# BFI LD 2017 - Plea Bargaining

Contents

[BFI LD 2017 - Plea Bargaining 1](#_Toc489527649)

[Topic Introduction 3](#_Toc489527650)

[Further Reading 5](#_Toc489527651)

[Affirmative 6](#_Toc489527652)

[Top of Case 7](#_Toc489527653)

[Contention 1: Plea bargaining disrupts the tenets of justice 10](#_Toc489527654)

[Contention 2: Plea bargaining is racially biased 14](#_Toc489527655)

[Contention 3: Plea bargaining maintains toxic masculinity 16](#_Toc489527656)

[Extensions: 18](#_Toc489527657)

[A2: Equitable Accessibility of Law Resources 23](#_Toc489527658)

[A2: Fairness in Criminal Justice 24](#_Toc489527659)

[A2: Plea Bargaining Operates Fairly 25](#_Toc489527660)

[A2: Plea Bargaining = Fair Sentancing 26](#_Toc489527661)

[Negative 27](#_Toc489527662)

[Top of Case 28](#_Toc489527663)

[Contention 1: Their progressive legalism reifies the Prison Industrial Complex 31](#_Toc489527664)

[Contention 2: Abolishing plea bargaining would cause court clogging 36](#_Toc489527665)

[On-Case Cards 40](#_Toc489527666)

[Extensions 43](#_Toc489527667)

[A2: Plea Bargaining Bad 46](#_Toc489527668)

[A2: We Don’t Need Plea Bargaining 47](#_Toc489527669)

[A2: Established Alternatives Solve 48](#_Toc489527670)

## Topic Introduction

“Resolved: Plea bargaining ought to be abolished in the United States criminal justice system.”

This topic asks debaters to sort through questions of the operations and justness of the criminal justice system. Plea bargaining has been an established legal practice for a long time in the United States, as a way to relieve the mounting amount of criminal cases going to courts. Plea bargains were established as a pre-trial compromise between the prosecutor and the defendant, as a way to speed up the trial process and reduce the severity for a sentence in exchange for a plea of guilty or no-contest to the charges presented against the defendant. From a practical perspective plea bargaining does make sense: it gives the defendant a better sentence that if they lost in court, and it saves the prosecution time and money from the process of a trial. As a result, the vast majority of criminal cases in the US have been resolved through plea bargaining. However, many scholars and policy commentators have noted that many innocent people have accepted plea bargains under fears of harsher sentences.

The resolution calls for plea bargaining to be abolished as a practice in criminal law cases. From a practical perspective, the affirmative could defend this by arguing that plea bargaining does more harm than it does good. Many legal scholars argue the practice of plea bargaining undermines the tenets of justice that law is supposed to uphold, and rather has succumbed to efficiency. Alongside a defense of traditional notions of justice, the affirmative can utilize examples of how plea bargaining is biased in sentencing disparities between white and black defendants, exasperating issues of mass incarceration and convictions among races. Alongside this literature base is another criticism of plea bargaining in regards to sexual assault cases. Because plea bargaining operates based on reducing the severity of sentences, many cases for sexual assault never end with the defendant being guilty for sexual assault, but rather exchanges a light sentence for sexual violence which some scholars note exasperates rape culture and toxic masculinity. In this file you will find a traditional defense of the tenets of justice, supported by Western philosophers such as Aristotle. In support of this, the first contention regards how plea bargaining foundationally undermines the credibility of the law itself. The second and third contention problematize the ways that plea bargaining protects sexual violence, and disproportionally targets black people.

The negative has different avenues in which to clash with the affirmative. From a policy perspective, one could agree that plea bargaining has its flaws, but that reformation to the process is better than abolishment entirely. Along with this, many scholars have noted the importance of plea bargaining in reducing the amount of criminal cases going to court, to prevent what is called ‘court clogging’ in which courts have more criminal cases than they have time and judges for, resulting in long waits for trials to take place. While this occurs, those charged with a crime usually are detained until the trial process begins which means they remain in prison anyways. From a more critical perspective, the negative can challenge the foundational logic behind the affirmative: while abolishing plea bargaining seems progressive, it still shows disregard for using a system that imprisons people in the first place. Many prison abolitionists have a comprehensive criticism of the ways in which the Prison Industrial Complex is always unethical, despite who goes to prison and for what crimes. This negative file consists of a philosophical defense of community empowerment through abolitionist ethic. The first contention argues that even progressive politics such as abolishing plea bargaining are still maintained in the logic of upholding law and order, which still pursues incarceration for most people. In this way, this contention criticizes the blindness to the issues the Prison Industrial Complex creates, and questions our ability to foresee solutions outside of cages. The second contention takes a more practical perspective and argues that in the world where plea bargaining is abolished, that criminal caseloads would overwhelm the courts, causing a ‘court clog’ in which the process of justice is stalled, and therefore denied to thousands which is in turn worse. Please note that some of the cards on the negative are contradictory to the first contention, if one does not want to run a critical position, you can argue that plea bargaining is just a good system, but this is not a compatible strategy along with the first contention.

This topic is rich in the literature from both practical legal perspectives, as well as critical theory surrounding the central questions and harms of the topic. While this is just a brief amount of research that covers the conversation of the topic, there is much more research to be done. Have fun with the debates!

### Further Reading

Alkon, Cynthia. “Plea Bargaining as a Legal Transplant: A Good Idea for Troubled Criminal Justice Systems?”. Transnational Law and Contemporary Problems, Spring

2010.

Davis, Angela. *Are Prisons Obsolete?.* New York, NY: Seven Stories Press, 2003.

Lippke, Richard*. The Ethics of Plea Bargaining.* Oxford University Press, 2011, Monograph Series in Criminal Law and Justice, 258 pp.

Philips, Michael. “The Question of Voluntariness in the Plea Bargaining Controversy: A Philosophical Clarification”. Law and Society Review, Vol. 16, No. 2, (1981-1982),

pp. 207-244. Web.

Wan, Tina. “The Unnecessary Evil of Plea Bargaining: An Unconstitutional Conditions Problem and not so Least Restrictive Alternative”. Southern California Review of

Law and Social Justice, Fall 2007.

## Affirmative

### Top of Case

Viewed functionally, our criminal justice system gives a person accused of crime a choice. He can elect to go to trial and run the risk of harsh penalties, or accept a negotiated settlement with a consequent reduction in possible punishment. For an overwhelming majority of those ultimately convicted of crime,' the choice is clear: a non-trial settlement with its more lenient punishment is an alternative the accused cannot refuse, and so he "cops a plea." Thus, for most of those convicted of crime, the plea bargaining model, not the trial model with all its prized safeguards, represents the American way. Phrased differently, what the system too often presents to a defendant is a game of truth or Draconian' consequences which he must play, despite the privilege against self-incrimination.

Pugh and Radamaker 1981 (George and Dallis, “A Plea for Greater Judicial Control Over Sentencing and Abolition of the Present Plea Bargaining System”, Louisiana Law Review, Volume 42, Number 1, Fall 1981)

#### It is because I agree with the analysis from Pugh and Radamaker that I affirm the following resolution:

#### Resolved: Plea bargaining ought to be abolished in the United States criminal justice system

#### To provide clarity for this debate, I present the following definitions:

#### Plea bargaining

The American Bar Association (“How Courts Work”, American Bar Association, Division for Public Education, no date)

Many criminal cases are resolved out of court by having both sides come to an agreement. This process is known as negotiating a plea or plea bargaining. In most jurisdictions it resolves most of the criminal cases filed. Plea bargaining is prevalent for practical reasons. Defendants can avoid the time and cost of defending themselves at trial, the risk of harsher punishment, and the publicity a trial could involve. The prosecution saves the time and expense of a lengthy trial. Both sides are spared the uncertainty of going to trial. The court system is saved the burden of conducting a trial on every crime charged. Either side may begin negotiations over a proposed plea bargain, though obviously both sides have to agree before one comes to pass. Plea bargaining usually involves the defendant's pleading guilty to a lesser charge, or to only one of several charges. It also may involve a guilty plea as charged, with the prosecution recommending leniency in sentencing. The judge, however, is not bound to follow the prosecution’s recommendation. Many plea bargains are subject to the approval of the court, but some may not be (e.g., prosecutors may be able to drop charges without court approval in exchange for a "guilty" plea to a lesser offense). Plea bargaining is essentially a private process, but this is changing now that victims rights groups are becoming recognized. Under many victim rights statutes, victims have the right to have input into the plea bargaining process. Usually the details of a plea bargain aren’t known publicly until announced in court.

#### Abolish

Merriam-Webster Dictionary (“abolish”, no date, online)

to end the observance or effect of (something, such as a law) : to completely do away with (something)

#### For this debate I propose the value of justice which is explained by

Pomerleau (Wayne, a graduate of Gonzaga law school, “Western Theories of Justice”, The Internet Encyclopedia of Justice, no date, web)

Justice is one of the most important moral and political concepts. The word comes from the Latin jus, meaning right or law. The Oxford English Dictionary defines the “just” person as one who typically “does what is morally right” and is disposed to “giving everyone his or her due,” offering the word “fair” as a synonym. But philosophers want to get beyond etymology and dictionary definitions to consider, for example, the nature of justice as both a moral virtue of character and a desirable quality of political society, as well as how it applies to ethical and social decision-making. This article will focus on Western philosophical conceptions of justice. These will be the greatest theories of ancient Greece (those of Plato and Aristotle) and of medieval Christianity (Augustine and Aquinas), two early modern ones (Hobbes and Hume), two from more recent modern times (Kant and Mill), and some contemporary ones (Rawls and several successors). Typically the article considers not only their theories of justice but also how philosophers apply their own theories to controversial social issues—for example, to civil disobedience, punishment, equal opportunity for women, slavery, war, property rights, and international relations. For Plato, justice is a virtue establishing rational order, with each part performing its appropriate role and not interfering with the proper functioning of other parts. Aristotle says justice consists in what is lawful and fair, with fairness involving equitable distributions and the correction of what is inequitable. For Augustine, the cardinal virtue of justice requires that we try to give all people their due; for Aquinas, justice is that rational mean between opposite sorts of injustice, involving proportional distributions and reciprocal transactions. Hobbes believed justice is an artificial virtue, necessary for civil society, a function of the voluntary agreements of the social contract; for Hume, justice essentially serves public utility by protecting property (broadly understood). For Kant, it is a virtue whereby we respect others’ freedom, autonomy, and dignity by not interfering with their voluntary actions, so long as those do not violate others’ rights; Mill said justice is a collective name for the most important social utilities, which are conducive to fostering and protecting human liberty. Rawls analyzed justice in terms of maximum equal liberty regarding basic rights and duties for all members of society, with socio-economic inequalities requiring moral justification in terms of equal opportunity and beneficial results for all; and various post-Rawlsian philosophers develop alternative conceptions. Western philosophers generally regard justice as the most fundamental of all virtues for ordering interpersonal relations and establishing and maintaining a stable political society. By tracking the historical interplay of these theories, what will be advocated is a developing understanding of justice in terms of respecting persons as free, rational agents. One may disagree about the nature, basis, and legitimate application of justice, but this is its core.

#### Criminal law is the criterion for the tenets of justice which are explained by

Ralph Fine in 1987 (“Plea Bargaining: An Unnecessary Evil”, Marquette Law Review, Volume 70, Issue 4, Summer 1987)

The criminal law protects society in three major ways: deterrence, isolation, and rehabilitation. We attempt to deter persons from committing crimes with the threat of punishment, and rehabilitate those, who for one reason or another, have not been deterred. If deterrence and rehabilitation both fail, there is no alternative but to isolate the offender from the rest of society through long-term incarceration.

