Pleading Guilty: A Voluntary or Coerced Decision?

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Abstract

The empirical literature on plea decisions shows that rational motives and coercion may coexist, but there is uncertainty with regard to whether accused feel that their decision is voluntary or made under considerable pressure. However, in most jurisdictions, the legitimacy of the plea bargaining process rests on the Court's obligation to ensure that the guilty plea is entered voluntarily and knowingly. This study proposes to understand how the accused interpret the rational or coercive elements of their decision-making process and the extent to which their decision to plead guilty is voluntary. Based on semi-structured interviews with twenty convicted individuals, we describe the different decision-making processes, from free and informed decisions to forced decisions to plead guilty while innocent.

Keywords: plea bargaining, sentencing, negotiations, innocent, coercion

Résumé

La littérature empirique montre que les motifs rationnels et la coercition peuvent coexister dans les décisions relatives à un plaidoyer de culpabilité. Une confusion persiste toutefois à savoir si l'accusé estime que sa décision a été prise volontairement ou si celle-ci résulte de pressions considérables. Néanmoins, dans la plupart des juridictions, la légitimité du processus de négociation de plaidoyer repose sur l'obligation des tribunaux à veiller à ce que le plaidoyer soit enregistré volontairement et avec une compréhension de la nature de l'accusation. Cette étude propose d'analyser la manière dont les accusés interprètent les éléments rationnels ou coercitifs de leur processus décisionnel et dans quelle mesure leur décision d'enregistrer un plaidoyer de culpabilité constitue une décision volontaire. Sur la base d'entretiens semi-structurés conduits auprès de vingt personnes condamnées, les résultats présentés décrivent les différents processus de prise de décision, et ce, de la décision libre et éclairée jusqu'à la décision forcée d'une personne innocente qui est contrainte d'enregistrer un plaidoyer de culpabilité.

Mots clés : négociation de plaidoyer, *sentencing*, négociation, innocence, coercition

Introduction

In Canada, the vast majority of criminal convictions arise from a guilty plea by the accused. Such a plea is often the result of an agreement between the defence counsel and the Crown (a plea bargain). Although this practice is common in most

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Western justice systems, it remains understudied, particularly in Canada, where the most recent empirical studies are more than twenty-five years old (e.g. Klein 1976; Ericson and Baranek 1982; Gravel 1991). This lack of research is all the more surprising because such negotiations have long been criticized for creating heavy pressures on the accused, leading to situations in which they might feel forced to plead guilty (Bowers 2008; Brockman 2010; Redlich, Summers, and Hoover 2010)

This article looks at how accused individuals describe their decision to plead guilty and to accept an offer from the Crown, analyzing the level of voluntariness and coercion in such decisions. The article is divided into six sections. The first presents the Canadian legal context around plea bargaining. The second reviews empirical studies that have focused on the accused's decision to plead guilty. The article then presents our objectives and methodology and the results of interview analysis using a continuum of coercion. The article ends with a discussion about what can be done to decrease pressure on the accused to plead guilty or accept an offer from the Crown.

1. The Legal Context of Plea Bargaining in Canada

Negotiations between counsel can take place at various stages in the judicial process. The subjects of negotiation are theoretically large and may relate to the charge, the sentence, or the facts submitted to the judge (Verdun-Jones and Tijerino 2002, 19). Ferguson and Roberts (1974) and Verdun-Jones and Tijerino (2002, 19) provide a list of different possibilities, ranging from reduction of the charge, to avoiding trial by jury, to not mentioning an aggravating circumstance at the time of sentencing. Piccinato (2004) suggests that, in Canada, negotiations usually focus on sentencing, and many scholars suggest that the resulting guilty plea provides very few real benefits, as accused persons usually receive a sentence very similar to the one that would have resulted from a trial (Gravel 1991; Ireland 2014; Nasheri 1998). However, for serious charges and charges that carry a mandatory minimum sentence, the possible benefits to the accused could be much more important (see Gravel 1991).

In an extensive comparison of plea bargaining in Canada and the United States, Nasheri (1998, 74) concludes: "Courts in the United States are more openly accepting of the practice of plea bargaining, leading to a more formalized and institutionalized practice there. Canadian courts have fewer formal rules and legal constraints and the practice has not become as thoroughly institutionalized." Many scholars suggested that this absence of formal rules gives prosecutors "incredible power" in bargaining (Manikis and Grbac 2017, 90) leading to an unequal balance of power, where they can choose the charges, the facts, and the sentence the accused must agree to (sometimes within a specific deadline) in order to benefit from the joint submission.

Negotiations generally end when the two sides agree on a proposal to suggest to the judge (joint submission). The judge is not obligated to accept the proposal, but judicial tradition is that it will be endorsed unless it is completely unreasonable (Martin Report 1993). This position was recently reinforced by a Supreme Court decision (*R v Anthony-Cook* 2016) that held that since joint submissions "are vitally important to the well-being of the criminal justice system, as well as the

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justice system at large … a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest." The Supreme Court insists that a "high threshold" for judicial refusal is needed to increase the accused's confidence that the joint submission obtained in return for a guilty plea will be respected by the judge. If negotiations fail, the accused may still plead guilty and both the defence and the Crown make sentencing recommendations (open submission as opposed to joint submission).

Before accepting a guilty plea, the judge must ensure its validity through a plea inquiry (see s 606[1] of the Canadian Criminal Code). In order to be valid, the plea must be "voluntary, unequivocal and informed." In *R v Smoke* (2017), Judge Kalmakoff summarizes:

> A plea is "voluntary" if the accused makes a conscious and volitional decision to plead guilty for reasons he or she sees as appropriate. It is "unequivocal" if it is unqualified and certain with respect to the acknowledgment of the essential facts of the crime charged. And, it is "informed" if the accused understands the nature of the charges, the legal effect of the plea, and the consequences that flow from it.

The jurisprudence on requests to withdraw a guilty plea[2] shed some light on what constitutes a "voluntary, unequivocal and informed plea." While the courts recognize that "[o]rdinarily a plea of guilty involves certain inherent and external pressures" (*R v Symonds* 2018) and that many are "entered in difficult circumstances, where an accused person is under pressure, and faced with unattractive options" (*R v Smoke* 2017), stress, anxiety, depression, desire to avoid prison, or desire to minimize a sentence are not always held to invalidate a guilty plea. As stated in *R v Moser* (2002), "A guilty plea will be rendered involuntary only if the conduct of other parties that influence the decision of the accused to plead guilty is oppressive or coercive, or other circumstances personal to the accused unfairly deprive him of free choice in the decision whether or not to go to trial." Judge Martin in *R v Downes* (2012) concludes that "There is no exhaustive list of such circumstances but they may include pressure from the court[3], pressure from defence counsel, the incompetence of defence counsel, cognitive impairment or emotional disintegration of the accused or the effect of illicit drugs or prescribed medications."

