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Legal regulation of the plea bargain through the lens of harmonization of criminal law and criminal procedure norms

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Abstract: The proliferation of plea bargains across various legal systems has resulted in significant changes to the structure of criminal trial proceedings and has generated substantial debate regarding the interrelationship between efficiency and legality in the administration of criminal justice. Although prior research has examined the use of plea bargains from an analytical perspective by examining either the extent to which such arrangements conform to principles of procedural fairness or are subject to the exercise of prosecutorial discretion, there have been few studies conducted in order to evaluate the structural relationships that exist between substantive criminal law and procedural regulation in this context. Through the development of a comparative, coherent analytical model to examine the degree to which plea bargains remain consistent with the hierarchical structures of criminal responsibility, the author conducts a comparative analysis of thirteen jurisdictions that represent three different types of legal traditions (i.e., adversarial, inquisitorial and hybrid) in order to identify patterns of substantive-procedural inconsistency. In addition to conducting a comparative analysis of legislative frameworks and judicial reasoning, the author also evaluates the potential for plea bargains to be compatible with legality and proportionality and demonstrates that their legitimacy will depend upon their explicit inclusion within the doctrines of criminal law as well as their inclusion within the doctrine of criminal law. The author finds that codification models tend to provide greater levels of normative stability than do decentralized or discretionary models. Finally, the author provides a typology of normative conflict and operational indicators that can be used in comparative criminal law scholarship and as a basis for evaluating the feasibility of implementing European criminal law harmonization.

Keywords: Plea Bargaining, Negotiated Justice, Substantive–Procedural Coherence, Criminal Law Harmonisation, Judicial Oversight, Comparative Criminal Procedure, Proportionality Principle

1. Introduction

The evolution of plea bargaining systems worldwide represents a major shift in how contemporary criminal justice is delivered. Plea bargaining was originally associated with adversarial legal systems; however, it is now being increasinglyused in many legal systems (continental European countries) and transitional legal systems.[6,7] Consequently, the structure of criminal adjudication is

[6] LYSENKO, S., BOBKO, N., KORSUNOVA, K., VLCHYSHYN, O., & TATARCHENKO, Y. The role of artificial intelligence in cybersecurity: Automation of protection and detection of threats.

undergoing a transformation. This trend has given rise to an ongoing controversy among scholars regarding the compatibility of procedural efficiencies which result from negotiated admissions of criminal liability with the basic principles of criminal liability.[8]

Traditionally, the debate has focused on fairness during trials, prosecutorial discretion, and the issue of efficiency. However, significantly less attention has been paid to a structural question that is becoming increasingly important for scholars of comparative law and European law: does plea bargaining work coherently within the normative hierarchy of criminal law and criminal procedure?[9]

As European legal systems continue to move toward greater harmonization—primarily through human rights decisions and procedural protections—the substantive-procedural relationship that underlies negotiated justice continues to be inadequately conceptualized.

Plea bargaining fundamentally undermines the classical distinction between substantive criminal liability and procedural adjudication. Admissions of guilt are simultaneously used as evidence and to determine sentences. When this transition is not sufficiently grounded in notions of culpability, proportionality and legality, there exists a risk of normative fragmentation. In these circumstances, negotiated justice could function as a parallel system to the system of criminal responsibility.[10]

In particular, this tension is especially evident in hybrid and transitional systems that include adversarial aspects of adjudication in historical inquisitorial legal frameworks. If the mechanism of plea bargaining is transplanted into such systems without a corresponding recalculation of the relevant doctrines, it is likely that both teleological and structural contradictions will occur. On the other hand, some codified systems demonstrate that negotiated justice can be compatible with legality if the negotiations are conducted within clearly defined statutory and constitutional limits.

With this backdrop, this thesis seeks to answer a central research question: To what extent do national models of plea bargaining support the maintenance of normative coherence between the substantive criminal law principles and the procedures for negotiating pleas? Rather than assessing plea bargaining solely in terms of efficiency and the protection of rights, the research uses a comparative coherence framework based on coherence.

The objective of this thesis consists of three parts: firstly, to evaluate the doctrines and legislation governing plea bargaining in selected jurisdictions with varying procedural traditions; secondly, to measure the level of substantive-procedural alignment by using structured coherence indicators; thirdly, to identify potential areas of conflict and to develop proposals for harmonization-oriented reforms.

Based on a working hypothesis, it is assumed that the legitimacy of plea bargaining does not depend on its procedural form but on the degree of structural

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Economic Affairs, 2024, vol. 69, pp. 43–51. https://doi.org/10.46852/0424-2513.1.2024.6

[7] KANTSIR, V. & KOVAL, M. International experience in the application of agreements in criminal proceedings. Bulletin of the Lviv Polytechnic National University. Series: Law Sciences, 2024, vol. 11, no. 2(42), pp. 61–67. https://doi.org/10.23939/law2024.42.061

[8] INTERNATIONAL CRIMINAL COURT. Guidelines for agreements regarding admission of guilt. 2020. Available at: https://www.icc-cpi.int/sites/default/files/itemsDocuments/20201009-Guidelines-for-agreement-regarding-admission-of-guilt-eng.pdf (accessed on 21 October 2025).

[9] STASIUK, N. Particular aspects of legal prevention and counteraction to domestic violence in Ukraine. European Political and Law Discourse, 2020, vol. 7, no. 4, pp. 185–189. https://doi.org/10.46340/eppd.2020.7.4.28

[10] AL-KALABANI, H. The impact of the administrative court's transition to ordinary court chambers upon the justice system of the Sultanate of Oman. Dialogues in Humanities and Social Sciences, 2025, vol. 3, no. 1, pp. 1–8. https://doi.org/10.71261/dhss/3.1.18

integration within the normative structure of criminal law. If such integration is lacking, there exists a heightened risk of illegality, disproportionality and a lack of accountability on the part of the judiciary.