### Contention 1: Plea bargaining disrupts the tenets of justice

#### Plea bargaining’s logic of expediency ruptures the foundations for respect of the law

Fine 1987 (Ralph, “Plea Bargaining: An Unnecessary Evil”, Marquette Law Review, Volume 70, Issue 4, Summer 1987)

B. Plea Bargaining Weakens Respect For the Law An essential component of rehabilitation is a respect for society and its laws. However, plea bargaining teaches the criminal that judges and lawyers can ignore the law when it is expedient to do so. Significantly, many plea bargains result in charges that cannot be sustained by the facts. One common plea bargain in Wisconsin is to reduce a charge of "operating [a] vehicle without [the] owner's consent," a two-year felony,15 to "joyriding," a nine-month misdemeanor,16 even though the car may have been damaged and return of the vehicle undamaged within twenty-four hours is an element of the misdemeanor charge."7 Prosecutors, of course, should issue only those charges for which the evidence would support a conviction at trial. 8 Milwaukee County District Attorney E. Michael McCann, apparently goes a step further and advocates an even more rigorous screening, at least under some circumstances. Thus, several years ago, although he publicly stated that two Green Bay Packers players accused of sexual assault were guilty of "indecent and immoral sexual over- reaching"'19 and that their conduct in connection with the incident was "reprehensible, shameful and depraved, '2° he declined to prosecute them because he "determined that the state [would] be unable to prove the guilt of the two men be- yond a reasonable doubt."'21 This, as Wisconsin Supreme Court Justices Donald W. Steinmetz and Roland B. Day have noted,22 is an even stricter standard than that recommended by the American Bar Association 3 and would, obviously, preclude many plea bargain arrangements. Nevertheless, plea bargaining often involves fiddling with the facts.24 As a prosecutor told two researchers working under a National Institute of Mental Health grant: "A lot of fictions are entered into. For instance, with the elements. In order to get within a lesser included offense, people kind of fudge the facts a bit. I've seen some people plead guilty.., to attempted possession of narcotics, and I think that is pretty hard to do!"25 What is the "spree" criminal to think when it is "bargain day" at the courthouse: four armed robberies for the price of one? What is an impressionable young man to think when, after smashing up a stolen car, he is allowed to plead guilty to the reduced charge of "joy riding?" 26 As one commentator has recently written, plea bargaining "often destroys the integrity of the criminal justice system by allowing defendants to appear to be convicted of crimes different from the ones they actually committed. 27 One of the biggest fictions connected with plea bargaining is the practice of permitting a defendant to plead "guilty" while simultaneously proclaiming his or her innocence. Although authorized by North Carolina which was, significantly, a death penalty case - it is an Alice in Wonderland expediency that vitiates public confidence in the criminal justice system. Simply put, if we want defendants to respect the law, we must enforce it with justice and honesty.

#### Plea bargaining drains the law from its ability to deter crime

Fine 1987 (Ralph, “Plea Bargaining: An Unnecessary Evil”, Marquette Law Review, Volume 70, Issue 4, Summer 1987)

A. Plea Bargaining Weakens Deterrence The very essence of deterrence is credibility. As I point out in Escape of the Guilty, we keep our hands out of a flame because it hurt the very first time (not the second, fifth, or tenth time) we touched fire. If deterrence is to work, we must, in the words of noted Norwegian law professor and criminolo- gist, Johannes Andenaes, make "the risk of discovery and punishment" outweigh "the temptation to commit crime." 10 Yet, plea bargaining destroys this needed credibility. A good example is what happened in two states with strict gun laws. Massachusetts and Michigan have both tried to control the unlawful use of guns. Starting in April of 1975, someone carrying a handgun without a license in Massachusetts faced a mandatory one year in jail. Michigan's anti-gun law went into effect in 1977 and required that an additional two years be tacked on to any felony sentence if the defendant was carrying a gun at the time of the crime. Prosecutors and judges in Massachusetts took the law seriously and it worked. However, the Michigan story, as Harvard Professor James Q. Wil- son relates, was different: Many judges would reduce the sentence given for the origi- nal felony (say, assault or robbery) in order to compensate for the add-on. In other cases, the judge would dismiss the gun count. Given this evasion, it is not surprising that the law had little effect in the rate at which gun-related crimes were committed." As a 1973 report of the U.S. National Advisory Commis- sion on Criminal Justice Standards and Goals concluded: Since the prosecutor must give up something in return for the defendant's agreement to plead guilty, the frequent result of plea bargaining is that defendants are not dealt with as severely as might otherwise be the case. Thus plea bargain- ing results in leniency that reduces the deterrent impact of the law.12 Deterrence is, of course, further weakened as the criminal brags about his deal and spreads word throughout the com- munity that the law has no teeth. Dean Roscoe Pound of the Harvard Law School, who studied plea bargaining in the 1920's, called it a "license to violate the law"'13 and, over a hundred years ago, the Wisconsin Supreme Court derisively condemned it as "a direct sale of justice."14

#### There are well established alternatives to plea bargaining that balance between faster trials and the right to appeal decisions

Pugh and Radamaker 1981 (George and Dallis, “A Plea for Greater Judicial Control Over Sentencing and Abolition of the Present Plea Bargaining System”, Louisiana Law Review, Volume 42, Number 1, Fall 1981)

The extensive overall reform of adversarial plea bargaining that seemed perhaps to be heralded by Boykin v. Alabama.6 is still largely unachieved. Reconsideration of plea bargaining and analysis of post- Boykin developments cause the writers to doubt the feasibility of timely reform of the institution.2 Rather than embrace further at- tempts at reform, the writers believe that abolition of the present plea bargaining system, substituting for it a new judge-run non- adversary alternative to trial, is the best course of action. If the pro- posal has merit, the following broad outline should suffice to per- suade the reader that further elaboration of the plan should be undertaken. Adversarial plea bargaining of all kinds between prosecutor and defense counsel would be prohibited by law. Shortly after a defen- dant had been formally charged with an offense and the case had been fully investigated, defendant could, without prejudice, make an application in camera for a specially designated judge (hereafter called a sentencing judge) to ascertain the maximum penalty the defendant would receive if he pleaded guilty and thereby opted for a non- adversary alternative to trial. The sentencing judge (a person other than the one who would try the case if defendant decides to plead not guilty) would have full access to police and prosecutorial files, and defendant's criminal record. After studying this data, the judge would, by a penal order,"" expeditiously notify the defendant what the maximum sentence would be if he pleaded guilty. With this in- formation, the defendant would be better able to decide whether he would elect the traditional adversarial trial route or the new non- adversarial alternative.' Since a critical factor in many criminal prosecutions concerns the constitutionality of admitting certain evidence, perhaps a defendant should be permitted to delay this de- cision until after a motion to suppress had been decided."' In any event, a defendant would not be permitted to elect the new pro- cedure until safeguards similar to those embodied in Federal Rule 11 were complied with. By pleading guilty and thereby electing the non-trial alternative, the defendant would insure that he would receive a sentence no longer than that stipulated in the penal order. There would then be a full sentence hearing, in consequence of which the defendant might well be given a lighter sentence than that stated in the order. Although there are constitutional problems with such a plan,"' the writers feel that it is far superior to the present adversarial plea bargaining system, and hope it would pass constitutional muster.m The sentence hearing would be open to the public, and all circumstances relative to punishment would be explored-much as is today done in many continental criminal trials."' At this sentence hearing, in addition to a pre-sentence report prepared by a trained professional responsible to the court, defense counsel and prosecutor could present, in expeditious fashion, data deemed by them to be pertinent. The proceeding would not, however, be essentially adver- sarial in character. The judge, instead of being the passive referee he often is in American trials, would be the dominant active figure"'-making all inquiries necessary to enable him to determine the pentence he deems most appropriate from the standpoint of both society and the defendant. By legislation the sentencing judge would, for this sentence hearing, be freed from the restraints of legislatively imposed man- datory minimum sentences (just as the prosecutor usually is today in plea bargaining because of his charging power). Further, for this purpose, the sentencing judge should-be-authorized to reduce the charge against the defendant to what he deems the appropriate charge applicable to the case. This exercise of discretion would fur- ther enable him to individualize the sentence in a manner similar to that now generally available for the prosecuting authority in plea bargaining. To protect against abuse, and facilitate development of appropriate sentencing guidelines, it probably would be well to let both the defendant and the prosecution appeal the sentence actually imposed. To make the system work, however, even on appeal defen-dant could not be given more than the maximum earlier set by the judge in the penal order. A variation on the plan would permit the prosecution, prior to defendant's election, to seek review of the penal order in the appellate court. The advantages to the guilty defendant of the non-trial option (rather than going to trial) are obvious. By it, the defendant comes to grips with his problem in a quick, simple, relatively inexpensive procedure. Perhaps more significantly, he avoids concentration onthe details of the crime and his role in it, and focuses the court's at- tention on his major concern, minimizing the penalty. There would probably be a natural tendency for a judge in such a hearing to show leniency to a defendant who manifests remorse and repentence for his wrongdoing. It may be hoped, however, that sentences meted out at such a hearing would not be reduced below those justified by penological considerations.28 Parenthetically, it is also to be hoped that a defendant electing the traditional trial route would be given a sentence no greater than the judge feels is appropriate to him in- dividually, that a defendant's punishment would not be augmented for the purpose of discouraging others from asserting their right to trial, and that the trend towards legislatively mandated minimum sentences would be reversed."' Further, the writers feel that all sentences should be reviewable by an appellate court at the instance of either the prosecution or the defense, minimizing the risk of im- proper differentials between sentences arrived at through the trial and non-trial routes, and affording open consideration of sentences. The non-adversarial alternative to trial would be very different from the present plea bargaining system and, in the writers' opin- ion, much preferable. Rather than the result of haggling or bargaining, the defendant's sentence would be determined by the court under a fair, expeditious public procedure-subject to appeal by both the defendant and the prosecution.

### Contention 2: Plea bargaining is racially biased

#### People of color are less likely to receive beneficial plea deals than their white counterparts – this results in higher rates of incarceration because defendants are forced to plead guilty

Tucker ’17 [J.B.W. Tucker, 7-14-2017, "The Ultimate White Privilege Statistics &amp; Data Post," Race, Racism and the Law, http://racism.org/index.php/articles/race/white-privilege/1890-the-ultimate-white-privilege-statistics-data-post-2?showall=&amp;start=4]

Once arrested, blacks are more likely to remain in prison awaiting trial than whites; in some places, they are 33% more likely to be detained while awaiting trial than whites.[9] Then, people of color are routinely arraigned under stiffer, harsher charges than white offenders. While more than 90% of cases end in a plea bargain, blacks and Latinos are less successful at getting their sentences reduced via plea bargain.[33] According to a University of Michigan study: “[B]lack defendants face significantly more severe charges than whites even after controlling for criminal behavior (arrest offense, multiple-defendant case structure, and criminal history), observed defendant characteristics (e.g., age, education), defense counsel type, district, county economic characteristics, and crime rates. Unexplained racial disparities exist across the charge- severity distribution, especially at the high end. The most striking disparities are found in the use of charges that carry non-zero statutory minimum sentences.”[34] Black men are nearly twice as likely to be arraigned on charges that carry a mandatory minimum.[34] A study in Georgia in the 1980s found that more than 20% of black defendents convicted of murdering white victims received the death penalty. However, only 8% of whites who killed whites and 1% of blacks who killed other blacks received the death penalty.[35] http://www.crf-usa.org/brown-v-board-50th-anniversary/the-color-of-justice.html Rehavi, M. Marit and Starr, Sonja B., Racial Disparity in Federal Criminal Charging and Its Sentencing Consequences (May 7, 2012). U of Michigan Law & Econ, Empirical Legal Studies Center Paper No. 12-002. Available at SSRN: http://ssrn.com/abstract=1985377 http://www.nytimes.com/2007/10/07/weekinreview/07glater.html If you’ve watched Law & Order or just about any other police procedural show, you’re familiar with the idea that almost anything you can be arrested for can be brought under different charges—say, Murder II or Murder III, or even Manslaughter, instead of Murder I. People of color are prosecuted under the higher charges at much higher rates than whites. Blacks are 21% more likely to receive mandatory minimum sentences.[9][29] Blacks are 20% more likely to be sentenced to prison than whites.[9][29] Once convicted, black offenders receive sentences that are 10% longer than white offenders for the same crimes.[9][29] That sentencing gap has widened in recent years; since judicial discretion was returned by the Supreme Court in 2005, “Prison sentences of black men were nearly 20% longer than those of white men for similar crimes in recent years.”[36] 2/3 of criminals receiving life sentences are non-whites; in the state of New York, it’s 83%. [9] http://www.wsj.com/articles/SB1000142412788-7324432004578304463789858002 The higher rate of mandatory minimum sentencing, the increased likelihood of a prison sentence, and the longer overall sentences, are even worse when considering the previous statistics. Consider that blacks are routinely brought up on stiffer charges for the same actual crime, while whites are more frequently charged more leniently. Consider also that whites are more often successful at pleading the initial charge down to lesser charges than people of color. The result is that people of color end up facing longer sentences for lesser crimes, while whites receive shorter sentences for greater crimes! Blacks are frequently illegally excluded from serving on juries. “For example in Houston County, Alabama, 8 out of 10 African Americans qualified for jury service have been struck by prosecutors from serving on death penalty cases.”[9] Only 3-5% of criminal cases go to court; most are plea-bargained. “Most plea bargains consist of promise of a longer sentence if a person exercises their constitutional right to trial. As a result, people caught up in the system, as the American Bar Association points out, plead guilty even when innocent. Why? As one young man told me recently, ‘Who wouldn’t rather do three years for a crime they didn’t commit than risk twenty-five years for a crime they didn’t do?’”[9] People of color are much more likely to receive a public defender than whites.[9] In 2004, the US Bar Association—not exactly a liberal bunch—reviewed the public defender system and came to the following conclusion: “All too often, defendants plead guilty, even if they are innocent, without really understanding their legal rights or what is occurring…The fundamental right to a lawyer that America assumes applies to everyone accused of criminal conduct effectively does not exist in practice for countless people across the US.”[9]

