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

Overview

Since the resolution is phrased in passive voice, the agent of the topic is up for debate. The aff could argue that Congress should pass legislation, or that the United States Sentencing Commission should revise its guidelines, or that the Supreme Court should rule plea bargaining unconstitutional. The resolution doesn’t demand a federal actor, so the aff could also claim that all 50 states and US territories, or all local criminal justice systems, should end plea bargaining. The drawback to those affirmative cases is that the neg can win that the Supreme Court would strike down those local ordinances/state laws, when challenged by people who want plea bargains, or that the federal government would move to pre-empt the states.

There are some important historical and current facts you should know about for this topic:

--According to the Bureau of Justice Statistics, in their study of 58,100 defendants charged with a felony in 2006, more than 95% of convictions came about through a guilty plea (the defendant pled guilty for a lighter sentence, avoiding a trial). In state courts that year, it was 94%. A more recent source says that in 2013, more than 97% of federal criminal charges, the ones that weren’t dismissed, were “resolved through plea bargains, and fewer than 3 percent went to trial.”

1 https://www.bjs.gov/index.cfm?ty=tp&tid=23
--In McCarthy v. United States, 394 US 459 (1969), the Supreme Court ruled that guilty pleas “must be voluntary,” and that the defendant must fully understand the consequences of a plea.4

--In Brady v. United States, 397 US 742 (1970), the Supreme Court ruled that a guilty plea does not have to be overturned just because “fear of death was a factor” in the defendant’s decision.5 The Court in this decision had apparently “rejected arguments that plea bargaining is unconstitutional.”6

--In Santobello v. New York, 404 US 257 (1971), the Court ruled that if the terms of a plea bargain have been breached by a prosecutor, the defendant should have the right to vacate the plea. Relief in these cases “should generally be granted.”7

--In Missouri v. Frye, 566 US _ (2012), the Court ruled that “the Sixth Amendment requires defense attorneys to communicate formal plea offers from the prosecution,” even though defendants don’t have a right to a plea deal.8

--In Lee v. United States, 582 US _ (2017), the Court ruled that the defendant, Jae Lee, was given “ineffective assistance of counsel” when, after being caught in the drug trade, his attorney mistakenly assured him that he would not be deported back to South Korea if he took a guilty plea. The justices, however, chose not to “create a sweeping, per se rule” because of the particularities of this case.9

Some of these cases may have a direct bearing on the arguments you’re making as to the conditions for a legally acceptable plea deal.

4 https://www.law.cornell.edu/wex/plea_bargain
5 https://www.oyez.org/cases/1969/270
6 https://www.law.cornell.edu/wex/plea_bargain
8 https://www.oyez.org/cases/2011/10-444
9 https://www.oyez.org/cases/2016/16-327
Definitions

Merriam-Webster defines “plea bargaining” as “the negotiation of an agreement between a prosecutor and a defendant whereby the defendant is permitted to plead guilty to a reduced charge.”\(^{10}\)

There are three types of plea deals, according to FindLaw, “charge bargaining” (ex. pleading to manslaughter to dismiss a murder charge), “sentence bargaining” (pleading guilty to a charge in exchange for a reduced sentence), and “fact bargaining” (agreeing to allow certain facts as evidence to prevent other facts from being introduced).\(^{11}\)

“Abolish” is defined by Merriam-Webster as “to completely do away with (something): annul.”\(^{12}\)

This definition of abolish suggests that the affirmative, to be topical, would have to completely do away with plea bargaining.

According to CorrectionalOfficer.org, “the United States criminal justice system” is “a network of criminal justice systems at the federal, state, and special jurisdictional levels like military courts and territorial courts.”\(^{13}\)

These definitions can help you in a T debate. Defining abolish as “to completely do away with” would beat plans that specify a particular type of plea bargaining for a certain offense, and defining the CJS as a network of federal, state, and particular jurisdictions would answer any aff that says, “the 50 states/territories should abolish plea bargaining.” Plea bargaining would have to be abolished nationwide, under that definition.