The scientific contribution of this paper consists of developing a coherent comparative criminal law analytical framework that includes a systematic typology of conflicts in norms and structured indicators of coherence. Thus, this study extends the evaluation of plea bargaining as either a necessary instrument of pragmatism or a systemic threat to a broader context of criminal law harmonization in Europe and beyond.

2. Literature review

The debate over regulating plea bargaining is probably the greatest debate that has occurred in recent criminal law scholarship. Plea bargains, which are used in a variety of jurisdictions to determine how criminal cases will be resolved, have altered the nature of criminal case resolution and raised significant questions regarding the relationships among process efficiency, legality and fairness. Four major themes can be identified in the literature concerning plea bargaining: (1) the theory and legitimacy of plea bargaining; (2) the global spread of plea bargaining and the ways in which different countries have adapted it to their legal systems; (3) the power of prosecutors with respect to whether a defendant enters a plea; and (4) the extent to which there is a coherent body of criminal law and criminal procedure with regard to plea bargaining.

2.1. Theoretical foundations: Legitimacy and the evolution of criminal justice

Plea bargaining is often viewed as an institutional departure from adjudicative justice in classic literature on the subject. Langbein[11] suggested that the use of plea bargaining represents a contemporary version of earlier coercive trial procedures which have historically been used to undermine the fact-finding functions of the criminal process. Similar to this argument, Alschuler[12], criticized the evolution of plea bargaining, arguing that it was incompatible with traditional due process protections. Feeley[13] illustrated how procedural pressure itself could serve as a form of punishment and create incentives for guilty pleas, regardless of factual guilt, at the expense of legitimacy.

Subsequent literature has added depth to these criticisms. Roberts[14] emphasized the notion that while negotiated justice may represent an unavoidable institutional choice, it must be transparent and include substantial safeguards. Damaska's[15] structural theory of different types of procedural models remain highly relevant today for comparative studies; when adversarial negotiation mechanisms

[11] LANGBEIN, J. H. Torture and plea bargaining. The University of Chicago Law Review, 1978, vol. 46, no. 1, pp. 3–22. https://doi.org/10.2307/1599287

[12] ALSCHULER, A. W. Plea bargaining and its history. Law & Society Review, 1979, vol. 12, no. 2, pp. 211–245. https://doi.org/10.2307/3053250

[13] FEELEY, M. M. The process is the punishment: Handling cases in a lower criminal court. New York: Russell Sage Foundation, 1980. Available at: https://repository.law.umich.edu/mlr/vol78/iss5/13 (accessed on 21 October 2025).

[14] ROBERTS, J. V. & PLENSICAR, M. M. Sentencing, legitimacy, and public opinion. In Trust and Legitimacy in Criminal Justice: European perspectives. Cham: Springer, 2015, pp. 33-51. https://doi.org/10.1007/978-3-319-09813-5_2

[15] DAMASKA, M. R. The faces of justice and state authority: A comparative approach to the legal process. New Haven: Yale University Press, 1986. Available at: https://yalebooks.yale.edu/book/9780300051193/the-faces-of-justice-and-state-authority/ (accessed on 21 October 2025).

are transferred to hierarchical or policy-based systems, they can produce systematic contradictions between efficiency and legality.

In European legal doctrine, Ashworth and Redmayne[16] noted that while procedural simplifications can be useful for reducing case loads and increasing the efficiency of the system, they should never compromise fundamental principles of culpability and proportionality. Therefore, these theoretical frameworks illustrate that plea bargaining should be seen as not just a procedural mechanism, but rather as a transformation of the structural design of criminal adjudication.

2.2. Global diffusion and comparative adaptation

Recent global diffusion research views plea bargaining as an institutionally-based diffusion model. Langer[17], for example, found that plea bargaining is spread through "legal translations" and not simply through transplants. Comparative research within Latin America shows that, when negotiating justice is implemented in those countries it is shaped by the traditional legal and institutional practices of each country[18,19].

Turner[20] showed that how plea bargaining functions in different jurisdictions depends upon the extent to which prosecutors have discretionary power versus judicial power over sentencing decisions. Socio-legal empirical research supports this idea by showing that while efficiencies may be achieved through avoiding trials, asymmetry can exist between prosecutor and defense as a result of the use of trial avoidance mechanisms[21].

Reports from international organizations related to the law have also highlighted the risks associated with using trial waiver systems too much[22].

The European Union's efforts at implementing simplified procedures for criminal cases, such as Germany's Verständigung or Italy's patteggiamento, have been recognized as attempts to reconcile the legal tradition of codification with the need to accelerate procedure. The literature however consistently identifies the "risk of fragmented harmonization," wherein procedural form is adopted, but not substantive alignment with criminal law principles occurs (see supra).

This concern is especially relevant in transitional systems. Scholarship on the subject in Ukraine has noted that there are inconsistencies between the goals of

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[16] ASHWORTH, A.; REDMAYNE, M. The criminal process. 4th ed. Oxford: Oxford University Press, 2010. Available at: https://global.oup.com/academic/product/the-criminal-process-9780198818403?cc=us&lang=en& (accessed on 21 October 2025).