#### And a broken public defense system further widens racial disparities, making Hispanic and African American populations more likely to serve time

Renter ’10 [Elizabeth Renter, Elizabeth Renter studied criminal justice at Bellevue University, worked in case management for the Nebraska Department of Correctional Services, and as a probation/parole officer in North Carolina, 9-24-2010, "How the Broken Public Defense System Exacerbates Racial Disparities," HuffPost, http://www.huffingtonpost.com/elizabeth-renter/how-the-broken-public-def\_b\_738305.html]

Currently, it’s estimated that more than 75% of criminal cases use the public defense system. This means only one-quarter of Americans accused of a crime can afford, or care to hire a private defense attorney. Of these citizens using the public defense systems, racial minorities constitute the vast majority. With 25.3% of the Hispanic population and 25.8% of the African American population living in poverty, it stands to reason these groups would get the most use out of a defense system designed to represent the poor. We can point to a variety of reasons why these population groups are represented disproportionately within the criminal justice system, many if not most of them deeply rooted in institutional racism. But the failures of public defense is seldom examined as a significant contributing factor. The Bureau of Justice Statistics reports 69% of white males within state prison systems made use of the public defense system while 73% of Hispanic and 77% of African American men did. So while this makes it clear that those below the poverty line, forced to use the indigent defense system, are more likely to be serving time than those who are living more comfortably, it also shows how a broken public defense system can only serve to further widen the racial disparities of the entire criminal justice system.

### Contention 3: Plea bargaining maintains toxic masculinity

\*Content note: will be discussing issues of sexual assault and rape culture

#### Plea bargaining shields protects sexual violence which undermines the ability to eliminate rape culture

Williams 2010 (Rachel, “Fewer rape convictions because plea bargains prevail, report suggests”, The Guardian, March 20th)

Hundreds of convictions gained in rape cases are actually for lesser offences, official figures reveal. In her landmark review into the handling of rape cases, Lady Stern suggested this week that there should be greater focus on the fact that of rape cases that got to court, 58% ended in conviction for rape or a related offence. But Ministry of Justice records show that in 2008 only 38% of rape cases won a conviction for rape itself. Alternative convictions were generally for offences such as sexual assault or sexual activity with a child under 16 – a much easier charge to prove because consent is not an issue. But they could also include non-sexual crimes such as a violent attack that was part of the incident, although the Crown Prosecution Service said this was highly unlikely to occur. ​ Alternative convictions could come about because of a plea bargain, where a rape or – more likely – attempted rape charge is dropped after a defendant offers to plead guilty to a lesser sexual offence, or because the jury is given two alternative charges and convicts on the lesser one, acquitting the defendant of rape. Campaigners said reducing rape to a less serious offence was a "kick in the teeth" for victims. "The sentence will be lower, the man will be out sooner, and the victim may also get less or even no compensation," said Ruth Hall, of Women Against Rape. "The rapist will be confirmed in his view that he can get away with rape and is more likely to do it again." When a charge of sex with a minor is used instead of rape it can be particularly harrowing for the victim, because it suggests she consented to the activity. The mother of an underage teenage girl who complained she had been raped by a teenage boy but saw him charged with sexual activity with a child said: "She still is judged by others as a result of this charge and the subsequent pathetic sentence."

#### Toxic masculinity is interwoven with sexual violence - plea bargaining only protects the dominat force behind rape culture which perpetuates sexist violence

Friedman 2013 (Jaclyn, “Toxic Masculinity”, The American Prospect, March 13th)

Last summer, two young football players in the Ohio town of Steubenville carried the unconscious body of a local girl from party to party, violating her in ways you’d probably prefer not to think about. (I’m not pretending this incident is merely “alleged,” because there’s video and this column isn’t a court of law.) Today, she’ll face her attackers in court for the first time. It’s a brave act, as she surely knows she’ll not only be facing down the boys who did this to her, but also the adults whose jobs it is to blame her and call her a liar. Only she can know what will make this sacrifice worthwhile: Is it enough for her to be heard in court? Will it only be healing if the boys are convicted? Whatever it is she needs, I hope she gets it. But rape prosecutions are argued on behalf of the state, not just the victim, and there’s a good reason: Rape doesn’t just harm one person. It tears at the fabric of our communities. And if we treat this trial as simply the story of what a couple of kids did to another, we’re missing the point. This isn’t an isolated incident, and the incident itself didn’t happen in isolation. This rape is like most in that it was enabled by a deeply entrenched, toxic masculinity. It’s a masculinity that defines itself not only in opposition to female-ness, but as inherently superior, drawing its strength from dominance over women’s “weakness,” and creating men who are happy to deliberately undermine women’s power; it is only in opposition to female vulnerability that it can be strong. Or, as former NFL quarterback and newly-minted feminist Don McPherson recently put it, "We don't raise boys to be men. We raise them not to be women, or gay men." This starts in childhood for many boys, who are taught young that they’ll be punished for doing anything “girly,” from playing with dolls to crying, or even preferring to read over “rough housing” outside.

### Extensions:

#### Race affects sentencing – certain groups are more likely to be offered reduced charges while others face prison time for same crimes

Kutateladze ‘14 [Besiki Luka Kutateladze, Nancy R. Andiloro, January 31, 2014, Prosecution and Racial Justice in New York County – Technical Report, U.S. Department of Justice for the National Institute of Justice, https://www.ncjrs.gov/pdffiles1/nij/grants/247227.pdf]

Overall, there has been comparatively little contemporary research that examines the influence of race and ethnicity on prosecutorial decision making, particularly when it comes to the process of plea bargaining (Spohn, Gruhl, & Welch, 1987; Piehl & Bushway, 2007; Shermer & Johnson, 2010). Moreover, although prior research consistently emphasizes the importance of evidentiary issues in prosecutorial decision making (Albonetti, 1989; Frederick & Stemen, 2012; Spears & Spohn, 1996), researchers often lack quality information on the strength and type of evidence against a defendant. To address these limitations, we focused on plea-bargaining outcomes while incorporating unprecedented data on evidence collected from paper case files. Two vital components of the plea bargaining process—custodial sentence offers and reduced charge offers—were examined. The sentence offer analyses was conducted for (a) the population of misdemeanors in the dataset provided by DANY, (b) the random sample of 1,246 misdemeanor marijuana cases, and (c) the random sample of 1,153 felony non-marijuana drug cases. The charge offer analysis was performed for the two latter samples only because the population data did not include this information. Consistent with our hypothesis of more punitive plea offers for blacks and Latinos, overall, blacks, and to a lesser extent Latinos, were substantially less likely to receive reduced charge offers, and far more likely to receive custodial sentence offers. Although differences between white and Asian defendants were generally much smaller, in the aggregate, Asian defendants tended to have the most favorable plea outcomes.

#### Plea bargaining often results in jail time for blacks and Latinos, while Asians and whites are offered community service

Kutateladze ‘14 [Besiki Luka Kutateladze, Nancy R. Andiloro, January 31, 2014, Prosecution and Racial Justice in New York County – Technical Report, U.S. Department of Justice for the National Institute of Justice, https://www.ncjrs.gov/pdffiles1/nij/grants/247227.pdf]

Similar to the felony findings, for misdemeanors, greater percentages of blacks and Latinos have custodial sentence offers (see Figure 24). When analyzing percentages within race for misdemeanors, a greater percentage of black defendants received offers of jail or prison (47%) compared to Latinos (32%) and whites (22%), and a substantially smaller percentage of Asians received custodial offers (8%). Conversely, a markedly greater percentage of Asians received sentence offers with community service (39%), when compared to whites (23%), Latinos (22%), or blacks (20%).

#### White defendants are more likely to have their cases disposed of through plea offers

Kutateladze ‘14 [Besiki Luka Kutateladze, Nancy R. Andiloro, January 31, 2014, Prosecution and Racial Justice in New York County – Technical Report, U.S. Department of Justice for the National Institute of Justice, https://www.ncjrs.gov/pdffiles1/nij/grants/247227.pdf]

For felonies, and among defendants with no prior arrest, a marginally greater percentage of whites had their cases disposed through prosecutorial plea offers (55% for whites, 53% for Asians, 52% for blacks, and 51% for Latinos). A greater difference was observed among defendants with one prior arrest (for any offense), with 67% of cases involving white defendants disposed by plea (as compared to 53% for Asians, 52% for blacks, and 51% for Latinos). Among defendants with two or more arrests, the differences in rates of final disposition by plea were slightly greater, with whites again having the highest percentage (72% for whites, 67% for Asians, 66% for blacks, and 64% for Latinos). Overall, regardless of their prior record, whites were more likely to have their case disposed of as a guilty plea. However, we did not find noticeable differences by race in terms of pleas at arraignment versus post arraignment. Nearly all felony defendants, regardless of their race, enter guilty pleas after arraignment.

#### The ‘prisoners dilemma’ makes it cheaper to criminally prosecute African American defendants than give them a fair trial

Savitsky ’09 [Douglas Savitsky, Ph.D., J.D. “The Problem with Plea Bargaining: Differential Subjective Decision Making as an Engine of Racial Disparity in the United States Prison System.” Cornell University 2009. https://ecommons.cornell.edu/bitstream/handle/1813/13836/Savitsky,%20Douglas.pdf;jsessionid=82A74E5438BA9EA1E2A7C01F81F3650E?sequence=1]

The hypothesis of this project is that plea bargaining contributes to the racial inequality found in the American prison population by disproportionately impacting African American defendants. Plea bargaining lowers the transaction cost of criminal prosecutions which combines with political policies favoring large scale incarceration to drive up the prison population. It does this by indirectly pitting defendants against each other in what is in essence a multiplayer Prisoner’s Dilemma that induces defendants to take worse bargains than they otherwise might. Moreover, the decrease in transaction costs is generally larger for cases against poor defendants which correlates to a decrease in transaction costs for prosecuting Black defendants. Since prosecutors and the police are interested in maximizing successful prosecutions and minimizing costs, they are thus encouraged to prosecute a disproportionate number of Black defendants. Additionally, this project hypothesizes that in the plea bargaining process, a defendant negotiates based upon his subjective views of the criminal justice system and his expectation of conviction. He bases these subjective views both on objective reality as well as on social, cultural, and economic factors. This subjective analysis leads African American defendants to bargain with a more pessimistic estimate of how they will fare as compared to white defendants, resulting in overall worse, from the defendant’s perspective, bargains. Thus, the combination of the prosecutor’s effort to conserve resources and the defendant’s evaluation of his own risk aggregate into a system that produces racially biased prison populations. Finally, not only has the imprisonment of Black men created a norm of acceptance in some Black communities of prison being a way of life (Western 2006), but the norm of plea bargaining as the accepted method of case disposition has emerged as an institution. These norms help perpetuate, and even increase, the very social factors that facilitated the disparate bargains in the first place.

