Plea bargaining makes no sense. To plea is to admit guilt, while to bargain is to try to align the outcome of a situation to be in accord with your best interests. Unless one's best interest results from admitting one's guilt, any plea bargain necessarily poses a conflict of interest between a defendant's obligation to justice to tell the truth and to himself for self-preservation. That said, plea bargaining, a defendant's admission of guilt to a crime often of less severity than the one for which he was originally accused, certainly exists, and it flourishes on a large-scale in the U.S. criminal justice system. This practice produces decisions much more quickly. Because many cases settled with plea bargaining do not go to trial, plea bargaining certainly alleviates what would be a heavy burden of cases on courts and public defenders. However, plea bargaining is not all good news. Going to trial, serving a sentence, and hiring a lawyer for a plea bargain all impose higher costs on the poor than on the rich. The poor and uneducated are more likely to be intimidated by a prosecutor and his or her ability, during a plea bargain, to threaten to charge the defendant with a more severe crime. Therefore, plea bargaining both systematically moves the justice system forward from crime to punishment and methodologically skews the justice system against the weakest members of society. To solve the issues that plea bargaining poses, the Department of Justice needs to standardize the process so that it does not unduly harm the poor and uneducated. Prosecutors should be required to submit a baseline accusation before entering a plea bargain, which, barring the discovery of new and relevant evidence, they would not be able to charge the defendant of a more severe crime.

Background

A plea bargain occurs when the defendant and prosecutor reach a settlement wherein the defendant pleads guilty “to some or all of the charges against them in exchange for concessions from the prosecutor,” according to Cornell University's Legal Information Institute. It happens after someone has been accused of a crime and before the case reaches trial. The guilty plea works as a bargaining chip for both the defendant and prosecutor because the defendant can clout the prosecutor for a less severe charge in exchange for a certain guilty verdict, when a trial by jury may exonerate the defendant. The prosecutor may tempt a defendant with the prospect of a less severe punishment in exchange for the guilty plea. In most state and federal systems, the prosecutor has much more control over the terms of the guilty plea than either the defense counsel or presiding judge.

This system poses a plethora of constitutional issues. Upon accepting a plea bargain, a defendant waives many of his or her constitutional rights. Amongst them are the privilege against self-incrimination, the right to plead “not guilty,” the right to favorable witnesses, the right to either testify or not at one's trial, and the right to show any available defenses at trial. The defendant also exonerates the prosecutor from the obligation to prove guilt beyond reasonable doubt. By pleading guilty, the defendant waives his or her rights to challenge the conviction or appeal the case on the grounds of having lost those rights. Plea bargaining, therefore, gives the defendant what would potentially be a less severe punishment than if the trial had gone to court while stripping them of many rights guaranteed to them by being accused.

In 2013, plea bargains resolved 97% of criminal cases that would have gone to trial. They save the justice system an incredible amount of trials, work, and time. However, they have become a problem in the United States because they favor everyone but the poor defendant. The opportunity costs of going to trial and actu-
ally serving prison sentences weigh more heavily on the poor because they can ill afford to spend time on either. They are more likely to accept suboptimal pleas as a result of poor guidance from our overworked public defense system. Lack of funding, limited staffing, insufficient time to review cases all create a public defense system that provides suboptimal legal advice to those who need it, and the poor are the ones who need public defenders most. Under Gideon v. Wainwright, one is guaranteed a public defender only in a criminal case, so accepting a guilty plea during plea bargaining appeals even more to the poor rather than potentially needing to pay an attorney to proceed with the trial.

Plea bargaining also favors the prosecution because they often pressure defendants into accepting plea bargains, even threatening more severe charges. The Supreme Court has allowed punishment for using such legal rights because accepting a plea bargain included no punishment. With worse knowledge of what more severe crimes they might actually be tried for, this system severely hurts the poor.

**Recommended Action**

There exist a myriad of possible ways to improve the plea bargaining system so that it does not unduly hurt the weak. However, to choose a particular solution, one ought to minimize its burden on the justice system while still promoting the plight of the poor and uneducated.

Eliminating plea bargaining entirely and providing everyone tried of any crime with a public defender would solve many of the problems plea bargaining currently poses, but both are simply infeasible. If plea bargaining did not exist, theoretically all accusations would go to trial, disposing of the problems plea bargaining itself poses for the poor. However, with over 90% of cases typically settled in plea bargains annually, the criminal justice system simply would not be able to function with such a large influx of new cases. Ensuring that all people have public defenders during a plea bargain would make the defendant and prosecutor equally knowledgeable about the process of plea bargaining, but the prosecutor would still have the advantage in being able to threaten more severe charges during a plea bargain. The public defense system is currently too overextended to cover all cases in plea bargaining, including non-criminal ones. Providing more public defenders represents an incredibly important long-term solution to plea bargaining but requires too large an influx of new human capital to solve the issue at present. While eliminating plea bargaining and drastically expanding public defense might alleviate the problems of plea bargaining, both require too much work to change the system.

An attainable way to solve many of the problems of plea bargaining would be to require a threshold charge before plea bargaining begins. With a threshold charge, barring the discovery of new evidence, prosecutors would be prohibited from charging the defendant with a more severe crime once plea bargaining has commenced. This system would nullify a big reason why people accept suboptimal or incorrect guilty pleas: the potential of receiving a harsher punishment should they refuse. Issuing a threshold charge would require the plea bargaining process have a formal start which it does not currently have.

The extension of pretrial rights to plea bargaining also represents a feasible way to solve many of plea bargaining’s problems. Currently, when one accepts a guilty plea, one releases all pretrial rights, including the right to challenge an illegally obtained confession, because as written, such rights only apply when the defendant challenges the validity of a charge itself. Pretrial rights should be extended to defendants during plea bargaining to ensure that they are in the most beneficial bargaining position the law accords defendants generally.

Finally, exculpatory evidence should be released during any plea bargain. In November 2015, the West Virginia Supreme Court ruled that prosecutors must release all exculpatory evidence—evidence that would benefit the defense—during a plea bargain. Such a mandate has applied to cases in court for over forty years. This decision should be enforced to allow for the defendant to achieve the most advantageous bargaining position. Criminal justice reform movements are plea bargaining reform’s biggest ally. Republican and Democratic presidential candidates as well as current policymakers have indicated their support for liberalizing the criminal justice system in favor of the accused. Those pursuing plea bargaining reform should describe it as another step towards improving America’s criminal justice system. 2016 candidates would be excited to commit to the proposal to differentiate themselves from one another. More specifically, President Obama has indicated his support for liberalizing the criminal justice system through limiting mass incarceration. If plea bargaining can achieve national attention, then President Obama could direct the Department of Justice’s Bureau of Justice Assistance and Criminal Division to follow this policy proposal as a means to uphold the constitutional protection against self-incrimination and ease the burden on our bloated prison system.

Plea bargaining puts those most susceptible to harm at the greatest risk of it. However, the current political climate about criminal justice reform and President Obama still in office provides the political pathway necessary to resolve plea bargaining. There are simple solutions to many of plea bargaining’s ills not requiring a complete overhaul of the criminal justice system. Hope persists for this conflict of interest

**Endnotes**

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