



Center for a Stateless Society

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## The Weekly Abolitionist: Plea Bargains vs. High School Civics Fantasies

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“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.” –The Sixth Amendment to the US Constitution

If you believe the text of the US Constitution, the stories you see on television, or the tales you’re told in your high school civics class, then you probably associate the criminal justice system with trials. The prosecution and defense present evidence, this evidence is evaluated by a jury, and a sentence is handed down.

But in the vast majority of cases, that isn’t what happens. Instead, somewhere between 90 and 95 percent of federal and state criminal cases are resolved through plea bargaining. When defendants plead guilty, they receive no jury trial, no opportunity to confront their accusers, and are often either locked in a cage or released on probation, where they are subjected to humiliating surveillance and onerous fees and fines.

The incentives to accept a plea bargain are strong, regardless of whether you are innocent or guilty. Defendants are often locked up before trial, worn down, and separated from their families and friends. This process is particularly difficult for poor defendants, who are often caged simply because they cannot afford to pay bail. Randal John Meyer of the Cato Institute points out the dire consequences that pretrial detention imposes on poor defendants:

Pretrial custody directly affects low-income individuals’ ability to maintain employment. The longer the period that someone is in jail — with the financial and personal pressures imprisonment imposes — the more inclined that individual is to accept a plea bargain regardless of the strength of the state’s case. Additionally, pretrial confinement is associated with more severe case outcomes, particularly in sentencing.

If you are locked up and cannot afford bail, taking a plea can seem very tempting. Yet it will be most tempting for those who can least afford to pay the probation fees and fines that might be associated with a plea deal. This enables prosecutors to use the courts as a system of revenue extraction by locking up poor people, threatening to send them to prison for years, and offering them a way out only if they pay frequent probation fees. All without any trial or due process.

Prosecutors have wide discretion in the types of charges they can bring, and many of these charges have mandatory minimum sentences associated with them. This allows prosecutors to stack charges. While any given charge you face may seem minor, when all your mandatory minimums stack up, a conviction at trial starts to mean decades in prison. And whether you committed a crime or not, that can be a pretty strong incentive to plead guilty.

In order to properly appreciate the human cost of plea bargains, I suggest watching Frontline's excellent documentary The Plea. The film tells the story of five people, all of whom had weak cases against them, who faced the horrific choice between taking a guilty plea and facing horrific consequences if convicted at trial. The documentary shows the stark contrast between our criminal justice system's stated ideals and its reality. And it shows how innocent people face extortion, imprisonment, and even execution due to misconduct, confirmation bias, and utterly perverse incentives. I highly recommend watching it.

But whether you watch the film or not, please remember this: The letter of the law is not enough. Rules on paper and the rules that are applied in the real world differ. The consequences of these differences can ruin people's lives, break families apart, impede discovery of the truth, and leave crime victims without anything resembling real justice. A country that proclaims devotion to trial by jury and due process of law can hand out over 90% of its felony convictions without a trial. There are countless people locked in cages or under the humiliating surveillance and wealth extraction of probation right now who never received a trial by a jury of their peers.