In *R v Wong* (2018), the Supreme Court recently established that a guilty plea may be withdrawn if the accused show that "(1) he or she was not aware of a legally

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1 In Canada, s 606 of the Criminal Code states that "**(1.1)** A court may accept a plea of guilty only if it is satisfied that the accused: **(a)** is making the plea voluntarily; and **(b)** understands **(i)** that the plea is an admission of the essential elements of the offence, **(ii)** the nature and consequences of the plea, and **(iii)** that the court is not bound by any agreement made between the accused and the prosecutor.

2 An accused might appeal his own guilty plea by demonstrating that the plea is invalid because a) it was not voluntary, unequivocal, or informed or, b) because the circumstances which led to the guilty plea demonstrate that a miscarriage of justice occurred.

3 In *R v Babos* (2014), the Supreme Court recognizes an unacceptable "bullying tactic" by the Crown, who threatened two accused with additional charges should they decide not to plead guilty. However, the majority refused to justify the stay of procedure or to provide any other remedies for this misconduct.

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relevant collateral consequence; and (2) there is a reasonable possibility he or she would have proceeded differently if properly informed of that consequence."

Jurisprudence on the withdrawal of guilty pleas reveals that accused individuals evoke a myriad of reasons as to why their plea should be considered invalid. However, a court seldom rules in favour of the accused and the threshold for a plea to be considered coerced is very high. Before turning to statements by accused individuals regarding the voluntary aspect of their pleas, it is useful to look at empirical studies on accused persons' perspectives to provide context for our study.

2. Empirical Studies of the Decision to Plead Guilty

Decision making by accused individuals regarding how to plead (guilty or not guilty) has traditionally been analyzed according to two theoretical frameworks. In one approach, scholars see the accused's decision to plead guilty as a rational process involving a cost–benefit analysis. In a classic study of the lower court, Feeley (1979) suggests that pleading guilty should be seen as an easy decision for most accused individuals, as a simple cost–benefit analysis would show that the cost of a trial (time, money, stress) outweighs the cost of the outcome of the plea bargain (often a lenient sentence, given the seriousness of the crime). His conclusion that "the process is the punishment" has been used by numerous scholars to explain why many accused so easily give up their right to a trial. The "shadow of the trial" theory, developed by Smith (1986) and updated by Bushway and Redlich (2012), argues that plea bargaining is a rational process in which each actor measures the quality of the bargain by comparing it with the probable sentence at trial discounted by the probability of a conviction.

The other approach emphasizes factors that *prevent* accused persons from making a rational decision about their plea. Bibas (2004) wrote a seminal article showing how structural distortions (pressure from Crown or defence counsel, penal incentives, pretrial detention, information deficits, etc.) and psychological biases (overconfidence, self-serving bias, etc.) corrupt the rational decision-making process. Other scholars have also shed light on factors that influence decision-making by accused individuals: financial situation (Poirier 1987), pretrial detention (Bibas 2004; Kellough and Wortley 2002), counsel pressure (McConville et al. 1994; Ericson and Baranek 1982; Baldwin and McConville 1977), and lack of knowledge (Redlich, Summers, and Hoover 2010; Ericson and Baranek 1982) are the most frequently documented.

Most of the literature on plea bargaining relies on official data or interviews with or observations of criminal justice actors. Few studies focus on the accused (see Auerhahn 2012, 95), and only a few empirical studies have attempted to understand why an accused person decides to plead guilty. Most of these studies rely on questionnaires or interviews with accused individuals in attempts to understand why they decided to plead guilty (see Klein 1976, Ericson and Baranek 1982, and Kellough and Wortley 2002 in Canada; Bordens and Bassett 1985; Hussemann 2013, and Redlich, Summers, and Hoover 2010 in the United States). These studies highlight different motivations for guilty pleas, such as feelings of remorse, minimizing suffering (for the individual or their family) or protecting

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someone, ending the process as quickly as possible, ensuring a particular decision, or benefitting from incentives (reduced sentence, easier detention conditions, release from jail, etc.). Feeling pressured by judicial actors or the police and lack of awareness of an alternative have also been reported as factors affecting the guilty plea. Such studies are useful in identifying the circumstances surrounding the decision and the motivations of the accused, but they fail to provide information about the accused's view of the voluntary or coercive aspects of decisions involving their plea: for example, do accused people feel that the sentence bargain being offered puts pressure on them to plead guilty or, on the contrary, do they see it as an additional rational reason for pleading guilty?

While some studies (see, for example, Bordens and Bassett 1985 and Ericson and Baranek 1982) shed light on defendants' lack of agency, suggesting they are "best seen as a dependant rather than as a defendant" (Ericson and Baranek 1982, 2), these studies were not investigating the voluntary or coerced aspect of the guilty plea. Two exceptions bear mentioning. Klein (1976) dedicated a chapter of his book *Let's Make a Deal* to inducements to plead guilty and describes offenders' perceptions of the tactics used by officials to induce them to plead guilty (adding or removing charges against a relative, capitalizing on fear and ignorance, uses of remand, and overcharging). Redlich and Summers (2012) surveyed American accused individuals directly about the extent to which they felt their plea had been "voluntary, knowing and intelligent," using a questionnaire. While the vast majority of the accused indicated that their decision had been made voluntarily (93% of the sample) and that they understood the procedure and consequences involved in the plea (more than 90% of the sample), the authors suggest that these opinions may not reflect the true situation since most respondents were unable to correctly answer questions about the plea procedure and often lacked the information needed to make an informed decision (for instance, half the sample claimed they had not been informed about the evidence against them). These findings suggest not only that there may be a gap between what accused people perceive and the actual situation but that questionnaires may not be the best way to explore whether a decision is voluntary and based on sufficient knowledge.

3. Current Study

This article focuses on the perspectives of the accused regarding the voluntary aspect of their decision to plead guilty. It adds their voice to our efforts to understand how possible coercive elements affect their decision-making process, recognizing that the issue of threat or coercion involves a subjective element. An individual's decision can be influenced by various factors, and the same situation may be perceived very differently by different individuals. Brunk (1979, 538) explains: "what is seen as coercive in one social or cultural context, or from one critical moral viewpoint, may be perceived in another as no imposition upon choice at all, and perhaps even as expanding social freedom." The aim of this paper is not to look at pleas in terms of whether they meet the legal requirement of "voluntary, unequivocal and informed" but, instead, to determine how accused individuals understood the plea they made and whether they saw it as having been made voluntarily. An accused's idea of coercion might not meet the legal criteria

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of an invalid plea established by the court but, in a justice system that prides itself on recognizing free will and providing access to a fair trial, it seems essential to look at how the key actor in the guilty plea process, the accused, experiences and describes the decision.