\(^{10}\) https://www.merriam-webster.com/dictionary/plea%20bargaining


\(^{12}\) https://www.merriam-webster.com/dictionary/abolish

\(^{13}\) http://www.correctionalofficer.org/us-criminal-justice-system
Frameworks

There are at least five important frameworks on this topic—

1. Proportionality—this value criterion would say that “the punishment has to fit the crime.” This can be justified from the point of view of retributive justice (just deserts), or it can also be justified as a basic moral intuition, required by any philosophy of punishment. Since this is a criminal justice topic, there are so many avenues to discuss ethical and political theories of punishment.

2. Constitution—this framework will argue that the standard by which plea bargaining should be abolished or preserved is its consistency with the constitution. This framework is very helpful on a legal topic, and can be justified in unique ways. For one, you can argue that the Constitution is an essential “rule of the road” for the legal system that serves as an ethical side-constraint on judges and prosecutors. You can also use other frameworks, like Kantianism or rule-utilitarianism, to argue why the rights of the Constitution need to be prioritized.

3. Utilitarianism—this framework is always useful because you can easily read it on both sides. Your central claim would be that plea bargaining helps or hinders the greatest good for the greatest number of people, focusing on material, concrete impacts like crime, the suffering defendants’ may face, prison overcrowding, a clogged court, etc.

4. Contractarianism—this framework posits that morality originates with agreements between mutually self-interested actors, and you could claim that plea bargaining is a “contract” that is or isn’t mutually desirable.

5. Virtue ethics—your argument would be that the purpose of the law/criminal justice should be moral education, geared toward human flourishing. The contentions would be about whether plea bargaining was instrumental to the development of good character.
Aff and Neg Positions

Aff Positions

1. Proportionality AC—the standard is proportionality, and plea deals lead to disproportionate punishments for both the innocent and guilty.

2. Constitution AC—the standard is consistency with the Constitution, and plea bargaining undermines the Sixth Amendment right to a trial by jury (because most cases don’t go to trial). To win this position, you have to make an argument why people’s decision to waive that right to a trial has no bearing on the constitutionality of the practice (which may be hard to do).

3. Util AC—plea bargaining undermines general deterrence of crime because sentences become more lenient, and crime has a host of harmful impacts. It’s possible to get to extinction (like always), but it’s a lot harder on this topic than others.

4. Prison Industrial Complex AC—plea bargaining is a core instrument of the anti-black and capitalist criminal justice system, and the aff is necessary to disrupt or “crash” said system. The best literature is about mass refusal of plea deals as a protest strategy, to force the system to take everyone to trial, though that doesn’t seem topical. You could argue that the neg’s interpretation, that the aff must be federal abolition, ignores how activists can be political actors who create change.

5. Plans—the aff could abolish plea bargaining for a specific type of offense, or specific groups of people, like organized criminals or corporations. These are much harder to win because of topicality, but you could read advantages with your utilitarianism aff about their crimes.

Neg Positions

1. Contractarianism NC—the standard is consistency with mutual self-interested agreements, and you’d argue that plea bargaining is a “contract” which tends to be in the self-interest of prosecutors and defendants. You should couple this with a counterplan that can resolve the instances of plea bargaining where that isn’t the case.
2. Court Clog DA—since most cases don’t go to trial, abolishing plea bargaining would flood the courts, already strapped for resources, with an enormous caseload. They’d have to drop a ton of cases, meaning way fewer people get brought to justice.

3. Virtue Ethics NC—the restorative justice argument explained in the framework section. Best to look for evidence that connects moral education to restorative justice, and virtue ethics to the criminal justice system.

4. Reform CPs—effective against affs that don’t have a good argument for why abolition is key. If the aff’s harms are only incidental to plea bargaining, as it’s done in the status quo, but not plea bargaining in its essence, they lose to this counterplan every time.

5. Kritiks—the best, in my opinion, would defend decarceration. Though the aff could seemingly permute this, ex. “abolish plea bargaining and abolish the prisons,” it links to the aff’s representations of crime and ‘criminals,’ like the proportionality aff asserting that the proper response to crime is punishment in a cage, rather than restitution and community engagement.
Affirmative Evidence


**Negative Evidence**