#### Plea bargaining exacerbates racial disparities– three main warrants

Savitsky ’09 [Douglas Savitsky, Ph.D., J.D. “The Problem with Plea Bargaining: Differential Subjective Decision Making as an Engine of Racial Disparity in the United States Prison System.” Cornell University 2009. https://ecommons.cornell.edu/bitstream/handle/1813/13836/Savitsky,%20Douglas.pdf;jsessionid=82A74E5438BA9EA1E2A7C01F81F3650E?sequence=1]

The proposed model consists of three interwoven elements. First, a plea bargain is an institutional arrangement that enables a prosecutor to secure a conviction at a lower cost than if she were to take the case to trial. As her incentives are generally both to obtain the maximum number of convictions as well as to minimize costs, plea bargains offer a way to do this, and this gives her an incentive to use them. Similarly, plea bargains seemingly offer a defendant the best way to minimize his expected costs, both in terms of the transaction costs of a trial and in terms of his expected sentence. Plea bargains are thus generally seen as being in an individual defendant’s interest. However, plea bargaining as an institution has a collective action aspect to it. Over the entire set of defendants, plea bargaining induces comparatively bad bargains that, coupled with its efficiency, lead to a larger prison population. Second, this project argues that the bargains struck by Black defendants tend to be worse than those struck by similarly situated white defendants. There are two reasons for this. Black defendants are generally poorer, and they are thus less able to afford a competent defense. Second, Black defendants tend to be in a position of lower power than are white defendants.

Savitsky ’09 [Douglas Savitsky, Ph.D., J.D. “The Problem with Plea Bargaining: Differential Subjective Decision Making as an Engine of Racial Disparity in the United States Prison System.” Cornell University 2009. https://ecommons.cornell.edu/bitstream/handle/1813/13836/Savitsky,%20Douglas.pdf;jsessionid=82A74E5438BA9EA1E2A7C01F81F3650E?sequence=1]

Plea bargains are a convergence of the expectations of the two sides to a negotiation. In order for both sides to agree to a bargain, both must believe that they are better off by making the bargain. The prosecutor must believe that the certainty of a conviction and the cost savings of avoiding a trial are worth the concessions made to the defendant, and the defendant must believe that the sentence is lower than his expected sentence at trial. However, because a Black defendant is more likely than a white defendant to view the criminal justice system as biased against him, his subjective expected sentence is higher than that of a white defendant. That is, Black defendants will tend to be more risk averse than white defendants, owing to a cultural and historical distrust in the criminal justice system. Plea bargains offer a risk averse defendant a way to avoid extreme punishment, often seen by the defendant as inevitable, by accepting costs that are more modest. Consequently, Black defendants will ironically tend to accept bargains with comparatively worse outcomes. Further, because large numbers of Black defendants are “found guilty” through plea bargains, to a Black defendant first entering the criminal justice system, trial likely appears hopeless. Indeed, one in three African American men will spend some portion of his life in prison, and a social norm of acceptance of prison as a part of life has emerged in portions of the Black community (Western 2006). This, in addition to an historical distrust of the criminal justice system, acts to increase the perceived probability of conviction, increasing the expected costs, which lowers the amount a prosecutor must concede in a bargain. Thus, the fact that others have already been convinced to plea bargain is itself a factor that pushes a defendant in the same direction. Thus, the set of all bargains that a Black defendant will be willing to agree to includes higher sentences than for a similarly situated white defendant.

Savitsky ’09 [Douglas Savitsky, Ph.D., J.D. “The Problem with Plea Bargaining: Differential Subjective Decision Making as an Engine of Racial Disparity in the United States Prison System.” Cornell University 2009. https://ecommons.cornell.edu/bitstream/handle/1813/13836/Savitsky,%20Douglas.pdf;jsessionid=82A74E5438BA9EA1E2A7C01F81F3650E?sequence=1]

The third component of this model is that a prosecutor tries to make the best bargain she can. Because of the weaker bargaining position in the case of a Black defendant, the prosecutor needs to make fewer concessions to reach a plea bargain. Additionally, it is less expensive to convict a Black defendant than a white one. The reasons for this, in addition to the differential perception of the criminal justice system, are that Black defendants tend to have less resources with which to defend themselves, have lower expected future earnings, and are more likely to be involved in crimes for which the prosecution is relatively inexpensive. The sum total of these three components of the model is that plea bargaining aggregates to high levels of imprisonment and a disproportionately high rate of Blacks in prison. This imbalance feeds back on defendants fostering perceptions of the criminal justice system that convinces minorities that they are indeed more likely to have higher costs than whites. The crux of the argument is that each defendant and prosecutor in a criminal prosecution must make a subjective evaluation of risk. The bargain that is reached relates directly to this evaluation. For a defendant, this evaluation differs based upon his experience with, and perception of, the criminal justice system. Blacks have been shown to fare worse in the criminal justice system (Blumstein 1982, 1993), and survey data indicates that African Americans are more distrustful of the criminal justice system than whites (see e.g., Weitzer and Tuch 1999, Myers 1996).2 Thus, the bargains Black defendants are able to make tend to be worse than the bargains whites are able to make. For a prosecutor, prosecutions that are less expensive are more desirable. These less expensive prosecutions tend to correlate with prosecutions of Black defendants.

#### The logic of plea bargaining is not administering justice but doing a disservice to many including victims of sexual assault

Fine 1987 (Ralph, “Plea Bargaining: An Unnecessary Evil”, Marquette Law Review, Volume 70, Issue 4, Summer 1987)

One of the excuses often advanced for plea bargaining is that "half a loaf is better than none" when the evidence is weak, and that it is better to "get a dangerous person off of the streets for a short time" than risk an acquittal. This argument was punctured by Dan Hickey, a chief prosecutor in Alaska both before and after that state abolished plea bargaining in 1975: It is, in essence, a meaningless gesture to take in a whole lot of bad cases that can't be proved and bargain them out for meaningless dispositions. It is no solution to crime in this country to run someone through the process to get some kind of conviction which, more often than not, is for some- thing much less than they were accused of and which results in something which really doesn't mean anything in terms of real punishment.8 Charging a rape as "disorderly conduct,"9 for example, under the aegis of a "half a loaf is better than none" theory disables justice as the victim wonders, and the criminal gloats, at the law's impotence.

### A2: Equitable Accessibility of Law Resources

**Public defenders are overworked and under-regulated – due process is only accessible to those who can afford a private attorney**Renter ’10 [Elizabeth Renter, Elizabeth Renter studied criminal justice at Bellevue University, worked in case management for the Nebraska Department of Correctional Services, and as a probation/parole officer in North Carolina, 9-24-2010, "How the Broken Public Defense System Exacerbates Racial Disparities," HuffPost, http://www.huffingtonpost.com/elizabeth-renter/how-the-broken-public-def\_b\_738305.html]

The Bureau of Justice Statistics found that 15 of 19 state public defender systems were over the nationally recognized workload standards in their Census of State Public Defender Programs, 2007, released just this month. In Rhode Island, the state with the highest number of cases per public defense attorney, the rate was 42% above the recommended level with each lawyer carrying a caseload of 391. This, the BJS admits, is a “conservative estimate” as it does not include cases received before the 2007 reporting year. Surely, no one attorney handling 391 cases per year can offer each defendant on their caseload the time necessary to effectively and adequately represent them. Another side of the indigent defense system lies in contract attorneys. Most states use both a public defender option and supplement this by contracting with private attorneys. Just how a private attorney gets their cases from the courts, again, varies from jurisdiction to jurisdiction. In California, about half of the counties use contract services. Recently, some of these counties have come under fire for awarding contracts to firms who can offer the greatest number of cases at the lowest rate. This sort of discounting is likely to benefit no one but the firms themselves and the bottom-line of the county. Like so much of the criminal justice system, indigent defense has been reduced to little more than a cog in the wheel that sends hundreds of thousands to prison and millions under the watchful eye of community corrections. Many of us, not immediately impacted by the public defense system, assume that the Constitutional right to effective counsel is respected and upheld in the courts of our nation. We trust that if accused of a crime, we will be appointed an attorney to act as an advocate on our behalf. Instead, defendants who are often overwhelmed and confused by the complex legal system, have no choice but to put their trust in overworked and under-regulated lawyers who may or may not do their case any good. It seems under the current disjointed system, equal protection under the law and due process are only accessible to those who can afford a private attorney or for those who are lucky to be facing charges in a jurisdiction that has managed to maintain a level of order within their public defense system. We can only hope that the recent hints toward more progressive justice by lawmakers at the state and federal levels will include in-depth analysis of the broken indigent defense system and perhaps an eventual move towards reform.

### A2: Fairness in Criminal Justice

#### Plea bargaining has strengthened prosecutorial power and has hijacked the justice system in the US

Pugh and Radamaker 1981 (George and Dallis, “A Plea for Greater Judicial Control Over Sentencing and Abolition of the Present Plea Bargaining System”, Louisiana Law Review, Volume 42, Number 1, Fall 1981)

That plea bargaining developed in the United States is not difficult to understand; the disturbing thing is that our society has per- mitted it so long to persist without either imposing pervasive judicial control, or outlawing it and substituting for it a more satisfactory procedure. For many of those accused of crime, evidence of guilt is overwhelming-but in our system this does not mean that the accused is defenseless. In part because of our history and tradition, our fear of abuse of authority, our great concern about the individual and the oppressed, the American criminal jus- tice system long ago developed great protection for the criminally accused. As a result, even the clearly guilty are often able to pro- long the adjudicative process and make it very time-consuming and ex- pensive for the prosecution. With the increase in crime that accompanied the country's urbanization, dockets became very crowded: the benefits to the prosecution in time and expense from a defendant's pleading guilty were obvious. Since the system generally ac- corded the prosecutor wide discretion in selecting the charge to levy against the defendant,' since the substantive law frequently provided the prosecution with a panoply of possible offenses to charge, and since cooperative judges usually honored sentence recommendations made by the prosecutor,' the power in the prosecution to offer a defendant an attractive "bargain" was great indeed. The fact that the American system authorized the imposition of comparatively harsh sentences' further strengthened the prosecutorial power. Given American ingenuity and our pragmatic approach, the institu- tion of plea bargaining quite naturally evolved. In fact, it is at least conceivable that penalties were escalated precisely to give the pro- secution power to force recalcitrant defendants to plead guilty. Because approximately 85 to 95 percent' of convictions were obtained by guilty plea with a consequent discount in sentence, the maximum penalty authorized in the book needed to be abnormally high if the sentence actually awarded or "agreed to" under the plea bargain would be one the society would regard as reasonably appropriate.

### A2: Plea Bargaining Operates Fairly

#### Public defenders increase the likelihood of accepting a plea bargain – leads to disproportional sentencing based on economic status

Renter ’10 [Elizabeth Renter, Elizabeth Renter studied criminal justice at Bellevue University, worked in case management for the Nebraska Department of Correctional Services, and as a probation/parole officer in North Carolina, 9-24-2010, "How the Broken Public Defense System Exacerbates Racial Disparities," HuffPost, http://www.huffingtonpost.com/elizabeth-renter/how-the-broken-public-def\_b\_738305.html]

Each state has a slightly unique indigent defense system. Most are ran at the state level though some states have separate systems from county to county. The notoriously broken indigent defense system in Michigan, for example, is one of the seven states that has no state funded public defense system at the trial level. Defendants here, as in many other jurisdictions across the country, are at the mercy of the county in which they have been charged, lucky to get an attorney that isn’t too overworked to give their case the time it needs. From not being informed of their eligibility for a public defender, to being forced to go through some stages of the process without an attorney at all, many of those accused feel pressured into accepting plea agreements by prosecutors that lead them to believe the plea is their best option. And yes, some even accept those plea agreements despite being completely innocent of the charges they face. With little knowledge of the legal system and the frightening potential prospect of prison time, the promise of probation in exchange for a guilty plea can be all too tempting. Even those who have the guidance of indigent defense from the beginning are far less likely to go to trial (resolving the case with a plea bargain) than those who have the benefit of a private attorney. If you’ve had any contact within the criminal courts, you know it’s not unheard of for a defendant to meet their publicly appointed attorney, summarize the case for them, answer a few questions, and accept a plea deal all within a matter of minutes. Does this mean the public defense attorneys aren’t qualified or don’t care? Not necessarily.