4. Methodology

Semi-structured interviews were conducted with twenty convicted individuals recruited with the help of staff in a halfway house (nine) and a restorative justice center (five), as well as probation officers in a community agency (six). The sample was diversified according to factors recognized in the literature as influential in plea decisions: self-report of guilt or innocence, pretrial detention, severity of charge, probable sentence, and prior offences. As shown in Table I, the accused in the sample had been charged and convicted of a variety of crimes—uttering threats, shoplifting, dangerous driving, second degree murder, drug production, and drug trafficking—and had received various sentences, most of which involved imprisonment, from a few days to a life sentence. Thirteen of them had prior convictions and twelve had been held in pretrial detention for a period lasting from a few days to the entire time from arrest until the court procedure. Although all interviewees had pleaded guilty to the charges against them, eleven maintained they were actually innocent.

The sample was comprised of eighteen men and two women with an average age of forty-seven (age range was from thirty-one to fifty-eight years old). Half had a high school diploma and thirteen had a job at the time of the interview. Most were single ($n = 10$), had children (from one to five) ($n = 13$) and had been born in Canada ($n = 19$). Although all the accused were interviewed in Montreal, their justice system experiences had occurred in different courthouses, some of which were very small, while others took place in large districts with heavy caseloads.

Sample size should follow the principle of theoretical saturation (Glaser and Strauss 1967), which states that the researcher continues to sample relevant cases until no new insights are being obtained from the data. In our case, saturation was achieved after sixteen interviews. Four additional interviews were done in order to confirm that saturation had been achieved.

The interview guide consisted of a framework of themes to be explored, with questions brought up during the interview in reaction to what the interviewee said. The list of themes included details of the case (facts, evidence), reasons for pleading guilty, procedures, relationship with lawyers, and the interviewee's opinion of the guilty plea. Interviews lasted from thirty-five to seventy-five minutes, with most interviews taking around one hour.

Once they were transcribed, interviews were analyzed thematically and the main themes and sub-themes were identified and put into a hierarchy in analytical memos. Follow-up analyses were then conducted based on the themes that emerged from the first analysis. For this article, each interview was analyzed individually in order to assess the accused's general impressions of the decision-making process, with particular attention given to plea decisions and instances where an offer was accepted. Passages that referenced rationality, coercion, pressures influencing decision making, or the reasoning process behind the decisions were highlighted

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Table I
Description of participants

	Name Gender (age)	Charges	Priors (P): Yes/No Pretrial detention (PD): (time)	Guilty plea (GP): Yes/No Deal (D): Yes/No Self-report innocence (SRI): Yes/No	Sentence
Voluntary decision	Paul Male (51)	Double murder, but most of discussion was of pleas for robbery	P: Yes PD: (2 years)	GP: Yes D: Yes (sentence) SRI: No	Life sentence
	Luc Male (68)	Sexual assault against a minor	P: Yes PD: (NS)	GP: Yes D: Yes (not being declared a dangerous offender) SRI: No	10 years of incarceration
	Jacques Male (59)	Drug possession for the purpose of trafficking and unauthorized possession of a prohibited weapon	P: Yes PD: No	GP: Yes D: Yes (sentence) SRI: No	2 years of incarceration
	Charles Male (48)	Drug trafficking	P: Yes PD: (NS)	GP: Yes D: Yes (sentence) SRI: No	2 years of incarceration
	Alain Male (49)	Child pornography, Incest	P: No PD: No	GP: Yes D: No SRI: No	3 years of incarceration
	Patrick Male (46)	Drug production	P: Yes PD: (7 days)	GP: Yes D: No SRI: No	1.5 years of incarceration
Rational decision	Mathieu Male (32)	Dangerous driving	P: No PD: (63 days)	GP: Yes D: No SRI: No	45 days of incarceration
	Jean Male (34)	Drug production	P: No PD: No	GP: Yes D: No SRI: Yes	10 months of incarceration
	Denis Male (46)	Theft, Serious assaults	P: Yes PD: (2 weeks)	GP: Yes D: Yes (sentence) SRI: Yes	6 months of incarceration
	Martin Male (33)	Theft, Serious assaults, etc.	P: Yes PD: (NS)	GP: Yes D: Yes (sentence) SRI: Yes	90 days of incarceration

Continued

Table I. Continued

	Name Gender (age)	Charges	Priors (P): Yes/No Pretrial detention (PD): (time)	Guilty plea (GP): Yes/No Deal (D): Yes/No Self-report innocence (SRI): Yes/No	Sentence
Non-optimal decision *(+ most accused in past experiences)*	Pierre Male (53)	Gangsterism	P: Yes DP: (9 months)	GP: Yes D: Yes (sentence) SRI: No	13.5 years of incarceration
	Louis Male (58)	Second degree murder	P: Yes DP: (NS)	GP: Yes D: Yes (eligibility for parole) SRI: No	Life sentence
Coerced decision	Eric Male (50)	Dangerous driving, attempted murder, assault	P: Yes DP: (7 months)	GP: Yes D: Yes (charges) SRI: Yes	1 year of incarceration
	Didier Male (51)	Sexual assault	P: No DP: No	GP: Yes D: Yes (sentence) SRI: Yes	2 years of probation
	Raymond Male (34)	Uttering threats, Serious assaults	P: No DP: No	GP: Yes D: Yes (sentence) SRI: Yes	Probation
	Serge Male (51)	Uttering threats, Serious assaults	P: No DP: No	GP: Yes D: Yes (sentence) SRI: Yes	1.5 years of conditional sentence
	Yves Male (48)	Robbery	P: Yes DP: (3 days)	GP: Yes D: No SRI: Yes	45 days of incarceration + 2 years of probation
	Virginie Female (54)	Drug trafficking (aiding and abetting)	P: No DP: (1 month)	G: Yes D: Yes (sentence) SRI: Yes	2 years of conditional sentence
	Damien Male (46)	Serious assaults causing bodily harm	P: Yes DP: (11 months)	GP: Yes D: Yes (sentence) SRI: Yes	7 months of incarceration + 2 years of probation
	Theresa Female (53)	Extortion, uttering threats, serious assaults	P: Yes DP: (50 days)	GP: Yes D: Yes (charges) SRI: Yes	9 months of incarceration

NS: not specified.

and more deeply analyzed. Based on these preliminary analyses, we concluded that our findings were best presented by using a coercion continuum that ranged from totally voluntary to totally coerced and made against the accused's wishes. Each participant was classified along this continuum, and similarities and differences between participants in the same "profile" were then explored.