[17] LANGER, M. From legal transplants to legal translations: The globalization of plea bargaining and the Americanization thesis in criminal procedure. Harvard International Law Journal, 2004, vol. 45, no. 1, pp. 1–64. Available at: https://journals.law.harvard.edu/ilj/2004/01/issue_45-1_langer/ (accessed on 21 October 2025).

[18] BRANDARIZ, J. A. & SOZZO, M. Penal Changes and Contrasting Trends Between Europe and Latin America. International Criminology, 2025, vol. 5, pp. 231-243. https://doi.org/10.1007/s43576-025-00189-x

[19] LANGER, M.; SOZZO, M. (eds.). Plea bargaining in Latin America: A socio-legal analysis. London: Routledge, 2024. https://doi.org/10.4337/9781802206678.00015

[20] TURNER, J. I. Plea bargaining across borders: Criminal procedure and the globalization of justice. New York: Wolters Kluwer, 2009.

[21] BIBAS, S. Plea bargaining outside the shadow of trial. Harvard Law Review, 2004, vol. 117, no. 8, pp. 2463–2547. https://doi.org/10.2307/4093404

[22] FAIR TRIALS. The disappearing trial: Towards a rights-based approach to trial waiver systems. London: Fair Trials International, 2021. Available at: https://www.fairtrials.org/app/uploads/2022/01/The-Disappearing-Trial-report.pdf (accessed on 21 October 2025).

criminal law and the procedural dominance of plea agreements[23]. Kantsir and Koval[24], similarly, point out the difficulties of aligning experiences gained internationally with domestic doctrinal frameworks.

2.3. Prosecutorial discretion, voluntary plea bargaining and institutional disequilibrium

A substantial body of literature has explored the increased power of prosecutors in the context of plea bargaining. In this regard, Bibas[25] argued that plea bargaining typically occurs outside of the "shadow of trial" and thus weakens the adversarial balance. Similarly, empirical studies have shown that defendants will plead guilty due to pressure placed upon them by the system, including the fear of significantly greater sentences.

The European Courts of Justice reinforce these concerns. For example, the European Court of Human Rights[26] emphasized that plea bargaining mechanisms must be voluntary and provide defendants with informed consent and adequate legal representation pursuant to Article 6 ECHR. Likewise, MILJUŠ and SIMOVIĆ[27] identify the possibility of pleas being incompatible with fair trial protections in regional practices.

Similarly, doctrinal writings from various countries illustrate the institutional problems associated with plea agreements. HELM[28] noted that plea agreements in factually complex cases can distort an assessment of evidence. BOKHASHVILI[29] pointed out that there are no clear standards for the exercise of prosecutorial discretion. KAŞLI[30] observed that expedited proceedings can create implicit pressure for defendants to admit their guilt. MOICEANU[31] emphasized that it is essential to maintain appellate review for guilty plea cases to preserve legality.

However, some writers have defended plea bargaining as a practical tool of criminal policy. OKUMU and MURIGI[32], supported the use of plea bargaining in corporate crime prosecution so long as accountability mechanisms were established. TREVISAN[33] emphasized the necessity of incorporating victim's rights into

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[23] SYDIY, Y. Some problematic issues of ensuring the conclusion of a plea agreement. Uzhhorod National University Herald Series Law, 2023, vol. 2, no. 77, pp. 251–257. https://doi.org/10.24144/2307-3322.2023.77.2.43

[24] KANTSIR, V. & KOVAL, M. International experience in the application of agreements in criminal proceedings. 2024. Ibid.

[25] BIBAS, S. Plea bargaining outside the shadow of trial. 2004. Ibid.

[26] EUROPEAN COURT OF HUMAN RIGHTS. Guide on Article 6 of the European Convention on Human Rights (criminal limb). Strasbourg: Council of Europe, 2020. Available at: https://icct.nl/sites/default/files/import/publication/guide_art_6_criminal_eng.pdf (accessed on 21 October 2025).

[27] MILJUŠ, I. Plea agreement and the right to a fair trial. Zbornik Radova Centra za Edukaciju Sudija i Tužilaca RS, 2022, vol. 13, no. 13. https://doi.org/10.7251/cest1322244m

[28] HELM, R. K. The challenge of 'Factual hard cases' for guilty plea regimes. Modern Law Review, 2024, vol. 87, no. 5, pp. 1182–1208. https://doi.org/10.1111/1468-2230.12876

[29] BOKHASHVILI, I. Practical Aspects of a Plea Agreement (bargaining). Journal of Law, 2023, vol. 1, pp. 241-259. https://doi.org/10.60131/jlaw.1.2023.7072

[30] KAŞLI, E. Seri Muhakeme Usulü Teklifini Kabul Etme Ve Suc İkrari İlişkisi. Türkiye Adalet Akademisi Dergisi, 2022, vol. 50, pp. 79–92. https://doi.org/10.54049/taad.1093107

[31] MOICEANU, N. The compliance with the right to a double degree of juridiction in the matter of plea agreement. International Journal of Legal and Social Order, 2021, vol. 1, no. 1. https://doi.org/10.55516/ijlso.v1i1.15

[32] OKUMU, L. A. & MURIGI, H. K. Alternative to prosecution in criminal law: A case for plea agreements in corporate crime. African Journal of Crime and Justice, 2022, pp. 55–77. https://doi.org/10.47348/ajcj/2022/a3

[33] TREVISAN, B. M. A extensão da participação da vítima no Acordo de Não Persecução Penal. Revista Brasileira De Direito Processual Penal, 2023, vol. 9, no. 1. https://doi.org/10.22197/rbdpp.v9i1.763

negotiated justice frameworks. PUNDA[34] pointed out that the success of plea bargaining depended on the strength of adversarial defense structures.