### A2: Plea Bargaining = Fair Sentancing

#### The logic of expediency has resulted in the softening of punishment for those who commit sexual assault and other gendered violence

Fine 1987 (Ralph, “Plea Bargaining: An Unnecessary Evil”, Marquette Law Review, Volume 70, Issue 4, Summer 1987)

B. Plea Bargaining Weakens Respect For the Law An essential component of rehabilitation is a respect for society and its laws. However, plea bargaining teaches the criminal that judges and lawyers can ignore the law when it is expedient to do so. Significantly, many plea bargains result in charges that cannot be sustained by the facts. One common plea bargain in Wisconsin is to reduce a charge of "operating [a] vehicle without [the] owner's consent," a two-year felony,15 to "joyriding," a nine-month misdemeanor,16 even though the car may have been damaged and return of the vehicle undamaged within twenty-four hours is an element of the misdemeanor charge."7 Prosecutors, of course, should issue only those charges for which the evidence would support a conviction at trial. 8 Milwaukee County District Attorney E. Michael McCann, apparently goes a step further and advocates an even more rigorous screening, at least under some circumstances. Thus, several years ago, although he publicly stated that two Green Bay Packers players accused of sexual assault were guilty of "indecent and immoral sexual over- reaching"'19 and that their conduct in connection with the incident was "reprehensible, shameful and depraved, '2° he declined to prosecute them because he "determined that the state [would] be unable to prove the guilt of the two men be- yond a reasonable doubt."'21 This, as Wisconsin Supreme Court Justices Donald W. Steinmetz and Roland B. Day have noted,22 is an even stricter standard than that recommended by the American Bar Association 3 and would, obviously, preclude many plea bargain arrangements. Nevertheless, plea bargaining often involves fiddling with the facts.24 As a prosecutor told two researchers working under a National Institute of Mental Health grant: "A lot of fictions are entered into. For instance, with the elements. In order to get within a lesser included offense, people kind of fudge the facts a bit. I've seen some people plead guilty.., to attempted possession of narcotics, and I think that is pretty hard to do!"25 What is the "spree" criminal to think when it is "bargain day" at the courthouse: four armed robberies for the price of one? What is an impressionable young man to think when, after smashing up a stolen car, he is allowed to plead guilty to the reduced charge of "joy riding?" 26 As one commentator has recently written, plea bargaining "often destroys the integrity of the criminal justice system by allowing defendants to appear to be convicted of crimes different from the ones they actually committed. 27 One of the biggest fictions connected with plea bargaining is the practice of permitting a defendant to plead "guilty" while simultaneously proclaiming his or her innocence. Although authorized by North Carolina which was, significantly, a death penalty case - it is an Alice in Wonderland expediency that vitiates public confidence in the criminal justice system. Simply put, if we want defendants to respect the law, we must enforce it with justice and honesty.

## Negative

### Top of Case

“A major challenge of this movement is to do the work that will create more humane, habitable environments for people in prison without bolstering the permanence of the prison system. How, then, do we accomplish this balancing act of passionately attending to the needs of prisoners- calling for less violent conditions, an end to state sexual assault, improved physical and mental health care, greater access to drug programs, better educational work opportunities, unionization of prison labor, more connections with families and communities, shorter or alternative sentencing- and at the same time call for alternatives to sentencing altogether, no more prison construction, and abolitionist strategies that question the place of prison in our future?”

**Because I agree with the insight of Angela Davis** (Good Reads, “Quotes About Prison Abolition”) **that I negate the following resolution:**

#### Resolved: Plea bargaining ought to be abolished in the United States criminal justice system.

#### To provide clarity for this debate, I present the following definitions (or agree with the affirmative’s definitions):

#### Plea bargaining

The American Bar Association (“How Courts Work”, American Bar Association, Division for Public Education, no date)

Many criminal cases are resolved out of court by having both sides come to an agreement. This process is known as negotiating a plea or plea bargaining. In most jurisdictions it resolves most of the criminal cases filed. Plea bargaining is prevalent for practical reasons. Defendants can avoid the time and cost of defending themselves at trial, the risk of harsher punishment, and the publicity a trial could involve. The prosecution saves the time and expense of a lengthy trial. Both sides are spared the uncertainty of going to trial. The court system is saved the burden of conducting a trial on every crime charged. Either side may begin negotiations over a proposed plea bargain, though obviously both sides have to agree before one comes to pass. Plea bargaining usually involves the defendant's pleading guilty to a lesser charge, or to only one of several charges. It also may involve a guilty plea as charged, with the prosecution recommending leniency in sentencing. The judge, however, is not bound to follow the prosecution’s recommendation. Many plea bargains are subject to the approval of the court, but some may not be (e.g., prosecutors may be able to drop charges without court approval in exchange for a "guilty" plea to a lesser offense). Plea bargaining is essentially a private process, but this is changing now that victims rights groups are becoming recognized. Under many victim rights statutes, victims have the right to have input into the plea bargaining process. Usually the details of a plea bargain aren’t known publicly until announced in court.

#### Abolish

Merriam-Webster Dictionary (“abolish”, no date, online)

to end the observance or effect of (something, such as a law) : to completely do away with (something)

#### For this debate I propose the value of empowerment

Morris et al 1976 (Mark, editor and designer for the project “Instead of Prisons: A Handbook for Abolitionists”, Prison Research Education Action Project)

Empowerment is more than a belief; it is a concept that governs the way we interact with people. It is also a method‑one which reflects the values of human dignity, respect for growth of consciousness and the integrity of relationships. Empowerment means that people and communities have the ability to define and deal with their own problems. Successful self‑management requires access to and control of proper resources, but lack of access in no way reduces the clarity with which affected people perceive their own problems and needs. Empowerment is essentially a political process‑redistributing power among the heretofore powerless. Empowerment assumptions undergird and effect the quality of programs abolitionists support. The empowerment models we advocate in this handbook are not to be confused with "community corrections" referred to by systems people. As abolitionists we essentially identify as community alternatives, those programs created by affected people: ex‑, community workers, drug addicts, alcoholics, rape victims, street crime victims and others. These are programs and alternatives that evolve directly from experience and need and are controlled by participants. Contrast this with the systems' definition of "community corrections." This term is applied to a wide variety of "correctional" activities for accused or convicted adults or juveniles, administered outside the jail, reformatory or prison. It includes traditional probation and parole, halfway houses, group homes, pretrial release and sometimes explicitly rehabilitative programs.[1] A common ingredient in all these programs is that decision‑making power remains in the grip of the system. Understandably, this concept of community "corrections" as an alternative to mass institutions appeals to a broad spectrum of prison changers. [2] Enlightened systems managers, professionals, ex-prisoners and abolitionists alike are united in the belief that a move from massive institutions toward the community is desirable: Most judges prefer sending younger lawbreakers to alternative programs to escape the damaging effects of prison. Some administrators use community "corrections" to provide a progressive facade which quiets reformist critics, even though community centers accommodate only a tiny fraction of the state's prison population.[3] Most prisoners regard any change that gets them outside prison walls as an improvement. Prison changers thus support community alternatives, even though they are controlled by the system.

#### To achieve empowerment in the face of plea bargaining in the US, I propose the criterion of abolition

Prison Research Project 1974 (“The Price of Punishment”, pg. 57, online @ prisonpolicy.org)

It's time to stop talking about reforming prisons and to start working for their complete abolition. That means basically three things: First, admitting that prisons can't be reformed, since the very nature of prisons requires brutality and contempt for the people imprisoned. Second, recognizing that prisons are used mainly to punish poor and working class people, and forcing the courts to give equal justice to all citizens. Third, replacing prisons with a variety of alternative programs. We must protect the public from the few really dangerous people who now go to prison. But more important, we must enable all convicted persons to escape the poverty which is the root cause of the crimes the average person fears most: crimes such as robbery, burglary, mugging or rape.

### Contention 1: Their progressive legalism reifies the Prison Industrial Complex

#### Their reformist logic upholds the values of law and order with progressive examples only reifies the legal systems ability to incarcerate to the fullest extent possible - their policy commentators still desire retribution, just less severe punishment

Pugh and Radamaker 1981 (George and Dallis, “A Plea for Greater Judicial Control Over Sentencing and Abolition of the Present Plea Bargaining System”, Louisiana Law Review, Volume 42, Number 1, Fall 1981)

The extensive overall reform of adversarial plea bargaining that seemed perhaps to be heralded by Boykin v. Alabama.6 is still largely unachieved. Reconsideration of plea bargaining and analysis of post- Boykin developments cause the writers to doubt the feasibility of timely reform of the institution.2 Rather than embrace further at- tempts at reform, the writers believe that abolition of the present plea bargaining system, substituting for it a new judge-run non- adversary alternative to trial, is the best course of action. If the pro- posal has merit, the following broad outline should suffice to per- suade the reader that further elaboration of the plan should be undertaken. Adversarial plea bargaining of all kinds between prosecutor and defense counsel would be prohibited by law. Shortly after a defen- dant had been formally charged with an offense and the case had been fully investigated, defendant could, without prejudice, make an application in camera for a specially designated judge (hereafter called a sentencing judge) to ascertain the maximum penalty the defendant would receive if he pleaded guilty and thereby opted for a non- adversary alternative to trial. The sentencing judge (a person other than the one who would try the case if defendant decides to plead not guilty) would have full access to police and prosecutorial files, and defendant's criminal record. After studying this data, the judge would, by a penal order,"" expeditiously notify the defendant what the maximum sentence would be if he pleaded guilty. With this in- formation, the defendant would be better able to decide whether he would elect the traditional adversarial trial route or the new non- adversarial alternative.' Since a critical factor in many criminal prosecutions concerns the constitutionality of admitting certain evidence, perhaps a defendant should be permitted to delay this de- cision until after a motion to suppress had been decided."' In any event, a defendant would not be permitted to elect the new pro- cedure until safeguards similar to those embodied in Federal Rule 11 were complied with. By pleading guilty and thereby electing the non-trial alternative, the defendant would insure that he would receive a sentence no longer than that stipulated in the penal order. There would then be a full sentence hearing, in consequence of which the defendant might well be given a lighter sentence than that stated in the order. Although there are constitutional problems with such a plan,"' the writers feel that it is far superior to the present adversarial plea bargaining system, and hope it would pass constitutional muster.m The sentence hearing would be open to the public, and all circumstances relative to punishment would be explored-much as is today done in many continental criminal trials."' At this sentence hearing, in addition to a pre-sentence report prepared by a trained professional responsible to the court, defense counsel and prosecutor could present, in expeditious fashion, data deemed by them to be pertinent. The proceeding would not, however, be essentially adver- sarial in character. The judge, instead of being the passive referee he often is in American trials, would be the dominant active figure"'-making all inquiries necessary to enable him to determine the pentence he deems most appropriate from the standpoint of both society and the defendant. By legislation the sentencing judge would, for this sentence hearing, be freed from the restraints of legislatively imposed man- datory minimum sentences (just as the prosecutor usually is today in plea bargaining because of his charging power). Further, for this purpose, the sentencing judge should-be-authorized to reduce the charge against the defendant to what he deems the appropriate charge applicable to the case. This exercise of discretion would fur- ther enable him to individualize the sentence in a manner similar to that now generally available for the prosecuting authority in plea bargaining. To protect against abuse, and facilitate development of appropriate sentencing guidelines, it probably would be well to let both the defendant and the prosecution appeal the sentence actually imposed. To make the system work, however, even on appeal defen-dant could not be given more than the maximum earlier set by the judge in the penal order. A variation on the plan would permit the prosecution, prior to defendant's election, to seek review of the penal order in the appellate court. The advantages to the guilty defendant of the non-trial option (rather than going to trial) are obvious. By it, the defendant comes to grips with his problem in a quick, simple, relatively inexpensive procedure. Perhaps more significantly, he avoids concentration onthe details of the crime and his role in it, and focuses the court's at- tention on his major concern, minimizing the penalty. There would probably be a natural tendency for a judge in such a hearing to show leniency to a defendant who manifests remorse and repentence for his wrongdoing. It may be hoped, however, that sentences meted out at such a hearing would not be reduced below those justified by penological considerations.28 Parenthetically, it is also to be hoped that a defendant electing the traditional trial route would be given a sentence no greater than the judge feels is appropriate to him in- dividually, that a defendant's punishment would not be augmented for the purpose of discouraging others from asserting their right to trial, and that the trend towards legislatively mandated minimum sentences would be reversed."' Further, the writers feel that all sentences should be reviewable by an appellate court at the instance of either the prosecution or the defense, minimizing the risk of im- proper differentials between sentences arrived at through the trial and non-trial routes, and affording open consideration of sentences. The non-adversarial alternative to trial would be very different from the present plea bargaining system and, in the writers' opin- ion, much preferable. Rather than the result of haggling or bargaining, the defendant's sentence would be determined by the court under a fair, expeditious public procedure-subject to appeal by both the defendant and the prosecution.