5. Results

Individual participant interviews provided a wide range of accused profiles (summarized in Table II) that differ in terms of the level of coercion experienced. Although all reported a certain amount of pressure, the effect of this pressure on their decisions varied. Table II highlights the importance of distinguishing between the two decisions made by the accused—the decision to plead guilty and the decision to accept an offer by the Crown—making it possible to look at the level of coercion exerted in each case. The result is a continuum of coercion. At one end, the accused describe their plea decision and acceptance of an offer as completely voluntary, rational, and the result of free and informed reflection. At the other end, the accused report having had very little control over the situation, resulting in a coerced plea and coerced acceptance of an offer. Between these two extremes, individual profiles reflect more nuanced situations, with accused interviewees referring to incentives or pressure but insisting on the voluntary nature of one of their decisions. In the "rational decision" profile, the accused argue that even if pleading guilty went against their initial intention (with some continuing to maintain their innocence), the decision to do so was rational because they felt such a plea would lead to the best resolution of their case (acceptance of an offer was voluntary because it was considered advantageous). In the third group (non-optimal decision), while the accused insisted that they were pressured to accept a deal from the Crown (coerced acceptance of an offer), they acknowledged that the decision to plead guilty was voluntary.

5.1. Voluntary Decision

The first representative profile is that of accused who described their decision-making process as voluntary ($n = 6/20$). These accused stated that they had voluntarily chosen to plead guilty. In most cases, evidence against them was very strong and they had no intention of challenging it in a trial: "Because it didn't make sense to fight … why go to court to fight for something when it's obvious that it was me who did it" (Jacques).[4] For two of these accused, the decision to plead guilty was further motivated by the fact that they recognized their guilt and wanted to take responsibility for their actions. These accused had committed sexual offenses and saw the guilty plea as a way to take responsibility and avoid giving further pain to the victims by forcing them to go to trial: "For me, my intention was that the victims wouldn't have to testify, so that it wouldn't traumatize them" (Luc).

What further distinguishes this group is that they felt that they had chosen the moment at which they would plead guilty and had made this decision freely.

[4] Interviews were conducted in French; quotations have been translated.

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Table II
Coercion continuum

	Voluntary decision Were able to choose when to enter their plea	**Rational decision** Accepted a guilty plea because of its advantages	**Non-optimal decision** Felt pressures to accept a deal but agreed voluntarily to plead guilty	**Coerced decision** Entered a coerced plea
	Low			***High***
Entered a guilty plea	Voluntary	Rational	Voluntary	Coerced
Accepted an offer	Voluntary	Voluntary	Coerced	Coerced
Unequivocal plea (Accused recognized the essential facts of the accusation)	Yes	No	Yes	No
Informed plea	Yes	Yes	Partial	No

Most of them were in a position that allowed them to wait for the best opportunity—they trusted their lawyers to find them the best possible offer. Three of these accused (Jacques, Alain, and Luc) explained that it was actually their lawyers who had insisted on the importance of remaining patient, either to wait for a more sympathetic judge or Crown attorney or to allow them to do more work on the case:

> Once they agreed on a sentence, well then it wasn't the right judge … we'll take the next one … It's a cat and mouse game in there. I'm sure he did it with the best intentions because he did a good job but it's long. It's very long. If I'd gotten my sentence in like the first six months, everything would be done, I'd be working at home. (Jacques)

For some, such as Jacques and Luc, patience worked to their advantage and they felt that they had received an interesting offer from the Crown. For others, such as Alain and Patrick, no agreement could be reached and they eventually pleaded guilty without a previously established bargain, leaving the sentencing up to the judge.

In contrast, two accused (Paul and Charles) found themselves in situations where they experienced a certain amount of pressure to plead guilty quickly in order to get out of jail or to end the stress associated with long judicial delays. However, they explained that, due to previous experience with the justice system, they understood the importance of staying patient:

> For sure, at first you want to go to trial because you want to get out … But most people, we're ready to wait for the right deal … At first, they offer you seven years, then, you do some time [in pretrial detention], you wait a long time, at a certain point with the right timing with the right judge, then you can end up with a sentence of two years. (Paul)

According to these two accused, previous experience with both the criminal world and the justice system resulted in less coerced and more informed decision-making. For Charles, negotiation was very important: "I did it every time. I've had thirteen significant sentences and for all thirteen, I worked out deals" (Charles). Through his contacts in the criminal world, he knew the right lawyers to approach and had worked with four lawyers: "Depending on the situation and the conditions in which I was arrested, with whom I was arrested, I'll choose between lawyers. Because I know that 'oh him, he'll work well because so and so is in such a file.'" Even if Charles believed that his lawyers were able to find him interesting offers, he stayed very involved in his cases and did not hesitate to give his lawyers explicit instructions or to change lawyers when he thought the best offer was not satisfactory. His interview suggests that knowledge of both the criminal and justice system worlds is necessary to be able to evaluate a lawyer's work and take action if necessary.

The accused in this profile wanted to plead guilty but resisted pressure to make such a plea quickly, either because they followed their lawyers' advice or because they had had experience with similar situations and had learned the importance of timing when entering a plea. Their interviews show that pressure does not necessarily lead to an involuntary plea—some accused are able to resist pressure and

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enter their plea at a time that suits them. Personal perspectives are clearly important in understanding the voluntary or coerced aspects of a plea.

5.2. Rational Decision

In this profile, we find accused individuals who pleaded guilty against their initial intention, but who also explained very clearly that the plea was the result of a rational decision as they felt it offered certain advantages. These accused share a number of characteristics with interviewees who said they had been forced to plead guilty (see fourth profile), the main difference being that the former believe their decision was made rationally, influenced by "good advice"[5] from their lawyer, and usually in exchange for an offer that provided a number of advantages. Three accused who self-reported as innocent but pleaded guilty (Jean, Denis, and Martin) and one accused who was guilty but believed that he could have been found innocent in court (Mathieu) are included in this profile. They all explained that, although their plea bargain was constrained by certain factors, the choice to enter a guilty plea had been made voluntarily and with full knowledge because of the advantageous option they were offered.

Denis, for example, has an extensive criminal record (over 300 priors), and explained that he had already pleaded guilty five or six times to offenses that he had not committed: "This has often happened to me. You have several charges against you at once, you go to court for thirty charges. There are four that aren't yours but, well, at the end of the day you get a good deal" (Denis). He justified his decision by saying that he felt that the deal was conditional on his acceptance of all the charges. If he contested some of the charges, he would have lost the sentence reduction and would have had to wait few months for trial. With his criminal record, he believed that he had very little hope of winning at a trial and that, in the end, one or two extra charges would not change much for him. "There are those who will say, 'Me, I can't risk losing because I need my clean record.' He'll fight to the end … I have so many convictions that it's not like that'll change anything to a new employer" (Denis).

