



A Philosophical Analysis of Lower Court Plea Bargains in the United States Criminal Justice System Using Principles of Game Theory

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Foundations of Plea Bargaining

Supreme Court Cases:

- *Boykin v. Alabama*
- *Brady v. United State*
- *Santobello v. New York*
- *Bordenkircher v. Hayes*
- *Parker v. North Carolina*

Historical Defenses of Plea Bargaining

Market Economic Model

Game Theory Applicability

When an actor can exert more influence over another actor in a bargaining situation, we arrive at a bargaining power imbalance. There is a complex bargaining power imbalance, creating an asymmetric system. This kind of philosophical analysis brings to light how the foundation of “relatively equal bargaining power” is not a reality in the nature of misdemeanor plea bargains in the criminal justice system. Supreme Court 1978 case *Bordenkircher v. Hayes* claims that plea bargains are a “give-and-take negotiation” that occurs “between the prosecution and defense, which arguably possesses relatively equal bargaining power”. However, when the principle of bargaining power balance is applied, a philosophical lens shows how there is a bargaining power imbalance between the prosecutor and defendant as actors.

Asymmetric System

The prosecutor is one agent, whereas defendants are an unorganized group of separate agents, and there’s an advantage that comes from your side being unified while the other is disunified. The state has the upper hand of time and resources, and since defendants cannot collectively decide to all choose to take their case to trial, the state is never challenged or checked on the use of this power. The government, with their immense resources, can credibly threaten to focus their resources on one defendant’s particular case, whereas the defendant does not have this same ability to allocate resources to their defense. Concurrently, the defendant does not have a credible threat to overwhelm the government in any sense.

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Posner argues, “The government has enormous prosecutorial resources [that it can] allocate...across cases as it pleases, extracting guilty pleas by threatening to concentrate its resources against any defendant who refuses to plead and using the resources thus conserved to wallop the occasional defendant who does invoke his right to a trial” (1505), as well as “Even the rare defendant who can afford to hire council... cannot match the resources of the prosecution” (1505). Additionally, the potential outcomes for the two actors enhance this asymmetry. The stakes for the defendant losing a trial are enormously high, while losing a trial for a prosecutor is relatively minimal. In some cases, a defendant’s life could be on the line, while a prosecutor could be negligibly affected by such a loss. The asymmetry of the stakes on the line between the two players directly affects the voluntariness of the plea deal.