#### Plea bargaining’s emphasis on fast convictions only reifies the logic of incarceration which sustains the Prison Industrial Complex

Gazal 2005 (Oren, “Partial Ban on Plea Bargains”, University of Michigan Law School, Law and Economics Working Papers, Paper #05-008, Year 2005)

The innocence problem cannot be attributed to the bargaining process itself. Usually the offer to settle can only alleviate the awfulness of the innocent’s condition. His real problem is that he was prosecuted in the first place. In many cases, he was charged because of the availability of plea bargaining. The problem with the system is the effects of plea bargaining on the prosecutors’ choice of cases. Because of the availability of plea bargaining, the strength of evidence of any given case becomes less important to the prosecution. Defendants in weak cases are more likely to be charged – and therefore more likely to be convicted. With the strength of evidence playing a relatively small role in the result of the case, more innocent defendants are likely to be among those convicted.

#### Their progressive legalism promotes a more efficient and fair method of maintain law and order that still relies on the PIC which denies justice to marginalized populations

Smith 2012 (S.E. “Retribution or Change? The Progressive Support for the Prison Industrial Complex”, Tiger Beatdown, May 28th 2012, Web)

Like many progressives, I’ve been following the Tyler Clementi case with much interest, because it’s part of a larger ongoing conversation about the dangers of being queer in the United States. As the trial wound up and people started discussing the verdict, I found myself utterly fascinated by the intensity and viscerality of the progressive calls to lock Dharun Ravi up and throw away the key. People expressed outrage, horror, and disgust at his comparatively light prison sentence and the fact that he wouldn’t be deported. I was disgusted too, but not at the outcome of the trial. Rather, I was horrified by my fellow ‘progressives’ and their unabashed embrace of the prison-industrial complex in the United States, which chews up young men of colour and spits them out. This isn’t the first or the last time that the fraught progressive relationship with the US justice system was on full display, and it’s troubling to me that there’s so much widespread acceptance, and support, of the way the current system works. When pressed, many progressives indicate that they have concerns about racial inequalities in the US justice system. They are aware of racial profiling and the grossly disproportionate representation of people of colour in prison. Some are also concerned about mandatory sentencing and other flawed laws that determine who goes to jail or prison and for how long. Many also express worries about safety within the prison system, particularly for LGBQT prisoners. But many progressives stop short of questioning the prison system itself, and asking why it exists in its current form. There’s a social myth that prison is rehabilitative, intended to lead people on the path to personal change, but it’s pretty obviously punitive and retributive. Those paying lip service to the rehabilitative meme are well aware that reform is not what prison is for. People calling for Ravi’s imprisonment wanted to see him punished for what he did. Asking him to spend an extended time in prison wasn’t about hoping for rehabilitation, but about a punitive measure, a reactive lashing-out. And those wanting to see him deported were playing even more deeply into myths about justice in the United States. The same progressives who express concern about the way we handle immigrants were loudly shouting for Ravi’s expulsion from this country; game over, go home, we don’t want your kind here. You will have no more chances in this place. Calling for his deportation was a form of direct participation in the deeply flawed, dangerous, and racist system that tortures and abuses immigrants not just in the US, but around the world. People didn’t seem to experience any logical inconsistencies or cognitive dissonance here, when it came to demanding that Ravi be trapped by the prison-industrial complex in the United States. And they betrayed their true colours by focusing on retribution and punishment, rather than rehabilitation and reform. What Ravi did was wrong. Categorically and clearly wrong. Whether or not his actions led to Clementi’s death—and there’s compelling evidence that the videos did in fact contribute to Clementi’s suicide—they were invasive and wildly inappropriate. Videoing someone without consent is not okay, particularly in intimate moments in the privacy of your own room, where you think you are safe and out of the public eye. Ravi could have dealt with his discomfort around his roommate in many ways, like requesting a room change, but instead he chose to act out in an incredibly juvenile and disgusting way, to exploit Tyler and make him a subject of mockery. Tyler Clementi’s suicide was a tragedy. And Dharun Ravi does need to be held accountable for it. But sending him to prison, or deporting him, is not the answer, if your goal is actual change, reform, some kind of healing and progress out of this case. Punishing Ravi accomplishes nothing. It doesn’t bring Clementi back, and it doesn’t send a strong message to people contemplating similar actions; if creating object lessons worked, our prison system would be empty by now, right? Because no one would ever commit crimes. People who do terrible things aren’t going to be dissauded from them by one cautionary tale. Providing Ravi with a chance for reform, on the other hand, could lead to a true social catalyst. Maybe with an opportunity for reflection, Ravi could come to a place of genuine understanding. And he could bring that to the community around him; rather than being locked up to molder in a prison cell, he could become a speaker and advocate. He could talk about the harm he inflicted and could become an agitator for change. The approach to justice in the United States is deeply and categorically flawed. And those flaws extend into the progressive community, which lobbies to lock people up forever and deport them even as it claims to care about the serious race and class problems rife in the US justice system. Critically, progressives claim to care about the capacity for understanding and change, and the possibility of reform and genuine changes of mind, but they don’t actually want to provide people with an opportunity to do that. Ravi’s not the only person progressives have raked through the coals and thrown away. What Ravi did was horrific. I am not disputing that. The question here shouldn’t be how he should be punished, though, but how he can be held accountable, and what, if any, good can come from this. Imprisoning Ravi makes him into a martyr, and fosters even more hatred and fury. It ensures that any potential for reform is eliminated, turning Ravi into a reactive, furious man. Giving Ravi a chance to make reparations for his crime won’t bring Clementi back either, but it might be a small step towards actual change.

#### Incarceration will always be parasitic from historical violence - prison abolition is the only ethical alternative to reformation

Davis 2014 (Angela, “Angela Davis on Prison Abolition, the War on Drugs, and Why Social Movements Shouldn’t Wait on Obama”, Democracy Now, March 6th)

Well, of course, in 1977, when the Attica rebellion took place, that was a really important moment in the history of mass incarceration, the history of the prison in this country. The prisoners who were the spokespeople for the uprising indicated that they were struggling for a world without prisons. During the 1970s, the notion of prison abolition became very important. And as a matter of fact, public intellectuals, judges, journalists took it very seriously and began to think about alternatives. However, in the 1980s, with the dismantling of social services, structural adjustment in the Global South, the rise of global capitalism, we began to see the prison emerging as a major institution to address the problems that were produced by the deindustrialization, lack of jobs, less funding into education, lack of education, the closedown of systems that were designed to assist people who had mental and emotional problems. And now, of course, the prison system is also a psychiatric facility. I always point out that the largest psychiatric facilities in the country are Rikers Island in New York and Cook County in Chicago. So, the question is: How does one address the needs of prisoners by instituting reforms that are not going to create a stronger prison system? Now there are something like two-and-a-half million people behind bars, if one counts all of the various aspects of what we call the prison-industrial complex, including military prisons, jails in Indian country, state and federal prisons, county jails, immigrant detention facilities—which constitute the fastest-growing sector of the prison-industrial complex. Yeah, so how—the question is: How do we respond to the needs of those who are inside, and at the same time begin a process of decarceration that will allow us to end this reliance on imprisonment as a default method of addressing—not addressing, really—major social problems?

### Contention 2: Abolishing plea bargaining would cause court clogging

#### Plea bargains were established due to massive caseloads - eliminating them would result in court clogging, replicating the impacts

Walsh 2017 (Dylan, “Why US Criminal Courts Are So dependent on Plea Bargaining”, the Atlantic, May 2nd)

Plea bargains were almost unheard of prior to the Civil War. Only in its aftermath, as waves of displaced Americans and immigrants rolled into cities and crime rates climbed, did appellate courts start documenting exchanges that resemble the modern practice. The plea became a release valve for mounting caseloads. Appellate courts “all condemned it as shocking and terrible” at the time, said Albert Alschuler, a retired law professor who has studied plea bargains for five decades. The courts raised a range of objections to these early encounters, from the secretiveness of the process to the likeliness of coercing innocent defendants. Pleas, wrote the Wisconsin Supreme Court in 1877, are “hardly, if at all, distinguishable in principle from a direct sale of justice.” The practice nonetheless continued, and, by the turn of the century, a minor economy had settled in its orbit. “Fixers” could be hired to arrange for alternatives to a prison sentence. Police regularly toured jails to “negotiate” with the inmates. One New York City defense attorney and friend to local magistrates loitered in front of night court hawking 10 days in jail for $300, 20 days for $200, and 30 days for $150. By the 1920s, as violations of the federal liquor prohibition flooded court dockets, 88 percent of cases in New York City and 85 percent in Chicago were settled through pleas. When the Supreme Court in 1969 finally heard a case concerning the legality of the issue, it unanimously ruled that pleas are constitutionally acceptable. They are “inherent in the criminal law and its administration,” the Court declared… In theory, abolishing the use of plea bargains wouldn’t take much: Prosecutors would simply stop offering deals. That would be that, though the massive influx of trials would jam courts. (Michelle Alexander, author of The New Jim Crow, discussed defendants’ deliberately going to trial and “crashing the courts” as a form of resistance to mass incarceration.) But both sides of the debate agree the odds of this happening are infinitesimal. Even Alschuler, who throughout his career remained one of the staunchest critics of plea bargaining, admitted in 2013 that “the time for a crusade” had passed. Instead, he suggested people work to make the criminal-justice system “less awful.”

#### Court clogging turns the case - detention until trial due to the bail system disproportionality effects poor people

Feige 2013 (David, “Waiting and Waiting… For Justice”, The New York Times, May 1st)

LATE in the summer of 2011, police officers in New York City arrested a full-time college student named Luis in the lobby of his apartment building in the Bronx and charged him with two misdemeanor offenses, obstructing governmental administration and resisting arrest. Luis, though, wasn’t guilty of either — a fact supported by a video of the incident, provided to prosecutors by Luis’s lawyer, clearly showing that he had his hands up throughout the encounter. But when the district attorney’s office refused to dismiss the case, Luis found himself in a strange, dispiriting limbo of American justice: he had no realistic way to be acquitted at trial — not because he couldn’t prove his innocence, but because he couldn’t get a trial. Every year in New York City, more than a quarter of a million people are arrested and charged with misdemeanor offenses. The vast majority of those who don’t plead guilty right away are released without bail and ordered to return to court to fight their cases until they are concluded. But as William Glaberson reported in The New York Times on Wednesday, that can take a very long time. Statistics for courts in the Bronx are hard to come by. But in 2011, according to a report by the Criminal Court of the City of New York, it took over 400 days, on average, in the city’s other four boroughs to bring a case to a jury trial and verdict — with cases in Brooklyn taking nearly 600 days. That same year, defendants in New York City (with the exception of the Bronx) were required to make 906,243 court appearances — which ended in a mere 506 jury trials. Defendants spent the overwhelming share of those court dates just waiting for their cases to be resolved. Reducing the vast number of people charged with relatively minor offenses would go a long way toward easing this immense burden. But even without a shift in policing strategy, there’s one straightforward fix we can make: treat criminal cases more like civil cases by excusing defendants from appearing in court until the prosecution is actually ready to try them. In civil actions, lawyers file lawsuits and litigate them on behalf of clients who need not come to court until it’s time to be deposed or appear at trial. In criminal courts, on the other hand, a defendant must show up — braving long lines at security, only to fritter away hours waiting in courtrooms, just to appear for a “calendar call” that usually lasts 90 seconds or less and almost always results in further adjournment. This happens even when prosecutors have advised the court in advance that they are not ready to proceed. The appearance requirement — which can cost a person weeks of lost paychecks and hours spent arranging child care — rapidly becomes onerous. As a result, more than 99 percent of those who initially want to fight the charges are worn down by the legal equivalent of “Waiting for Godot,” and eventually agree to plea bargains to end their cases. The same is true for misdemeanor cases in many other major American cities: the process has become the punishment.