For him, innocents who plead guilty always have a reason to do so: "Nobody's going to plead guilty to something if it won't get him something somewhere … We don't believe in justice anymore … We try to get the greatest benefit. They try to incarcerate me for things I didn't do … I'll take everything I can for it. It's a give and take" (Denis). In the interview, he explained that he had accepted the offer rationally because he found it interesting and not because he felt coerced to do so: "If the deal isn't interesting—for example, three years ago, I definitely would have contested the charges that aren't mine" (Denis).

Mathieu and Jean's experiences are relatively similar to Denis's, although they both pleaded guilty (Mathieu because he was facing "dead time," Jean because he realized that the judge would not acquit him) without making a deal with the Crown, mainly because they were facing an inflexible Crown attorney

[5] It should be noted that defence counsel has a professional obligation not to assist an accused in pleading guilty if they are not admitting the facts surrounding the accusation. The reference to "good advice" thus echoes the words and perspectives of the accused.

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and did not like what they had been offered. Both were assisted by lawyers they trusted and saw as being invested. Since their lawyers had deemed the offer uninteresting, they reported not having felt any pressure to accept it and could wait for a situation that seemed favourable (a sympathetic judge for example) before entering a plea. They both believed that this had led to a positive result and were not troubled by the fact that it may have involved an unjust process—a conviction even though they should have or could have been acquitted. For these two accused, the most important thing was resolving the charges so they could move on, perhaps supporting Feeley's (1979) thesis, previously presented, that "the process is the punishment."

5.3. Non-Optimal Decision

In this third profile, the accused explained that they had pleaded guilty in a voluntary and informed manner—they were knowledgeable about their file, felt the evidence against them was strong, and considered a trial to be useless. Nevertheless, these interviewees cited a number of elements that had pressured them to accept an offer that they found acceptable, though not optimal. They explained that, without such pressure, they would have waited for a better offer from the Crown. Pierre's case is a good example: he had been arrested as part of a vast police operation against organized crime and explained that he had taken several weeks to analyze the evidence in detail, discussed it at length with his lawyer, and came to the conclusion that a trial would be useless. Pierre is knowledgeable about the criminal world and has a number of contacts in the justice system. He had researched the types of sentences handed down for the crimes of which he was accused and knew what he wanted (a sentence of ten years or less). He had been ready to wait, to draw out the proceedings, but the Crown had brought charges against his mother and sister[6]: "It was a way for the police to make me plead guilty. The police know … my mother was eighty-three years old and my sister was a school crossing guard so neither was involved in drug trafficking or … they weren't bandits" (Pierre).

He explained that he didn't feel right making his family go through the process—they had to appear in court repeatedly, they were stressed by the proceedings, and he worried about the consequences it could have for them. Pierre was clear during his interview—if charges hadn't been brought against his family, he would never have agreed to plead guilty, given the Crown's offer (thirteen and a half years of incarceration), as his experience and contacts within the criminal and justice system worlds would have helped him wait for a more interesting offer.

Numerous accused mentioned this situation of coerced acceptance of offers when they talked about their diverse experiences with guilty plea bargains. Several explained that having been in pretrial detention in the past, not having any money to provide better pay for their lawyer, not having taken enough time to discuss

[6] This tactic recalls what Klein (1976) observed for 15% of his respondents, who pleaded guilty in exchange for withdrawal of charges against a female relative (Klein refers to this as chivalry).

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their case with the lawyer, or general lack of knowledge about the way the justice system functions had led them to accept offers that turned out to be of little value. Many stated that experience with the law and its proceedings eventually made them better able to evaluate the offers proposed, as well as to resist pressure from the system and its actors to accept an offer.

5.4. Coerced Decision

At the other end of the profile continuum, we find eight accused [7] who consider their plea decision was coerced. These individuals explained that, although they considered themselves innocent and had always wanted to plead not guilty, at a certain point they found themselves in a situation where they felt that pleading guilty was the only option. They felt overwhelmed by events and proceedings, and believed that their decisions were not made voluntarily. The following quotation from Raymond illustrates their state of mind:

> I don't think I made a very free choice because I didn't have all the information to make the decision, to be fully informed. Then, the conditions, for me personally [he was depressed at that time and consuming a lot of alcohol] and financially, and the way everything was presented to me, also did not allow me access to all the options. (Raymond)

The accused in this group share six characteristics. First, they believe they are innocent of the charges[8] and should never have been charged. Second, the outcome of going to trial was uncertain, making it difficult for them to assess the risk of conviction. Third, they were exhausted and stressed by the process, the large amount of time required for the judicial procedure and wanted a rapid resolution of their case: "It isn't a free decision … for me it was too heavy. I had to lift the weight from my back … I always had to appear in court, in front of the judge, the lawyers, you lose your job, two to three hours, no, no, no, it was too much" (Didier). Fourth, none of these accused were facing any time in prison after a guilty plea. It is possible that this led their lawyers to underestimate the consequences of such a plea. For instance, Raymond's lawyer advised him to plead guilty to offenses he maintained he hadn't committed in exchange for conditional discharge. In Canada, conditional or absolute discharge is generally seen as a clemency measure, as it avoids a conviction and the associated criminal record[9]. However, Raymond was later accused of breaking the conditions of his discharge and then faced numerous

[7] Since half the sample was recruited on the basis that they had pleaded guilty while considering themselves innocent, the number of accused in this group is undoubtedly higher than it would be if this criterion had not been used.

[8] Eric recognized his guilt in one charge against him (dangerous driving), while insisting he was innocent of the others (attempted murder and assault). The other accused in this group claimed to be innocent of all charges brought against them.

[9] Conditional and absolute discharges are defined in s 730 of the Criminal Code : 1) Where an accused, other than an organization, pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for fourteen years or for life, the court before which the accused appears may, if it considers it to be in the best interests of the accused and not contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged absolutely or on the conditions prescribed in a probation order made under subsection 731(2).

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consequences (depression, new charges, etc.). For him, this plea was the beginning of more trouble with the criminal justice system.

Fifth, the accused in this profile all believed that their pleas were not informed. The interviews suggest that the lack of information involved elements in the plea bargain itself (for instance, Theresa unknowingly pleaded guilty to a robbery that she insisted she had not committed—she thought she was pleading guilty only to a charge of extortion), its consequences (Didier explained that no one had warned him that he would no longer be able to travel to the United States once he had a criminal record), and the sentence or the conditions imposed (Serge said he would never have pleaded guilty if he had known what a conditional sentence actually consisted of—he was under house arrest for the first nine months). In Damien's case, the Crown attorney surprised Damien by requesting two years of probation, in addition to the agreed-upon joint sentencing submission that he be sentenced to time served. Damien insisted that he would never have pleaded guilty if he had known that the Crown was going to make this recommendation. The lack of information can also involve legal proceedings. Two accused explained that they had pleaded guilty the morning of the trial to avoid being represented by a lawyer they did not trust. They said that not only did they not know that they could switch lawyers, they also thought that they could easily appeal the decision later. They quickly realized that appeal procedures for a guilty plea are complicated, expensive, and uncertain. For some accused, this lack of information was due to their lawyer's incompetence or lack of investment in the case, while others cited dishonesty. Theresa, for example, remained convinced that her lawyer had taken advantage of her weakness at the time and her lack of understanding of the process in order to make her unwittingly enter a plea of guilty to a charge that she categorically denied. All the accused insisted that they would not have pleaded guilty or accepted the deal if they had had more information (the second criteria established in *R v Wong* 2018 for withdrawal of a plea).

