

Research Package #3

SH and JH - THBT We Should Eliminate Plea Bargains from the Criminal Justice System



THBT We Should Eliminate Plea Bargains from the Criminal Justice System

This Research booklet is only an overview of information and good debaters will use this booklet as a basis for their thinking and move on to other ideas and research. As well, the best foundation for any research into a topic begins with some basic reading on the ideas. Follow this with an interview with someone who is knowledgeable, can suggest ideas and can direct you to other ideas and research. Although you cannot quote this person unless he/she is published in print or on video, a human being can always explain issues better than an article.

Overview

The topic should be considered from a normative perspective. The actual process of eliminating plea bargains may or may not be difficult depending on the actor (who the proposition defines as the house). Focusing on this process will not produce an exciting or interesting debate. Debaters should instead be focusing on the more salient aspects of the resolution. First, what the positive and negative impacts of eliminating plea bargains from the criminal justice system will be. Second, why society would be better or worse off considering these impacts.

Definitions

When defining terms, the proposition team should always consider whether the definitions provided are reasonable. Are they correct, complete, and fair? The best way to check if the definitions are reasonable is to consider whether the proposition, opposition, and the judges would all agree that the definitions provided are sufficient.

The first term to define in this debate is the house. It is important to consider criminal justice systems can be very different from country to country. The ability to negotiate plea bargains is not universal among countries worldwide. Even among countries that have plea bargaining, the extent of what can be negotiated and what cannot be can be very different. Setting the house as “western liberal democracies” is possible but it is fairly vague. Setting the house as a specific country provides focus. Canada is a good choice because it should be the most familiar setting among the debaters and judges. Italy, for example, may not be a good choice because it can't be expected that other people in the room know how the criminal justice system operates there. That being said, both sides are welcome to provide examples of how the criminal justice system works (with or without plea bargaining) in other countries in order to compare and contrast.

The second term to define is eliminate. A dictionary definition of eliminate should be sufficient in this case.

“Plea bargains” and “Criminal Justice System” are the other two terms that need to be defined. A dictionary definition may not be sufficient in order to give a full picture of what the motion entails. It is a good idea to give a brief description of the procedures of the criminal justice system. The proposition should also explain what concessions can be made between the crown and the defence in order to reach a plea bargain.

Key Ideas

The criminal justice system in Canada is adversarial. There are two sides in every criminal trial. The government and the accused who has been charged. Crown prosecutors that represent the government are responsible for seeing that justice is done. Defence lawyers represent the accused and they are responsible for ensuring that the legal rights of the accused are not violated. Both sets of lawyers are motivated to achieve the best possible outcome for their clients.

A police investigation is the first step towards a sentence. Once there is reasonable grounds present the suspect may be arrested. Charges will be made by the police and then reviewed by the crown prosecutor. If the charges are not dropped a disclosure happens. At disclosure, the crown and the defence will provide evidence as to whether or not the accused committed the crime. The crown and the defence will discuss whether the crown will withdraw the charges, the defence will submit a plea bargain, or whether both sides will go to court.

In order for plea bargains to happen at all, both the crown and the accused must believe that they are benefiting. In exchange for a lesser charge and lighter sentence, the accused must often provide testimonial that may be used to convict another person. The plea bargain also means a costly trial (in terms of time and money) can be avoided. Despite these practical benefits there is possibility that principles are compromised as well. The pressure to take a plea bargain can be seen as coercive considering the accused is at risk of harsher punishments if they go to trial instead. The proposition and opposition teams will need to argue about how to balance these ideas.

A combination of direct and indirect evidence will be presented at trial to determine the guilt of the accused. The burden is on the crown prosecutor to provide enough evidence to convict the accused. For criminal law, standard of evidence is much higher compared to private (civil) law. The crown prosecutor must convince the judge (and possibly the jury) that the accused is guilty of what he or she was charged with beyond a reasonable doubt. "Beyond a reasonable doubt" is a higher standard of evidence compared to "a balance of probabilities". Proving the crime was committed by the accused with the available evidence is not always possible. At the same time, wrongful convictions can still happen. Being innocent or guilty is different from being found innocent or guilty. Four scenarios arise because of this.

- The accused is actually innocent and they are found innocent.
- The accused is actually innocent but they are found guilty.
- The accused is actually guilty and they are found guilty.
- The accused is actually guilty but they are found innocent.

Depending on the actor these scenarios can be considered desirable or undesirable. Sometimes it can be very ambiguous as to what the outcome of a trial will be. The crown and the defence will have a best and worst case scenario in mind before going to trial. They may opt into plea bargaining to mitigate the risk of the worst case scenario occurring for each side. Both sides will have to make concessions which also means the best case scenario for each side may not happen either.

Criminal sentencing can serve many different purposes. The four main goals of sentencing are deterrence, rehabilitation, retribution, and segregation. Depending on the situation, these goals may or may not be exclusive. Both teams should consider whether these goals are compromised when plea bargains are reached. If they are compromised, then the two teams should argue whether or not the goals can be justifiably be compromised given the benefits that arise.

- Sentencing should specifically deter a criminal from committing a crime in the future. It should

also generally deter all other members of society from committing a similar crime.

- Sentencing should rehabilitate an offender. Criminals should be given opportunities so that they can reenter society and positively contribute to it. In theory, this should prevent criminals from returning to prison upon being convicted of new crime.
- Sentencing should seek retribution against the criminal. This reflects the moral culpability of the criminal and the harm to victims as well as society caused by him or her.
- Sentencing should segregate criminals from society. If criminals are allowed to be among society, then they may commit another crime.



Where to start

The Canadian Department of Justice published an extensive article by Milica Potrebic Piccinato on plea bargaining. Below is a short summary of some of the advantages and disadvantages of plea bargains. None of these points serve as arguments on their own. It is up to the debaters to provide analysis and evidence to convince the judges that their constructive material is meaningful and worthy of winning a debate.

Proposition Arguments

- plea bargaining leads to manipulation of the judicial system and compromises legal and constitutional principles
- plea bargaining encourages abuses of power by prosecutors and judges
- plea bargaining creates a situation in which defence counsel may be tempted to give precedence to his own interests rather than to the best interests of the accused
- plea bargaining results in offenders receiving lenient sentences
- plea bargaining increase the risk of wrongful conviction

Opposition Arguments

- plea bargaining contributes to the efficiency of the criminal justice system
- plea bargaining reduces the cost of the operation of the criminal justice system
- plea bargaining reduces prosecutors' workload
- plea bargaining provides an element of certainty for the parties
- plea bargaining guilty plea is a mitigating factor on sentence
- plea bargaining may dispense a traumatised witness from testifying
- plea bargaining may avoid disrupting the professional and personal life of a witness

The textbook All About Law: Exploring the Canadian Legal System published by Nelson is also a good source for learning about the law in Canada.

Debaters should also prepare themselves by finding stock arguments on sites like www.idebate.org, www.debatepedia.org, and www.debate.org. Even if a debater does not use them in their speeches they should be prepared for them to be used against them.

Debaters should also read articles and research case studies. Canada's most notorious plea bargain was made by Karla Homolka in the 90s. It is a good idea to be familiar with that situation and other high profile cases.