Thus, the literature illustrates a significant doctrinal dichotomy; namely, whether plea bargaining should be seen as a practical means of governance or as a structural threat to the principles of fairness.

2.4. Compatibility between substantive and procedural criminal law

While there is a vast body of literature about the relative merits of efficiency and fairness in relation to plea bargaining, there has been relatively little consideration of how the formal or substantive criminal law relates to the procedural mechanisms used for plea bargaining. Most scholarship addresses plea bargaining as primarily procedural, yet does so without systematically examining whether such mechanisms are compatible with legality, culpability, proportionality and the individualization of punishment.

This is demonstrated by Calderón[35] which explores the tensions between negotiated outcomes and the principle of guilt in the context of the German Verständigung model. It also demonstrates that the transplantation of plea bargaining mechanisms from common law jurisdictions into civil law systems will require doctrinal recalibration in order to avoid creating normative fragmentation[36]. A similar concern is identified in the regional literature related to the recent reform efforts in Ukraine[37].

However, there is an under-developed literature on comparative European harmonisation regarding how substantive criminal law can be made to relate coherently to the procedural elements of plea bargaining mechanisms. The international community's instruments relating to plea bargaining have focused on ensuring fair trial rights rather than the broader systemic relationship between the criminal law and the procedures through which parties negotiate pleas.

There are three major deficits revealed by the review of the international and regional literature on this subject: (1) There is no integrated analytical framework that links substantive criminal law principles to procedural plea mechanism across all relevant jurisdictions. (2) There is insufficient comparative analysis of how negotiated justice affects codified legality traditions within European systems. (3) There is a limited amount of comparative doctrinal study of normative fragmentation in hybrid or transitional legal systems.

3. Methods

In this study, a structured doctrinal-comparative design is used to assess the normative coherence between substantive criminal law and the criminal procedural regulation of plea agreements. The methodological approach for this study is

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[34] PUNDA, O. The simplified order of the court proceedings on the basis of agreements: experience of the procedure legislation of the USA. Uzhhorod National University Herald Series Law, 2022, vol. 2, no. 73, pp. 148–153. https://doi.org/10.24144/2307-3322.2022.73.54

[35] CALDERÓN, G. O. Acuerdos que conducen a una condena en el proceso penal alemán (verständigungen): Estudio dogmático y crítico. Revista Chilena De Derecho, 2023, vol. 50, no. 1, pp. 105–133. https://doi.org/10.7764/r.501.5

[36] LUMBANTOBING, N. A. P., SITEPU, N. S. & HERLAMBANŠG, N. Comparison of plea bargaining in the United States with "Special Line" in the draft book of criminal procedure code (Kuhap) in Indonesia. Bengkoelen Justice Jurnal Ilmu Hukum, 2023, vol. 13, no. 2, pp. 274–289. Available at: https://pdfs.semanticscholar.org/0213/037a522ededе7efa9e7fa8d26e9ad6478222.pdf (accessed on 21 October 2025).

[37] SYDIY, Y. Some problematic issues of ensuring the conclusion of a plea agreement. 2023. Ibid.

comprised of (1) dogmatic analysis, (2) a structured comparative evaluation, (3) jurisprudential examination, and (4) normative modeling.

This study was completed between February and May 2025 by an interdisciplinary team of researchers that specialize in criminal law and criminal procedure. At each stage of the methodological design, independent review of the work of at least two researchers ensured that the analysis was consistent.

The methodological design will occur in four sequential stages.

3.1. Research design and analytical framework

The research is founded upon an analytical model for assessing coherence in criminal justice processes. Coherence is operationalized as the extent to which the following criminal justice process components are preserved: (1) Procedural guidelines that govern plea bargains, maintain the elements of criminal responsibility (actus reus, mens rea and culpability); (2) Sentencing practices are proportionate to those established by statute; (3) Mechanisms for judicial oversight ensure legality and voluntary compliance; (4) The hierarchical structure of norms (Constitution—Criminal Code—Procedural Code—Judicial Precedent—International Obligations) are maintained.

Each of these dimensions were transformed into specific indicators to be analyzed.

Stage 1. Selection and legal classification of normative acts regulating plea bargains (criminal law norms and criminal procedure norms from national and international sources);

Stage 2. Comparative case-law analysis of judicial decisions applying plea bargains across selected jurisdictions;

Stage 3. Identification of inconsistencies and formulation of legally grounded recommendations using predictive legal modelling.

3.2. Jurisdiction selection and inclusion criteria

The following jurisdictions were chosen based on explicit criteria for comparative scope: (1) Existence of a formally approved plea agreement or equivalent trial avoidance mechanism; (2) Presence of codified regulation or a stable body of jurisprudence; (3) Representation of differing procedural traditions (adversarial, inquisitorial, mixed); (4) Relevance to European harmonization discussions.

Based upon the criteria listed above, this study includes: (1) 10 EU member states (Germany, France, Italy, Spain, Poland, Netherlands, Sweden, Czech Republic, Romania, Lithuania); (2) 2 common law countries (USA and Canada); (3) Transitional legal system (Ukraine).

All jurisdictions that did not meet the criteria mentioned above have been excluded from the study. The references to other systems (e.g. Oman) serve as an example and are not included in the comparative data set.

3.3. Sources and dataset construction

The data set is composed of three strata:

(1) Legislative data set (legislative corpus) (42 acts).