Finally, and most importantly, people in this group felt poorly represented by their lawyers. They believed that their lawyers were not knowledgeable about their cases, did not make an effort to do a good job defending them, and were generally not invested in the situation. "He [the lawyer] didn't do what he said. When we would meet, he told me great things, that he would check on what I asked him … but in the end: 'Oh I wasn't able to reach that person, I don't know if he's going to be able to come.'" (Damien)

During the interview, Eric explained that he was convinced that his lawyer's lack of involvement was due to his inability to pay her more than what she was receiving from legal aid. According to him, his lawyer intentionally extended the process in the hope that he would offer her more money.

> She told me: 'Listen, we've been waiting for the trial for a while, you call me pretty often. I work as a legal aid and I have many cases, and I'm limited in the amount of time I can dedicate to you. Basically, I receive one payment to represent you, for everything … And, we've already spoken, I don't know how many times.' So, that told me clearly that her effort was dependent on the income. (Eric)

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His perspective is supported by Theresa: "I said: 'Well no, I'm not pleading guilty to robbery, I'm not guilty.' But he [the lawyer] told me: 'If you think I'm going to trial on legal aid, you're seriously kidding yourself'" (Theresa).

Many accused said that they resented the strong pressure from their lawyers to enter a guilty plea. Four of them found themselves being pressured by their lawyers to plead guilty on the morning of the trial: "I felt stuck, because I don't know the law. I found myself [facing a guilty plea] on the day of the trial, it was never discussed before" (Raymond). All four told the same story: they arrived on the morning of the trial, thinking that they would plead not guilty. Their lawyer then announced that a witness had or had not shown up, that the risk of conviction was greater than expected, and that they had a very interesting offer from the Crown: "My lawyer had promised: 'Don't worry, I'll get you out of this' … When we got to the trial, my lawyer told me, 'I can't do anything for you 'cause you have past robberies and then the judicial procedures lasted two and a half years … Plead guilty, I'll get you detention on weekends'" (Yves).

These accused all ended up entering a guilty plea because they felt that it was their only option at the time. Serge's case exemplifies this type of situation. During their first meeting, his lawyer asked him to briefly summarize his story, and he described it as his ex-partner accusing him of assault and of uttering death threats. The lawyer never read his file and they did not meet again before the trial. The day of the trial, the lawyer explained to him that his ex-partner had filed new charges against him and that it would be better for him to plead guilty to the initial charges because otherwise the Crown would add the new charges to the case. In his interview, Serge explained that he had felt coerced to plead guilty—if he had not, he was afraid that there would be a trial and, as he would still have been represented by the same lawyer, whom he considered incompetent, he thought he might be convicted of all charges. The lawyer explained to him that he could ask for a different lawyer but that judges rarely accepted these requests on the morning of the trial. The accused believed him as he did not know the process.

Certain accused, such as Didier and Serge, felt that their lawyers had taken advantage of their fatigue and unhappiness over the delayed proceedings to make them plead guilty. Didier said: "I say I was forced by my lawyer. It's like she was tired too … She saw that I wasn't happy … she told me, 'If you want it to be over, you'll have to plead guilty'" (Didier). And Serge explained: "They want to go to court to get the remuneration, and when they see that you're tired […] well then they [make you an offer]" (Serge).

For others, such as Raymond or Yves, pressure from their lawyers was much more direct. Raymond's lawyer threatened to give up the case if he continued to insist on pleading not guilty, while Yves said: "I didn't want to plead guilty. The judge told me 'Are you pleading guilty?' four times. My lawyer rushed me, he said, 'Say guilty, damn it. Get it over with.' That's why I pleaded guilty" (Yves).

Although the accused in this profile mention similar pressures, we also found pressures that were cited only in a limited number of cases but greatly

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affected decision making and accused individuals' impressions of having been coerced to plead guilty. The financial cost of going to trial was an important constraint for Theresa and Jean, and pretrial detention or having to do "dead time[10]" was also brought up by some of the accused (see Euvrard and Leclerc 2017).

All the accused in this group shared a number of characteristics, but their self-reported innocence and lack of information are important since they provide support for legal questions regarding the validity of the plea. Their perception of "ineffectiveness of counsel" is also important since it may have exacerbated the stress of the procedures as well as increasing lack of information and inability to anticipate the outcome of a trial.

6. Discussion and conclusion

The four profiles highlight the need to distinguish between two decision-making acts—the decision to plead guilty and the decision to accept or not accept an offer from the Crown. This distinction recalls Emmelman's (1996) proposal that plea bargaining should be analyzed as a process that involves several different evaluations and decisions, rather than only one decision made at a specific time.

The concept of a coercion continuum is useful here as it accommodates the idea that some decisions may have been made voluntarily while others may have been influenced by varying kinds of incentives (see Brunk 1979, 533 for a discussion of the different "kind[s], or perhaps levels, of inducements"). Certain interviewees felt that both decisions had been voluntary (voluntary decision), while others, such as Pierre, felt that the plea had been voluntarily chosen but acceptance of the offer had been coerced (not optimal decision). Still others, such as Martin, felt that they had been coerced in their decision to plead guilty but the choice of which offer to accept had been voluntary and rational (rational decision). Finally, at the other end of the continuum, several accused considered that both decisions had been made under constraints and were out of their control (coerced decision). If we want to ensure that pleas are made voluntarily, we must consider the ability both to decide on the plea (guilty or not guilty) and to accept or reject offers from the Crown.

6.1. The Ability to Decide on a Plea

This article identifies a number of constraints on accused individuals that could have coerced them to plead guilty even though they considered themselves innocent. Based on these constraints, a number of things could be done to avoid false guilty plea. First, the justice system should more quickly identify accused persons who are facing "dead time" so that these individuals (such as Mathieu, Eric, and Martin in our sample) do not find themselves in a situation where it is more

[10] For the interviewees, dead time refers to unnecessary incarceration, either because the sentence the accused will get does not merit imprisonment, because the time spent on remand would be the same (or less) than the sentence imposed for the crime committed.

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rational for them to plead guilty to an infraction they did not commit than to remain in detention.