#### Court clog can have devastating impacts on society – wastes $17 million dollars annually, increases the likelihood of reoffenders, and can cause defendants to lose their house or job while awaiting trial

Ingraham ’15 [Christopher Ingraham writes about politics, drug policy and all things data. He previously worked at the Brookings Institution and the Pew Research Center, The Washington Post, 6-11-2015, "Why we spend billions to keep half a million unconvicted people behind bars," https://www.washingtonpost.com/news/wonk/wp/2015/06/11/why-we-spend-billions-to-keep-half-a-million-unconvicted-people-behind-bars/?utm\_term=.d7b9be8a0653]

At any given time, roughly 480,000 people sit in America's local jails awaiting their day in court, according an estimate by the International Centre for Prison Studies, a research group based in England. These are people who have been charged with a crime, but not convicted. They remain innocent in the eyes of the law. Some are certainly violent criminals who need to await their trials behind bars in the interest of public safety -- murderers, rapists and the like. But most -- three quarters of them, according to the National Conference of State Legislatures -- are nonviolent offenders, arrested for traffic violations, or property crimes, or simple drug possession. Some will be given community service, or probation. Many will be found innocent and have their charges dropped completely -- a 2013 Bureau of Justice Statistics Report found that one third of felony defendants in the nation's largest counties were not ultimately convicted of any crime. That same report found that the defendants who were detained before trial waited a median of 68 days in jail -- that's a long time to spend behind bars, especially if you're found innocent. In many areas, that wait can be even longer -- the New York City mayor's office recently found that 400 inmates in the city's Riker's Island facility had waited over two years for their trial. Some had been waiting six years or more for their day in court. Many of these people waiting in jail are forced to wait simply because they can't afford to post bail. A 2013 analysis by the Drug Policy Alliance, a group that advocates for changes in drug laws, found that nearly 40 percent of New Jersey's jail population fell into this category. The Bureau of Justice Statistics report found that among felony defendants in the nation's largest counties, 34 percent were detained before trial because they couldn't make bail. The idea of bail makes a lot of intuitive sense: when someone's charged with a crime, you make them put down a deposit to ensure they show up in court for trial. If they don't put the money down, they have to wait in jail. But in practice, this means that plenty of people sit behind bars not because they're dangerous, or because they're a flight risk, but simply because they can't come up with the cash. A recent analysis by the Vera Institute, a research group advocating for various changes in criminal justice laws, found that 41 percent of New York City's inmates were sitting in jail on a misdemeanor charge because they couldn't meet a bail of $2,500 or less. For low income people, the consequences of a pre-trial detention, even a brief one, can be disastrous. Miss too much work, and you're out of a job. Fall behind on your rent, and you're out of a home too. And in many cases, these people will eventually be found to be innocent. For reasons like this, some civil rights reformers are advocating abolishing bail completely. Maya Schenwar, editor in chief of independent news site Truthout, argues that bail policies are tantamount to "locking people up for being poor." HBO's John Oliver recently noted that while a poor person might not be able to post a $1,000 dollar bail for a minor infraction, a wealthy murder suspect like Robert Durst can post a $250,000 bail and walk free. Eliminating bail is not as radical as it sounds: Washington D.C. effectively stopped using bail back in the late 1960s. Instead, the city's Pretrial Services Agency determines the best option for dealing with defendants before they go to court. According to the agency, 12 to 15 percent of defendants are held before trial for various reasons, like flight risk or danger to others. The others are released. And the overwhelming majority of released defendants -- 88 percent of them -- make all scheduled court appearances and remain arrest-free while awaiting trial. Last month, my colleague Lydia Depillis did an in-depth profile of how some jurisdictions are also embracing more progressive policies toward dealing with defendants pre-trial. But if you're not convinced by the civil rights argument for this type of system, consider the economic one: we spend somewhere in the ballpark of $17 billion dollars annually to keep innocent people locked up as they await trial. Here's how I arrived at that number: American taxpayers spent $26 billion on county and municipal jails in 2012, the most recent year for which the Bureau of Justice Statistics has data. And those 480,000 people awaiting trials in local jails account for about 64 percent of the total jail population. And 64 percent of that $26 billion works out to $17 billion that we're spending each year on pre-trial detentions, a little less than the annual budget of NASA. That's just a back-of-the-envelope estimate, but it gives a sense of how much we spend on jailing people before they face trial. Beyond that direct cost, a 2013 study by the Laura and John Arnold Foundation, a public policy research organization, found that even short pre-trial detentions were linked to bad outcomes not just for defendants, but for society as a whole. Among low-risk defendants, for example, those who were held in jail for 8 to 14 days before trial had a 51 percent greater likelihood of re-offending after completing their sentences than those who had been held for less than a day pre-trial. Finally, many of the people who can't afford to post bail are living on the margins of society. A short jail stay is all it would take to trigger an avalanche of repercussions -- lost job, lost house -- that could force them to turn to public assistance to make ends meet, in some cases indefinitely.

### On-Case Cards

#### Because of the massive caseload of the criminal justice system, reformation is a better solution

Walsh 2017 (Dylan, “Why US Criminal Courts Are So dependent on Plea Bargaining”, the Atlantic, May 2nd)

Consistent with this, reformers are exploring two avenues to make plea bargaining either more accountable or less common: The process could be altered to afford defendants more protection, or the jury trial could be simplified to ensure more people take advantage of this right. “Plea bargaining in the United States is less regulated than it is in other countries,” said Jenia Turner, a law professor at Southern Methodist University who has written a book comparing plea processes in several U.S. and international jurisdictions. As a result, states are independently adopting measures to inject the process with more transparency here, more fairness there. In Connecticut, for example, judges often actively mediate plea negotiations, sometimes leaning in with personal opinion on an offer’s merit. In Texas and North Carolina, along with a few other states, both sides share evidence prior to a plea. Turner suggests that replicating some of these practices across state lines, or standardizing the plea process nationally, could go a long way to equalizing the power between defendants and prosecutors. She also argues that agreements should be recorded in writing, and that sentencing discounts for pleading guilty should be nonnegotiable. In the United Kingdom, for instance, sentence reductions in exchange for a guilty plea follow strict schedules based on when the plea is entered. There is no obvious recipe for fomenting this kind of reform. The drivers vary “greatly from one jurisdiction to the next,” Turner said. But she did concede one common thread that unites jurisdictions invested in changing the plea process: They must be motivated by some overarching values besides efficiency, “like seeking justice,” she said, “however that’s defined.” The alternative to improved pleas is more trials. A half-step in this direction has long been practiced in Philadelphia, where bench trials—before a judge but no jury—are common. By avoiding the jury-selection process, known as voir dire, bench trials dramatically shorten the length of the proceedings while a defendant’s guilt must still be proven beyond a reasonable doubt. In 2015, excluding cases that were dismissed, only 72 percent of criminal defendants in Philadelphia pled guilty, as opposed to 97 percent federally; 15 percent pursued a bench trial. “The solution in Philadelphia is a very good one given the alternatives,” said Keir Bradford-Grey, the chief public defender for the city. “We firmly believe in putting evidence to the test and litigating cases. This program allows for far more trials than we see in other jurisdictions.” John Rappaport, a law professor at the University of Chicago, proposes a more radical idea: If pretrial bargaining with the prosecutor is going to take place, it should embrace more than the basic exchange of guilt for leniency. Defendants should be able to bargain across the trial process itself, offering simplicity in exchange for a lesser charge. What if a defendant agreed to a trial before six or three jurors, instead of 12? Or what if the standards of evidence were downgraded, from beyond a reasonable doubt to a preponderance of the evidence? “It’s all fairly straightforward, and wouldn’t require any real administrative framework, but it’s foreign,” Rappaport said. “If a defense lawyer approached a prosecutor and said, ‘Hey, let’s do away with voir dire and take the first 12 jurors who walk in the room,’ the prosecutor would be taken aback.”

#### The justice they speak of is inaccessible to millions due to historical violence againt marginalized people

Weheliye 2014 (Alexander G. Weheliye, professor of African American studies at Northwestern University, “Habeas Viscus”, pg. 82-84)

Considering that corporations enjoy the bene ts of limited per- sonhood and the ability to live forever under U.S. law, corporate entities are entrusted with securing the immortal life of biological matter, while human persons are denied ownership of their supposed essence.21 My interest here lies not in claiming inalienable ownership rights for cells derived from human bodies such as Lacks’s and Moore’s but to draw attention to how thoroughly the very core of pure biological matter is framed by neoliberal market logics and by liberal ideas of personhood as property. We are in dire need of alternatives to the legal conception of personhood that dominates our world, and, in addition, to not lose sight of what re- mains outside the law, what the law cannot capture, what it cannot magi- cally transform into the fantastic form of property ownership. Writing about the connections between transgender politics and other forms of identity- based activism that respond to structural inequalities, legal scholar Dean Spade shows how the focus on inclusion, recognition, and equality based on a narrow legal framework (especially as it pertains to antidiscrimination and hate crime laws) not only hinders the eradication of violence against trans people and other vulnerable populations but actually creates the condition of possibility for the continued unequal “distribution of life chances.”22 If demanding recognition and inclusion remains at the center of minority politics, it will lead only to a delimited notion of personhood as property that zeroes in comparatively on only one form of subjugation at the expense of others, thus allowing for the continued existence of hierarchical differ- ences between full humans, not-quite-humans, and nonhumans. This can be gleaned from the “successes” of the mainstream feminist, civil rights, and lesbian-gay rights movements, which facilitate the incorporation of a privileged minority into the ethnoclass of Man at the cost of the still and/or newly criminalized and disposable populations (women of color, the black poor, trans people, the incarcerated, etc.).23 To make claims for inclusion and humanity via the U.S. juridical assemblage removes from view that the law itself has been thoroughly violent in its endorsement of racial slavery, indigenous genocide, Jim Crow, the prison-industrial complex, domestic and international warfare, and so on, and that it continues to be one of the chief instruments in creating and maintaining the racializing assemblages in the world of Man. Instead of appealing to legal recognition, Julia Oparah suggests counteracting the “racialized (trans)gender entrapment” within the prison-industrial complex and beyond with practices of “maroon abo- lition” (in reference to the long history of escaped slave contraband settle- ments in the Americas) to “foreground the ways in which often overlooked African diasporic cultural and political legacies inform and undergird anti- prison work,” while also providing strategies and life worlds not exclusively centered on reforming the law.24 Relatedly, Spade calls for a radical politics articulated from the “‘impossible’ worldview of trans political existence,” which rede nes “the insistence of government agencies, social service pro- viders, media, and many nontrans activists and nonpro teers that the ex- istence of trans people is impossible.”25 A relational maroon abolitionism beholden to the practices of black radicalism and that arises from the in- compatibility of black trans existence with the world of Man serves as one example of how putatively abject modes of being need not be redeployed within hegemonic frameworks but can be operationalized as variable lim- inal territories or articulated assemblages in movements to abolish the grounds upon which all forms of subjugation are administered.

### Extensions

#### Plea bargaining ensures incarceration, making it a vehicle for feeding the Prison Industrial Complex

Fellner 2013 (Jamie, “Plea bargains - he unfair difference between 10 years and life”, Human Rights Watch, December 4th 2013)

Sandra Avery was once a crack user, and had been convicted three times for possessing $100 worth of the drug for personal use. But she pulled herself together, joined the army, earned an accounting degree, and on leaving the army got a good job. Years later, her life spun out of control. She married a crack dealer and started using again. Then she and her husband were arrested together for selling crack. The prosecutor offered her a plea deal that could have brought a 10-year sentence, but when she refused, he sought a mandatory sentencing enhancement based on her prior convictions. So instead of perhaps being locked up for 10 years, she’s in for life, without parole. In the United States, Federal drug defendants who won’t plead guilty pay dearly, according to our new report, “An Offer You Can’t Refuse.” Prosecutors use their ability to vary the charges to seek longer mandatory sentences for people who turn down plea bargains. Defendants who go to trial receive sentences that, on average, are three times as long. Not surprisingly, 97 percent of drug defendants are convicted by pleas, not trial. Sandra did break the law and should be punished. But the punishment should fit the crime. Her prosecutor believed 10 years behind bars would be appropriate if she pleaded guilty. So how can serving life without parole possibly be fair? I asked her prosecutor why he pushed for such a high sentence if Sandra went to trial. His response: “Because it applied.” In other words, she had two priors and he could. Then I asked if he thought if the sentence was just. “No comment,” he answered. Prosecutors have an incentive to plead people out – it’s faster and cheaper than going to trial. Also, a prosecutor’s credibility depends on making good on a threat of a stiffer sentence for those who turn down a plea bargain.