Data Set: Criminal Codes & Criminal Procedure Codes (plea bargains, etc.) - each Act broken down to: Substantive norms (elements of an offense, limits of sentencing, definition of guilt); Procedural norms (negotiation, initiation, judicial approval, appeal).

Each norm was rated on: presence of proportionality safeguards; limits of judicial discretion; availability for appeal; explicit reference to voluntariness; compliance with normative hierarchy.

(2) Case law data set (judicial decisions) (65 cases).

Cases chosen based upon: finality of decision; judicial reasoning regarding the legality of the plea bargain; judicial analysis of compatibility between procedural and/or substantive law.

Case Law was evaluated using a structured evaluation matrix which included: the substantive principle relied upon by the judiciary; the procedural rules relied upon by the judiciary; judicial assessment of voluntariness; judicial assessment of proportionality; evidence of normative conflict/contradiction.

Normative inconsistency was defined as the explicit or implicit acknowledgement by the judiciary that procedural agreement mechanisms compromised statutory or constitutional safeguards.

The percentages referenced in the Results section reflect only descriptive frequency; no statistical inferences were drawn.

(3) International instruments data set (15 documents).

International Instruments analyzed include: European convention on human rights (Arts. 6 and 7); ECtHR case law; Rome Statute (Art. 65); recommendations of council of Europe; United Nations documents on fair trial standards.

International Instruments were analyzed as benchmarks for harmonization.

3.4. Methods of legal analysis

3.4.1. Dogmatic (Doctrinal) evaluation

An internal logical coherence test was used. All jurisdictions were tested for each of the following elements: The logic of the relationship between a defendant's substantive guilty finding and their acceptance of a plea; The consistency of the statutory range of penalties for an offense with what is being offered as a negotiated plea outcome; The preservation of constitutional rights for defendants. Jurisdictional violations were categorized using a four category system: Procedural violations (deficiencies in procedural safeguards); Structural violations (violation of hierarchical norms); Teleological violations (inconsistencies in purpose); Terminological violations (ambiguity in concepts). All of these categories were used consistently across all jurisdictions.

3.4.2. Comparative method

A five-variable comparative matrix was created: Legal basis for the plea bargain; Means by which the process is initiated; Safeguards during the process; Level of judicial oversight during the process; Legal consequences and appellate rights. Variables were rated based on qualitative assessments of coherence, using ratings of 1 (coherence fragmented) through 5 (coherence fully harmonized). Rating of the variables represents doctrinal coherence, and not empirical effectiveness.

3.4.3. Judicial analysis

Patterns of judicial reasoning were identified as follows to assess: Explicit reference to the legality principle; Proportionality evaluation; Voluntariness assessment; Constitutional review. This phase examined the structural form of reasoning employed, rather than outcomes.

3.4.4. Normative modeling (legal forecasting)

Legal forecasting utilized normative scenario modeling, rather than statistical predictive models.

Three alternative future legal regimes were developed, each representing different potential reform alternatives: (1) Codification of common practice; (2)

Decentralized hybrid regulation; (3) Soft law coordination. Each of these three reform options were compared against four criteria: Adherence to internationally recognized standards; Clarity of norms; Accountability of institutions; Stability of systems. The above modeling is conceptual and doctrinal in nature.

3.5. Methodological limitations

The study is not claiming to have made an empirical measurement of the outcomes of plea bargains. This study has a focus on normative coherence only. The quantitative references in the Results section are for the purpose of descriptionand do not imply that the results can be statistically generalized.

4. Results

The results are structured according to the four methodological dimensions defined in the analytical framework: (1) internal doctrinal coherence; (2) jurisprudential application; (3) inter-jurisdictional comparison; and (4) normative reform modelling.

4.1. Internal doctrinal coherence (dogmatic analysis)

High coherence systems—Germany: The German system is the most internally consistent system for plea bargaining in the world. This is because the substantive and procedural aspects of criminal justice are divided into two distinct bodies of legislation; namely the Strafgesetzbuch and the Strafprozessordnung. Also, the courts have a formal duty to approve all plea bargains. Sentencing is also constrained by statute and the voluntariness of the defendant's agreement must be verified. No structural inconsistencies were found. However minor procedural shortcomings were discovered that do not compromise the hierarchical integrity of the legal norms.

Moderate coherence systems—France and Italy: Both countries present an overlap between substantive and procedural dimensions of criminal procedure. Both countries have codified regulatory structures however, their respective procedural acceleration mechanisms can lead to a degree of ambiguity with respect to how these mechanisms impact the application of sentencing regimes. In Italy, this ambiguity is further complicated by limited judicial review of plea agreements which contributes to a reduced level of proportionality control by the judiciary. Similarly in France, ministerial guidelines can indirectly affect the logical structure of sentencing as provided for under statute.

Thus both systems represent a form of "teleological" tension (i.e. a tension that exists between competing goals and/or values), rather than a "structural" inconsistency (i.e., a conflict that exists due to a lack of congruence between different elements of the system).

Fragmented/hybrid systems—Ukraine and Canada: Both countries present structural vulnerability with respect to plea bargaining regulation. In Ukraine there appears to be an inherent ambiguity in the nature of the relationship between the adversarial negotiation process and the investigative procedural traditions that exist in Ukrainian criminal procedure. As such it is unclear what the parameters of judicial review of plea bargains would be in cases where such a bargain has been entered into in the context of an investigation. Additionally certain plea provisions in Ukraine appear to exist outside of a direct link to the substantive culpability doctrine of the Criminal Code of Ukraine.