Second, defence lawyers need to be more involved. As Eric and Theresa pointed out, legal aid or arrangements between legal aid and privately practicing lawyers are not sufficiently financially rewarding to encourage lawyers to become invested in cases or to assure a complete and full defence (a point also raised by McConville et al. 1994 in Britain or Weitzer 1996, 313, in the United States). This situation leads some lawyers to specialize in entering guilty pleas. These "volume" lawyers take advantage of the legal aid payment structure by taking on a large number of accused individuals who plead guilty, a process more profitable than taking a case to trial. As the number of cases they deal with every day is large (some work on up to fifty files per day), they cannot invest the time necessary to determine whether trial or negotiation would be more appropriate for a particular client. They also have little time to discuss client expectations, which often leads to situations where the accused are forced to make a rapid decision without the time or information necessary to properly assess their different options (as was the case for most of those in the coerced decision-making group in our sample). This situation contributes greatly to accused dissatisfaction with the process and leads some accused to believe that their decision was coerced. Such lawyers also tarnish the reputation of the entire profession, as most accused individuals associated them with corrupt practices. Some changes to the legal aid payment structure would clearly allow better representation of the accused and could prevent trial from becoming a luxury that only a small number of accused individuals or lawyers can afford. Penalizing lawyers who do not offer a minimum level of service could also help strengthen the quality of the defence and ensure fairer treatment of the accused.

Third, as we cannot be sure that the accused are being provided with a full and complete defence, judges should be particularly vigilant in circumstances that might lead to invalid pleas. Since 2002, s 606 (1.1) of the Canadian Criminal Code has required that judges ensure that the plea is voluntary, but most scholars question the ability of the plea inquiry to protect accused individuals from entering pleas against their will (see Bowers 2008 and Brockman 2010, 131–134). Our results suggest that judges should pay more attention to the plea inquiry when confronted with an accused who enters a guilty plea shortly before the trial begins (such as Raymond, Yves, Serge, and Virginie in our sample). This is of particular importance in cases where the accused is not facing jail time (respondents in the coerced decision-making group). As suggested by Cook (2001, 639), the plea inquiry should include greater participation by the accused. Instead of asking closed-end questions, such as "Do you make this plea voluntarily?" or "Do you understand the nature and the consequences of the plea?," judges could ask the accused to explain their understanding of the charge, the plea terms, or the associated penal consequences. Judges can also help reduce false guilty pleas by informing accused people of their rights (for example, that they can change lawyers if there is a disagreement about how the case should be resolved) and the consequences of their plea (the effect of prior convictions is of particular importance in cases where an accused is not sent to prison).

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6.2. The Decision to Accept an Offer

This article also sheds light on the elements that can lead an accused to believe he or she is constrained to accept an offer. Many of the problems cited by the accused in our study with regard to the process of plea bargaining appear to stem from a lack of knowledge or understanding of the justice system and its rules and procedures (see all accused in the coerced decision making category as well as Mathieu). Our results show that contact with a good defence lawyer, who provides legal knowledge, and the accused's previous experience with the law, which provides experiential knowledge, are important variables in explaining why two accused individuals, in similar circumstances, do not necessarily experience or react to the same pressures in the same way. Contact with the justice system or its actors provided guidelines and knowledge that allowed the accused to better assess the consequences of their plea, the offer made by the Crown, and the work of their counsel. Since there are no formal and public sentencing guidelines in Canada and negotiation takes place behind closed doors, accused individuals have very little objective information to rely on, other than advice from their lawyer. As Ericson and Baranek (1982, 27) point out "the only *real* option was to have faith [in their lawyer] or to give up." Our results suggest that some accused individuals do not have the information or time to adequately evaluate the offer from the Crown. In order to avoid the problems associated with lack of knowledge and the difficulty of obtaining information other than that provided by their lawyer, the justice system should encourage the formalization and transparency of negotiations. Two options are generally considered to achieve this end.

First, "rapid settlement offers," in which Crown attorneys provide a written sentencing recommendation with the assurance that it is the best possible offer, could pave the way for initiatives that promote greater transparency in negotiations and in the work of Crown attorneys. Knowledge of the charges the Crown plans to enter and of the sentencing recommendations that would be made with or without a guilty plea would make it easier to prevent overcharging[11], (which was potentially problematic for Pierre and Denis). It would also provide some control over the extent of the sentencing discount, which would ensure that the sentence suggested as the possible result of a trial is not unrealistic or so onerous that it induces a coerced guilty plea. Interview excerpts suggest that some accused individuals were informed that the sentence imposed at trial could be heavy (see Paul, for example, where it was suggested that a trial sentence might be seven years but who ended up with two years after a guilty plea, or Eric, whose lawyer suggested that a plea bargain could result in a fine as opposed to a possible four years of prison after a). Such information, realistic or not, can clearly lead to situations where it seems hazardous to refuse a particular deal.

[11] The practice of overcharging is defined as charging the accused with every charge that is legally possible, even when it is evident that conviction on some of the counts is unlikely or unnecessary. This practice has been documented in Canada by Klein (1976) and Ericson and Baranek (1982), but a recent study (Euvrard & Leclerc 2015) confirms that it is still used by some Crown attorneys to increase their bargaining power during negotiations.

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Second, some countries have adopted a system of predetermined sentencing discounts associated with a guilty plea. In England, for example, the judge must decide on a sentence after considering all the aggravating and mitigating factors and then apply a systematic reduction for a guilty plea. In most such systems, the extent of the reduction is a function of the time when the plea is entered: one third off for a plea entered at the first reasonable opportunity, one quarter or one fifth off for a plea entered prior to trial, and one tenth for a plea entered during trial. This has the advantage of fixing the "waiver rewards" (see Lippke 2011 for a discussion on the distinction between trial penalties and waiver rewards) and ensuring that it is not so important that it can lead to a coerced plea. It also ensures that the "deal: is not a function of the quality of the legal representation available to the accused or their ability to pay for such representation (a view shared by an important number of our respondents but shown in this paper in excerpts from Charles and Eric). This practice is also intended to encourage an early plea, which benefits the accused (see all respondents in the coerced group but also Mathieu and Jean), the justice system, which saves time and resources, and the victim(s), who can now focus on healing. In summary, transparency and accountability in negotiations would clearly improve accused individuals' ability to gather the relevant information that would allow them to voluntarily decide to enter a plea and accept an offer. It would promote greater equity between those involved in the negotiations and would help ensure that the benefits of the plea are real but not so important that they induce a false guilty plea or penalize accused individuals who choose to benefit from their right to a trial.