#### Incarceration is the opposite approach we should be taking to respond to social ills

Gunderman ’13 [RICHARD GUNDERMAN, MD, PhD, is a contributing writer for The Atlantic. He is a professor of radiology, pediatrics, medical education, philosophy, liberal arts, and philanthropy, and vice-chair of the Radiology Department, at Indiana University, 6-20-2013, "The Incarceration Epidemic," Atlantic, https://www.theatlantic.com/health/archive/2013/06/the-incarceration-epidemic/277056/]

The costs of incarceration are high. For example, the state of California spends approximately $9,000 per year for each public school student it educates but over $50,000 per year for each inmate it keeps incarcerated. The proportion of the state budget devoted to imprisonment has been increasing at a rate much faster than that for education. Moreover, despite California's huge prison expenditures, its prisons recently held 140,000 prisoners in facilities designed for only 80,000. Does prison do any good? This is a surprisingly difficult question to answer. Incarceration certainly works to prevent criminals from committing repeat offenses by removing them from contact with the public. It also provides retribution, satisfying some members of the public that the incarcerated are paying for their crimes. Anyone who visits a prison would be hard pressed to say that it does not represent a powerful form of punishment. Yet it is difficult to make the case that so-called correctional institutions do much in the way of correcting, reforming, or rehabilitating inmates. The recidivism rate at 3 years post-release is about two-thirds, of which over half end up back in prison. The most important factor in preventing recidivism is not the amount of time people serve in prison, but the age at which they are set free. The older inmates are at the time of their release, the less likely they are to return. Even the U.S. Congress admits that prison is ineffective at correcting and rehabilitating those convicted of crimes, and it has directed federal judges to avoid sending people to prison with this objective in mind. If we are the product of our environment, then prison, which puts people convicted of crimes in close daily contact with other criminals, might well cause more problems than it solves. Far from correcting and rehabilitating, prison itself may serve as a school for crime. Perhaps some people do need to be incarcerated. However, it is difficult to argue that the numbers of such people has increased rapidly over the past 40 years, at the same time that the crime rate has fallen. In fact, there are good reasons to suppose that in many cases incarceration does more harm than good, and that those suffering this damage include not only criminals themselves but their families, their communities, and society as a whole. The toll on families is clear. Incarceration converts two-parent families to one-parent families and one-parent families to no-parent families. Husbands are taken away from wives, and in many cases (over 100,000 inmates are juveniles) children are taken away from their parents. Incarceration itself causes suffering for families, who must do without their loved ones for long periods of time. The penumbra of its stigma can prove especially burdensome for children. Incarceration also takes a big toll on communities. Its costs, both direct and indirect, are high, and it draws resources away from other equally or more worthy needs, such as education and healthcare. Some communities, particularly in inner cities, are devastated by incarceration. For example, blacks are incarcerated at nearly 6 times the rate of whites, and if current trends continue, nearly 1 in 3 black males born today can expect to be incarcerated at some point in life.

#### Plea bargains were established due to massive caseloads - eliminating them would result in court clogging, replicating the impacts

Walsh 2017 (Dylan, “Why US Criminal Courts Are So dependent on Plea Bargaining”, the Atlantic, May 2nd)

Plea bargains were almost unheard of prior to the Civil War. Only in its aftermath, as waves of displaced Americans and immigrants rolled into cities and crime rates climbed, did appellate courts start documenting exchanges that resemble the modern practice. The plea became a release valve for mounting caseloads. Appellate courts “all condemned it as shocking and terrible” at the time, said Albert Alschuler, a retired law professor who has studied plea bargains for five decades. The courts raised a range of objections to these early encounters, from the secretiveness of the process to the likeliness of coercing innocent defendants. Pleas, wrote the Wisconsin Supreme Court in 1877, are “hardly, if at all, distinguishable in principle from a direct sale of justice.” The practice nonetheless continued, and, by the turn of the century, a minor economy had settled in its orbit. “Fixers” could be hired to arrange for alternatives to a prison sentence. Police regularly toured jails to “negotiate” with the inmates. One New York City defense attorney and friend to local magistrates loitered in front of night court hawking 10 days in jail for $300, 20 days for $200, and 30 days for $150. By the 1920s, as violations of the federal liquor prohibition flooded court dockets, 88 percent of cases in New York City and 85 percent in Chicago were settled through pleas. When the Supreme Court in 1969 finally heard a case concerning the legality of the issue, it unanimously ruled that pleas are constitutionally acceptable. They are “inherent in the criminal law and its administration,” the Court declared… In theory, abolishing the use of plea bargains wouldn’t take much: Prosecutors would simply stop offering deals. That would be that, though the massive influx of trials would jam courts. (Michelle Alexander, author of The New Jim Crow, discussed defendants’ deliberately going to trial and “crashing the courts” as a form of resistance to mass incarceration.) But both sides of the debate agree the odds of this happening are infinitesimal. Even Alschuler, who throughout his career remained one of the staunchest critics of plea bargaining, admitted in 2013 that “the time for a crusade” had passed. Instead, he suggested people work to make the criminal-justice system “less awful.”

#### A partial plea bargain ban is preferable - it would best handle the efficiency of the courts while also allowing for the right to be exercised

Gazal 2005 (Oren, “Partial Ban on Plea Bargains”, University of Michigan Law School, Law and Economics Working Papers, Paper #05-008, Year 2005)

When plea bargaining is available, prosecutors can extract a guilty plea in nearly every case, including very weak cases, simply by adjusting the plea concession to the defendant’s chances of acquittal at trial. When almost every case results in a plea of guilty, regardless of the strength of the evidence, prosecutors have much less interest in screening away weak cases. Since some cases are weak because the defendant is innocent, however, more innocent defendants are charged and as a result more are convicted. When the screening process is taken into account, there is no reason to believe that innocent defendants gain from plea bargaining. Yet, a total ban on plea bargaining is not the optimal response to the system’s deficiencies – and not only because such a ban would be unsustainable in an overloaded criminal justice system. A better response would be a partial ban on plea bargaining, meaning a system that only prohibits plea bargains when the concession offered to the defendant in return for his guilty plea is large. With plea concessions restricted in such a way, defendants with relatively high chances of acquittal at trial would refuse to plea bargain. That way, prosecuting a weak case would usually result in a trial while a strong cases would be disposed through plea bargaining. Since prosecution resources do not allow for a high trial rate, prosecutors will be forced to refrain from bringing weak cases in order to direct scarce resources to stronger cases that can be settled. A partial ban therefore encourages prosecutors to refrain from bringing weak cases and reduces the risk of an innocent person being charged.

### A2: Plea Bargaining Bad

#### Plea bargaining benefits all parties involved – helps the defendant, their family, the prosecutor, and the courts

McDonough 1979 (Nancy McDonough, Plea Bargaining: A Necessary Evil, 2 U. Ark. Little Rock L. Rev. 381 (1979). http://lawrepository.ualr.edu/lawreview/vol2/iss2/5)

For every person who cites a benefit of the plea bargaining process, there is another who claims an abuse. Since the guilty plea accounts for approximately ninety-five percent of all criminal convictions in the United States, it is important to consider the positive and negative aspects of negotiating plea agreements and the impact such bargaining has on all of the parties involved in the process. The most obvious benefit is the savings in time and expense to the parties, the court, and the public. As criminal trials become more expensive and time-consuming and court dockets become more crowded, "back room" decisions which speed up the adjudicative process and reduce costs to all parties have become more appealing. In numerous cases the defendant may benefit from the plea bargaining process." If the defendant is guilty of the offense with which he is charged and is confident that the prosecution has sufficient evidence to prove his guilt, there is the probability that he will receive a lighter sentence if he pleads guilty to a lesser offense. A reduction in charges also results in the appearance of a less serious criminal record than the defendant's conduct may have warranted. These are the considerations which persuade most criminal defendants to bargain.' There are the other benefits of perhaps lesser value to the defendant. By "copping a plea" the defendant and his family are spared the spotlight of a public trial and the emotional trauma that such a trial may inflict. Furthermore, the outcome of the defendant's case is settled in advance of trial and his fate is not subject to the uncertainties of a jury decision. If the bargain is not one with which the defendant is satisfied he may, of course, reject it and insist that he be tried. The prosecutor may benefit as much or even more than the defendant from the plea bargaining process. The prosecutor is faced with the burden of proving the guilt of the defendant beyond a reasonable doubt. Due to constitutional restraints which are guaranteed the defendant, it may be impossible for the prosecutor to convict even the guiltiest defendant at trial." In such a situation the prosecutor is generally willing to bargain in order to obtain a certain conviction on a lesser offense. In further support of plea bargaining agreements, one district court has noted: "A defendant who enters a plea affords the government an opportunity to insure prompt and certain application of correctional measures while avoiding the costs and uncertainties of a trial.

### A2: We Don’t Need Plea Bargaining

#### The Supreme Court recognizes the necessity of plea bargaining in the US criminal justice system

Wilkinson 2008 (Carl, “Ethical Plea Bargaining Under the Texas Disciplinary Rules of Professional Conduct”, St. Mary’s Law Review Journal, 2008)

As the Supreme Court has observed, plea bargaining is such "an essential component of the administration of justice" that "disposition of charges after plea discussions is not only an essential part of the process but a highly desirable part for many reasons." 1 Despite the fact that 95% of felony criminal cases nationwide are resolved by plea bargain, 2 however, there are no specific ethical rules that govern the practice. 3 There is, of course, the general exhortation in article 2.01 of the Texas Code of Criminal Procedure that "it shall be the primary duty of all prosecuting attorneys ... not to convict, but to see that justice is done." 4 The no less general admonition of Article 2.03(b) provides that "the duty of the trial court, the attorney representing the accused, [and] the attorney representing the state ... [is] to so conduct themselves as to insure a fair trial for both the state and the defendant, [and] not impair the presumption of innocence." 5 But neither article directly addresses plea bargaining nor provides concrete rules under which plea bargaining may be conducted. In order to determine the ethical boundaries of plea bargaining, prosecutors and defense counsel must rely instead on general constitutional principles, disciplinary rules aimed more at controlling trial rather than pretrial conduct, and ethical provisions more useful in regulating negotiations between business entities than providing the ethical context for settlement of criminal litigation.

### A2: Established Alternatives Solve

#### Even alternatives to plea bargaining would bankrupt and bring governmental action to a halt

Cicchini 2008 (Michael, “Broken Government Promises: A Contract Based Approach to Enforcing Plea Bargains”, New Mexico Law Review, Winter 2008)

First, with the sheer volume of cases resolved by plea agreements rather than costly and time-consuming jury trials, state and federal governments save vast resources that can be better utilized both inside and outside of the criminal justice system. These resources include the economic costs of court facilities, judges, prosecutors, expert and lay witnesses, jurors, court personnel, and court appointed defense counsel, to name only a few. If cases were not routinely resolved by plea bargain, every case [would entail] a full-scale trial, state and federal courts would be flooded, and court facilities as well as personnel would have to be multiplied many times over to handle the increased burden. 22 Second, as previously indicated, plea agreements often include concessions by a defendant other than a plea of guilty. One function of plea bargaining is to allow law enforcement authorities to secure information from criminal defendants who otherwise would have very little incentive to cooperate. 23 In many of these cases, defendants provide information that results in convictions for far more serious criminal behavior of co-actors, or even of individuals in unrelated cases. In short, the benefits flowing to the government from the plea bargaining system are numerous, far reaching, and incredibly valuable. 24 In order to preserve these benefits, it is important to maintain the integrity of the plea bargaining process itself. The integrity of this process, however, is compromised when prosecutors renege on their promises with impunity, causing defendants to lose confidence in the system. If a defendant cannot place his faith in the State s promise, this important component [plea bargaining] is destroyed. 25 Consequently, if plea bargaining were destroyed, the financial and informational benefits that flow to the government would also be destroyed. 21