Similarly, in Canada, while there exists a body of case law that provides a framework for the regulation of pleas through prosecutorial practice and judicial discretion, no comprehensive and codified regulatory regime governing the terms of plea agreements exists. While the possibility of constitutional review of the plea

bargaining process remains available, the absence of clear legislative articulation of the terms of such a process presents significant challenges to effective regulation.

4.2. Jurisprudencial application and normative tensions

The jurisprudential matrix has been applied to 65 final judicial decisions. In each case, I have investigated whether (1) there is an explicit reference to the substantive criminal law principles; (2) if there is an evaluation of the voluntariness; (3) if there is a proportionality review; (4) if I can identify a normative conflict.

Normative inconsistencies were noted when courts acknowledged or implied a contradiction between the negotiated procedure and statutory guarantees. Descriptive analysis shows that 42.3% of the decisions have an identifiable normative tension.

European court of human rights: ECtHR had the greatest number of contradictions (53.8%) with violations being most often concerning: (1) insufficient verification of voluntariness; (2) inadequate legal assistance; (3) disproportionate outcomes of the sentence; (4) failure to protect the presumption of innocence.

Court's jurisprudence emphasize that the efficiency of procedures cannot overcome the guarantees of Article 6.

EU member states supreme courts: Supreme courts in the EU countries identified the conflicts in 38.5% of reviewed cases. Most of these conflicts concern: (1) judicial passivity in the review of agreements; (2) ambiguity about the requirements for the factual basis; (3) interaction between the negotiation of the penalty and the statutory proportionality. However, the courts of codified systems showed a higher ability to restore coherence through constitutional interpretation.

International criminal court: ICC had the lowest rate of normative tension (33.3%). Article 65 of the Rome Statute provides detailed safeguards for the parties involved, including the judicial confirmation of the factual basis and voluntariness. The structured nature of ICC procedures limits the discretionary fragmentation.

4.3. Cross-jurisdictional comparison of legal systems

A five variable cross-jurisdictional comparison was used to determine a qualitative coherence rating for each jurisdiction using the matrix.

Germany (Rating: 5): (1) codification of the initiation of criminal prosecutions; (2) high levels of protection under the procedural law; (3) mandatory judicial review in all cases; (4) the legal consequences of the sentencing are defined. The alignment of substantive law with procedural law is maintained.

Italy (Rating: 3): (1) mixed mechanisms for the initiation of criminal prosecutions; (2) medium level of protection through procedural law; (3) limited judicial review of the criminal proceedings; (4) sentencing has some elements of discretion. Although teleological tensions remain, there is still a structural framework that supports the integrity of the system.

United States (Rating: 2): (1) contractual basis for initiation of criminal prosecution; (2) variable protection under procedural law; (3) very limited judicial oversight of criminal justice processes; (4) broad discretion exists with respect to prosecutorial decision making. The system places an emphasis on efficiency and therefore creates a systemic inequality between substantive legality and the negotiated outcome of cases.

Ukraine (Rating: 3): (1) codified framework for criminal prosecution; (2) partially protective measures exist within the procedural law; (3) formal judicial review exists, however it is unclear whether this review is linked to the principle of substantive proportionality. The system reflects hybridity during a transitional period as opposed to an integrated legal doctrine.

4.4. Typology of identified normative conflict

The conflicts identified across all jurisdictions can be categorized into the four types: (1) Procedural conflict (45%): inadequate assessment to determine voluntariness of a plea; lack of defense participation in plea negotiations; inadequate judicial oversight of plea proceedings. (2) Teleological conflict: Conflict between the goals of efficiency and fairness/proportionality. (3) Terminological conflict: Conceptual ambiguity (e.g., confession v. negotiated plea). (4) Structural conflict: Misalignment of norms within the hierarchical structure of the law.

Procedural conflict is the most common form of conflict due to the fact that plea agreements take place within the procedures for the acceleration of proceedings, which can have an impact on the substance of the outcome of those proceedings.

4.5. Normative reform models (legal forecasting)

Four models of legal reform were evaluated on their compliance to international norms, clarity of new norms, accountability, and overall systemic stability.

The three models evaluated are as follows:

(1) Codified legal harmonization model. This model establishes a system where statutory law is explicitly safeguarded by international human rights standards. This includes the following: mandatory judicial review; statutory limits on sentencing; statutory rights of appeal; direct correlation between admission into court and criminal liability. The codified legal harmonization model exhibits the greatest institutional and systemic consistency in its design.

(2) Hybrid regulatory discretion model. This model utilizes decentralized regulatory approaches along with prosecutorial discretion. The hybrid model does not have centralized oversight mechanisms and results in substantial uncertainty regarding which norms will be applied to specific cases. Therefore, this model exhibits less conformity to the principles of harmonization.

(3) Flexible standardized ethics model. This model uses ethical guidelines and recommendations that do not include the requirement of statutory codification. Although the model allows for flexibility, the lack of mandatory enforcement mechanisms may lead to an inadequate level of enforceability.

Based upon comparative analysis, codified legal harmonization has provided the most consistent framework for the establishment of procedural-substantive coherence within a legal system.

5. Discussion

This study investigated plea bargaining by examining the relationship between the substantive criminal law and criminal procedure as they relate to normative coherence. The study looked at whether the process of plea bargaining is evaluated based on an economic model (i.e., efficiency) or a model that protects individual rights. In addition to looking at these two issues, this study asked the structural issue of whether negotiated justice operates within the foundational principles of criminal liability or outside of them.

While the study did show that plea bargaining does not automatically undermine either the principle of legality or fairness; it found that the legitimacy of plea bargaining is directly related to how integrated into the overall normative structure of the legal system that process is.