The results of our work suggest that, while various pressures are almost inevitable during the plea bargaining process, they do not always have a harmful effect on the accused. Some aspects of these pressures, however, seem to increase the possibility that the accused will feel that their decision to plead guilty or accept an offer has been coerced. Access to an effective defence, sensitivity to the accused's reluctance to plead guilty, and taking the time to explain the charges and the consequences of pleading guilty would undoubtedly reduce the number of coerced guilty pleas. Changes to the legal aid payment structure would contribute to better representation and could also prevent trial from becoming a luxury that only a small number of accused or lawyers can afford. Finally, greater transparency in the negotiations would not only contribute to the accused's feeling that they have been treated fairly when they accept an offer but could also ensure that the gain from pleading guilty is not so large that it becomes irrational not to accept it, even for a non-guilty person.

References

Auerhahn, Kathleen. 2012. 'Social control of the self' and pleading guilty in criminal court. *International Review of Sociology* 22 (2): 95–122.

Baldwin, John, and Michael McConville. 1977. *Negotiated justice: Pressures to plead guilty*. London: Martin Robertson.

Bibas, S. 2004. Plea bargaining outside the shadow of trial. *Harvard Law Review* 117 (8): 2463–2547.

https://doi.org/10.1017/cls.2019.33 Published online by Cambridge University Press

Bordens, Kenneth S., and John Bassett. 1985. The plea bargaining process from the defendant's perspective: A field investigation. *Basic and Applied Social Psychology* 6 (2): 93–110. doi:10.1207/s15324834basp0602_1

Bowers, J. 2008. Punishing the Innocent. *University of Pennsylvania Law Review* 156 (5): 1117–80.

Brockman, Joan. 2010. An offer you can't refuse: Pleading guilty when innocent. *Criminal Law Quarterly* 56: 116–134.

Brunk, Conrad G. 1979. The problem of voluntariness and coercion in the negotiated plea. *Law and Society Review* 13 (2): 527–553.

Bushway, Shawn D., and Allison D. Redlich. 2012. Is plea bargaining in the "shadow of the trial" a mirage? *Journal of Quantitative Criminology* 28 (3): 437–454. doi:10.1007/s10940-011-9147-5

Cook III, Julian A. 2001. Federal guilty pleas under rule 11: The unfulfilled promise of the post-Boykin era. *Notre Dame Law Review* 77: 597–640.

Emmelman, Debra S. 1996. Trial by plea bargain: Case settlement as a product of recursive decision-making. *Law and Society Review* 30 (2): 335–360.

Ericson, Richard. V., and Patricia M. Baranek. 1982. *The ordering of justice: A study of accused persons as dependants in the criminal process.* Toronto: University of Toronto Press.

Euvrard, Elsa, and Chloé Leclerc. 2015. Les rapports de force lors des négociations des plaidoyers de culpabilité. Analyse du point de vue des avocats de la défense. *Criminologie* 48 (1): 191–213. https://doi.org/10.7202/1029354ar

———. 2017. Pre-trial detention and guilty pleas: Inducement or coercion? *Punishment and Society* 19 (5): 525–542. https://doi.org/10.1177/1462474516670153

Feeley, Malcolm. 1979. *The process is the punishment*. New York: Russell Sage Foundation.

Ferguson, Gerard A., and Darrell W. Roberts. 1974. Plea bargaining: directions for Canadian reform. *Canadian Bar Review* 52: 497–576.

Glaser, Barney G., and Anselm A. Strauss. 1967. *The discovery of grounded theory: Strategies for qualitative research*. New York: Aldine Publishing Company.

Gravel, S. 1991. La négociation des plaidoyers de culpabilité : Une pratique hétérogène. *Criminologie* 24 (2): 5–29.

Hussemann, Jeanette M. 2013. Negotiating justice: Defendant perspectives of plea bargaining in American criminal courts. Doctoral thesis, University of Minnesota.

Ireland, David. 2014. Bargaining for expedience? The overuse of joint recommendations on sentence. Winnipeg (Canada): Thesis submitted to the Faculty of Law, University of Winnipeg.

Kellough, Gail, and Scot Wortley. 2002. Remand for plea. Bail decisions and plea bargaining as commensurate decisions. *British Journal of Criminology* 42 (1): 186–210.

Klein, John F. 1976. *Let's Make a Deal.* Lexington, MA: Lexington Books.

Lippke, Richard L. 2011. *The ethics of plea bargaining*. Oxford: Oxford University Press.

Manikis, Marie, and Peter Grbac. 2017. Bargaining for justice: the road towards prosecutorial accountability in the plea bargaining process. *Manitoba Law Journal (Robson Crim)* 40 (3): 85–110.

Martin Report. 1993. *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure and Resolution Discussions*. Ontario: Attorney General.

McConville, Michael, Jacqueline Hodgson, Lee Bridges, and Anita Pavlovic. 1994. *Standing accused: The organisation and practices of criminal defence lawyers in Britain.* Oxford: Oxford University Press.

Nasheri, Hedieh. 1998. *Betrayal of due process: A comparative assessment of plea bargaining in the United States and Canada*. University Press of America.

Poirier, Robert. 1987. La négociation des sentences du point de vue des avocats de la défense. *Criminologie* 20 (2) : 57–68.
Piccinato, Milica P. 2004. La reconnaissance préalable de culpabilité. *Ministère de la Justice du Canada : Groupe de La Coopération Internationale*.
Redlich, Allison D., Alicia Summers, and Steven Hoover. 2010. Self-reported false confessions and false guilty pleas among offenders with mental illness. *Law and Human Behaviour* 34 (1): 79–90. doi:10.1007/s10979-009-9194-8
Redlich, Allison D., and Alicia Summers. 2012. Voluntary, knowing, and intelligent pleas: Understanding the plea inquiry. *Psychology, Public Policy, and Law* 18 (4): 626–643. doi:10.1037/a0026066
Smith, Douglas A. 1986. The plea bargain controversy. *Journal of Criminal Law and Criminology* 77: 949–968.
Verdun-Jones, Simon N., and Adamira A. Tijerino. 2002. *Victim Participation in the plea negotiation process in Canada: A Review of the literature and four models for law reform*. Ottawa, Canada: Justice Canada.
Weitzer, Ronald. 1996. Racial discrimination in the criminal justice system: Findings and problems in the literature. *Journal of Criminal Justice* 24 (4): 309–322.

Legislation Cited

Criminal Code, RSC, 1985, c C-46.

Cases Cited

R v Anthony-Cook, 2016 SCC 43, [2016] 2 SCR 204.
R v Babos, 2014 SCC 16, [2014] 1 SCR 309.
R v Downes, 2012 ONCJ 45. 99 WCB (2d) 396.
R v Moser, 2002 ONSC, 163 CCC (3d) 286.
R v Smoke, 2017 SKQB 345. 142 WCB (2d) 866.
R v Symonds, 2018 NSCA 34 147 WCB (2d) 563.
R v Wong, 2018 SCC 25, [2018] 1 SCR 696.

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