5.1. The pleading bargain as a change in structure

Plea bargaining was described by classic scholars[38,39,40] as an example of how the pursuit of legaltruth was abandoned in favour of efficiency; we found in our research that the criticism for plea bargaining is still valid in systems where the prosecutor has a lot of leeway and there is little or no judicial oversight. Therefore, in many countries including the US, the desire to be efficient will often outweigh the principles of proportionality and individualresponsibility.

We also however nuanced the traditional criticisms of plea bargaining. Systems of codification (Germany) have showntthat negotiated justice can work together with lawfulness if the following conditions are met: judicial verification of the factual basis is obligatory; sentencing is determined by statute exclusively; appeal options remain available; the hierarchical structure of the constitution is maintained.

This supports Damaskas structural theory[41]: whether a system can support plea mechanisms is based upon the architecturaldesign of the system and not merely upon its procedural design.

5.2. Global diffusion and fragmented harmonization

Plea bargaining is widely seen as a locally adapted form of a globally diffused model[42,43]. This study builds on this comparative perspective and demonstrates how often global diffusion leads to fragmentation of norms.

In transition countries like Ukraine, plea mechanisms are formally incorporated into legislation but they have been only partially adopted in the doctrinal body of law. The coexistence of adversarial negotiations with an inquisitorial tradition creates teleological tension between procedural efficiency and guilt assessments.

Hybrid systems without extensive codification (Canada) will have to rely on the discretion of practitioners to fill existing gaps in legislation. However, this discretion will increase uncertainty.

Therefore, the findings support the thesis that harmonization can be accomplished neither through the transferal of procedure nor through the mere adoption of foreign rules of criminal law. Rather, the legal system must be revised to make clear and binding provisions regarding the content of admissions negotiated during proceedings.

5.3. Prosecutorial power and judicial duty

Prosecutorial power in the plea system has been a concern for some time in jurisprudential analysis. When judicial review is merely formal as opposed to being substantively based, voluntary pleas are not sufficient for verification.

The ECHR jurisprudence analyzed in this article confirms what scholars have long recognized–that Article 6 protections against criminal conviction cannot simply be satisfied by procedural formalisms; instead, the Court emphasizes: true

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[38] ALSCHULER, A. W. Plea bargaining and its history. 1979. Ibid.
[39] LANGBEIN, J. H. Torture and plea bargaining. 1978. Ibid.
[40] FEELEY, M. M. The process is the punishment: Handling cases in a lower criminal court. 1980. Ibid.
[41] DAMASKA, M. R. The faces of justice and state authority: A comparative approach to the legal process. 1986. Ibid.
[42] LANGER, M. From legal transplants to legal translations: The globalization of plea bargaining and the Americanization thesis in criminal procedure. 2004. Ibid.
[43] BRANDARIZ, H. A. & SOZZO, M. Penal change, increased punitiveness and convergence across borders. International Criminology, 2025, vol. 5, pp. 231-243. https://doi.org/10.1007/s43576-025-00189-x

voluntariness, informed consent, active participation of the defense, proportionality of sentence.

Additionally, the ICC model also shows that specific statutory protection may help minimize structural conflict within the legal system, which is clearly demonstrated by the formalized structure of the admissions process under Article 65 that demonstrate that negotiated justice can be compatible with the rule of law if there is a formalized system of oversight.

Therefore, these conclusions support academic advocacy for increased judicial oversight (as an alternative to abandoning plea mechanisms).

5.4. Substantive-procedural coherence as an omitted category of analysis

This study's central contribution is to reframe the discussion. Most research regarding plea bargaining has been evaluated on either efficiency or fairness. Less research examines whether it is compatible with substantive criminal law theory. The coherence-based analytical model used in this article demonstrates that normative fragmentation primarily occurs when: Procedural rules alter the logic of sentencing absent a doctrinal justification; Admission of guilt substitutes for proof without adequate factual scrutiny; Prosecutorial discretion exceeds statutory proportionality limits. Using structured coherence indicators, this study provides an analytical framework to assess negotiated justice, which goes beyond binary approvals or rejections.

5.5. Implications of European harmonization

European criminal law is still in a relatively primitive state of legal unity. Procedural safeguards now tend to be legally standardized on the basis of the principles of the ECHR while national governments remain largely free to determine their substantive criminal laws. Based on these results, it would seem that further attempts at European-wide criminal law harmonization need to shift from ensuring the fairness of trials (fair trial guarantees), toward developing more specific, direct standards for the integration of substantive and procedural rules. In its current form, without such development, plea bargains will continue to act as an autonomous procedural system with respect to other aspects of the criminal process. In terms of codifying the level of legislative harmony (the different scenarios of potential legislative harmonization discussed above), Scenario A would represent the greatest level of legal certainty; whereas the hybrid and soft-law alternatives may lead to continued fragmentation.

5.6. Theoretical and practical contribution

In part the study confirms the initial hypotheses: discrepancies between substantive and procedural norms can create legitimacy risks; however the study goes beyond confirmation to demonstrate that such risks depend on systems, as opposed to being intrinsic to a particular form of justice.

The article has contributed to: a structure for measuring coherence (the coherence framework) across different jurisdictions, a taxonomy of conflicts (normative conflict), an oriented reform model towards harmonization, a theoretical bridge from criminal law to procedural negotiations.

By locating plea bargaining in systems design rather than in procedural conveniences this study is contributing to comparative criminal law studies.

5.7. Restrictions

This study employs a doctrinal-comparative methodology centered on normative coherence (and not empirical performance). Thus, the analysis will

assess the structural consistency of both substantive and procedural norms; however, the analysis will not measure the empirical frequency of plea-bargaining outcomes, sentencing disparities, or the behavior of defendants when making decisions about whether to plead guilty. The results of this study are therefore related to the legal structure of these jurisdictions (as opposed to their social effects).

Second, even though the dataset for the comparative analysis of the jurisdiction included 13 jurisdictions from differing procedural regimes, the extent to which each jurisdiction was analyzed differed with respect to the amount of reasoned judicial opinions and codified regulations available. Some systems have an abundance of jurisprudence, whereas others rely on statutes that were adopted through legislative action, and therefore may impact the degree to which comparisons can be made at a level of detail.

Third, the doctrine-based evaluation system for assessing coherence is an analytical tool used to evaluate qualitative aspects of legal doctrine. Although this tool has been applied systematically throughout all jurisdictions, it is not intended to establish mathematical precision or predictive validity. Instead, it should be viewed as an analytical framework (not a quantitative index).

Lastly, some jurisdictions continue to experience changes to their legal reforms in real time. For example, some transitional systems are experiencing ongoing legislative amendments, which may cause the regulatory context that is discussed in this article to be altered. Therefore, the conclusions drawn in this article represent the state of the law as of early 2025.

5.8. Recommendations

The study suggests that the legitimacy of plea bargaining is based upon its incorporation into the underlying criminal law as a structural component rather than simply as an independent procedural tool.

The recommendations for future legislation based upon the above-mentioned coherence study are:

(1) Explicitly connecting procedural mechanisms and substance. Codification of the relationship between negotiated admissions and the statute(s) defining the elements of criminal liability is recommended. Plea bargains should be structured as part of established principles of culpability and proportionality.

(2) Substantive judicial approval. Judges should verify during judicial approval that: there is a factual basis for admitting guilt;the agreed sentence is proportional to the crime; the defendant has made his decision voluntarily and with adequate legal representation. This will provide sufficient assurance that pleas bargained under these conditions have been conducted legally.

(3) Preserving normative hierarchy. Plea bargain regulation must conform to constitutional rights and obligations to international law, notably Article 6 of the European Convention on Human Rights. Any ministerial directives or prosecutorial rules should not replace clear statutory regulations.

(4) Guaranteeing appeal and review. Access to appellate review should continue to exist, particularly when the terms of a plea agreement result in severe sentencing or alter factual determinations regarding the accused.

(5) Strategy of harmonization-oriented reforms. In the area of plea bargaining, it is suggested that European-wide harmonization initiatives address the need for systematic substantive-procedural coherence, rather than focus solely on formalities relating to the right to a fair trial. As a general rule, codified models of harmonization have more potential for creating system stability compared to decentralized, soft-law-based methods of reform.

(6) Directions for future research. Additional research should seek to correlate empirical data on the outcomes of plea bargains with a continued evaluation of the

coherence of the doctrine of plea bargaining. For example, studies that analyze plea bargaining outcomes (e.g., sentencing patterns, defense capacity, etc.) in relation to the structure of the plea bargaining process (e.g., prosecutorial discretion, etc.), would both inform and support the normative framework for plea bargaining presented in this article.

6. Conclusions

This study investigated the extent of the relationship between substantive criminal law and criminal procedural mechanisms by investigating the degree of normative coherence in respect to plea-bargaining. The study considered plea-bargains as a mechanism of "negotiated justice" rather than simply as a procedural instrument of efficiency and assessed whether the system of negotiated justice remains coherent with the underlying principles of criminal responsibility. The study found that the legitimacy of plea bargains does not depend on an inherent compatibility with concepts of legality, proportionality and fairness. The legitimacy of plea bargains instead depends on the degree of systemic integration of negotiated justice into the normative hierarchy of the legal system. Systems which have codified procedures and mechanisms of mandatory judicial review, statutory limits on sentencing discretion, and constitutional protections against abuses of power, tend to be more coherent than those which provide prosecutors and courts with unstructured discretion.

The study's findings show that most of the conflict arises when there is no formal link between procedural mechanisms of accelerated disposition of cases and the doctrines of criminal liability, proportionality, and guilt. As a result, plea bargaining may become a quasi-independent subsystem that is removed from the architectural structure of criminal law. Such fragmentation is especially evident in transitional legal systems and in jurisdictions in which the prosecution enjoys unregulated discretionary powers.

The study contributes to comparative criminal law research in three areas. Firstly, the study provides operational criteria for evaluating the substantive-procedural alignment of legal systems across jurisdictions. Secondly, the study identifies four categories of normative conflict that can occur in relation to mechanisms of negotiated justice (procedural, teleological, structural, and terminological). Lastly, the study places the debate about the role of plea bargaining in the context of the ongoing debate about European criminal law harmonization.

The study has confirmed that the harmonization of procedural fair trial guarantees will not be sufficient for sustainable integration of plea bargaining; that is, for negotiated justice to become stable and legitimate within the criminal justice system, explicit doctrinal coordination is required between the substantive principles of criminal liability and the procedural frameworks of negotiation. Codified and harmonized models of negotiation demonstrate greater normative stability and institutional legitimacy than decentralized or soft-law approaches.

Ultimately, the study has advanced our understanding that the future of negotiated justice does not lie in its extension or contraction, but rather in its reformulation. Coherence between substantive criminal law and procedural mechanisms is necessary to ensure the integrity and certainty of the law, to protect the rights of individuals, and to maintain the trust and confidence of the public in the administration of criminal justice.

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