Title
Plea Bargaining, Conviction Without Trial, and the Global Administratization of Criminal Convictions

Journal
Annual Review of Criminology, 4(1)

ISSN
2572-4568

Author
Langer, Máximo

Publication Date
2021-01-13

DOI
10.1146/annurev-criminol-032317-092255

Peer reviewed

ANNUAL REVIEWS

Annual Review of Criminology

Plea Bargaining, Conviction Without Trial, and the Global Administratization of Criminal Convictions

Máximo Langer

School of Law, University of California, Los Angeles, California 90095, USA;
email: langer@law.ucla.edu

Annu. Rev. Criminol. 2021. 4:1.1–1.35

The *Annual Review of Criminology* is online at criminol.annualreviews.org

https://doi.org/10.1146/annurev-criminol-032317-092255

Keywords

comparative criminal justice, plea bargaining, conviction without trial, criminal convictions, police and prosecutors, administratization

Abstract

This article documents the diffusion of plea bargaining and other mechanisms to reach criminal convictions without a trial and argues that their spread implies what this article terms an administratization of criminal convictions in many corners of the world. Criminal convictions have been administratized in two ways: (*a*) Trial-avoiding mechanisms have given a larger role to nonjudicature, administrative officials in the determination of who gets convicted and for which crimes, and (*b*) these decisions are made in proceedings that do not include a trial with its attached defendants' rights. The article also proposes a way this phenomenon could be quantitatively measured by articulating the rate of administratization of criminal convictions, a metric to allow for comparison among different jurisdictions. The article then presents cross-national data from 26 jurisdictions on their rate of administratization of criminal convictions and different hypotheses that may help explain variation across jurisdictions on this rate.

INTRODUCTION

Plea bargaining and related mechanisms have been spreading around the world in the past few decades (Fair Trials 2017, Langer 2004, Thaman 2010b, Turner 2009). So far, the implications of this phenomenon have not been fully understood. This article argues that the spread of these mechanisms implies what this article terms as an administratization of criminal convictions in many corners of the world. Criminal convictions have been administratized in two ways: (*a*) Trial-avoiding mechanisms have given a larger role to nonjudicature, administrative officials in the determination of who gets convicted and for which crimes, and (*b*) these decisions are made in proceedings that do not include a trial with its attached defendants' rights. The administrative determination of criminal convictions is assumed to be legitimized through the defendants' admission of guilt or formal consent to the adjudication of the case without a trial. In this regard, what characterizes plea bargaining and related trial-avoiding conviction mechanisms is neither negotiation between the defense and the prosecutor or the judge nor coercion—even if negotiation and coercion are features of a subset of these mechanisms. Rather, the common thread among these mechanisms is administratization.

To make this point, this article explains that plea bargaining is a way to reach a criminal conviction without a trial. As such, plea bargaining should be studied together with other procedural mechanisms adopted around the world that also enable reaching a conviction without a trial. One may also study and analyze plea bargaining and other trial-avoiding conviction mechanisms as part of the broader range of decisions by criminal justice operators, which includes decisions that do not lead to a criminal conviction—such as formal and informal and unconditional and conditional dismissals by the police, prosecutors, and courts; pretrial supervision; mediation and other alternative dispute resolution mechanisms; and acquittals. However, criminal convictions are different from other decisions by criminal justice operators; because criminal convictions publicly communicate that a person has been found guilty of the commission of an offense, they are a precondition for formal punishment (fines, probation, prison, death penalty, etc.), may lead to the forfeiture of property connected to the crime, they enable collateral consequences (such as restrictions on the ability to vote, run for office, to work, access public housing, etc.), and create a criminal record. Thus, the ways criminal convictions are globally produced are worth studying in their own right.

This article documents the spread of plea bargaining and other trial-avoiding conviction mechanisms in a substantial part of the world and names, theorizes about, and describes the phenomenon of administratization of criminal convictions. The article also proposes a way this phenomenon could be quantitatively measured by articulating the rate of administratization of criminal convictions, a measure or metric to allow for comparison among different jurisdictions. The article then explores different hypotheses that may help explain variation across jurisdictions in the rates of administratization of criminal convictions. Throughout, this article raises questions for future qualitative and quantitative empirical research on the administratization of criminal convictions and plea bargaining and other trial-avoiding conviction mechanisms more generally.

THE DIFFUSION OF PLEA BARGAINING AND RELATED TRIAL-AVOIDING CONVICTION MECHANISMS

Four decades ago, scholars characterized plea bargaining as a uniquely American phenomenon (Langbein & Weinreb 1978, Langbein 1979a). Although at the time there were commentators who questioned how uniquely American plea bargaining truly was (Baldwin & McConville 1979, Goldstein & Marcus 1977), there is no question that in many jurisdictions a trial was a requirement

to issue criminal convictions for all offenses or at least for all nonpetty offenses. This was especially the case in civil law and other non–common law jurisdictions,[1] where guilty pleas do not exist.

Since the 1970s, there has been a substantial spread of plea bargaining and other trial-avoiding conviction mechanisms that enable public officials to find a person formally guilty for the commission of a criminal offense without a trial, relying on the defendant's consent (Fair Trials 2017, Langer 2004, Thaman 2010b, Turner 2009). **Table 1** illustrates this trend by showing when plea bargaining and other trial-avoiding conviction mechanisms were statutorily introduced or judicially recognized in 60 jurisdictions. See the **Supplemental Material** for information on how these jurisdictions were selected, how the information about them was gathered, and the list of sources for each individual jurisdiction.

Table 1 includes data about plea bargaining—i.e., understandings, agreements, or negotiations by which the defendant enters a formal guilty plea in exchange for some potential benefit such as a charge, fact, or sentence reduction or change. The table considers procedural mechanisms that enable a criminal conviction without a trial in exchange for some potential benefit as equivalent to plea bargaining, as long as the defendant admits their guilt and/or accepts before a court the application of the mechanism to their case. **Table 1** also includes data about penal orders that are typically applied to nonserious offenses and through which the prosecutor requests a sentence that becomes final if the court formally approves it and the defendant does not oppose the application of the mechanism to their case. (There is variation in the exact regulation and requirements of penal orders in different jurisdictions, and some, for instance, do not require formal approval by the court.)

Table 1 distinguishes between penal orders and their variants and plea bargaining and its variants because of the different origins and features of these two mechanisms. Germany was among the first countries to adopt the penal order (Thaman 2012) as a way to deal with minor criminal offenses through fully written proceedings in which the sentence proposed by the prosecutor becomes final with the court's approval if the defendant does not object (§§ 407–412 StPO). Plea bargaining originated in common law jurisdictions whose proceedings have long used guilty pleas as a way to adjudicate any type of criminal case, hence opening the door for explicit or implicit understandings, agreements, or negotiations over the pleas. Despite these different origins and features, all the mechanisms listed in **Table 1** share in common that they enable reaching a criminal conviction against an individual without having to hold a trial and based on the individual's admission of guilt or explicit or implicit consent to the application of the mechanism.

Table 1 shows that plea bargaining and other trial-avoiding conviction mechanisms are not a fully new phenomenon of the past few decades. In common law jurisdictions, guilty pleas have been a well-established feature for centuries, and there were instances or practices of understandings, agreements, or negotiations about guilty pleas going back far in time (Fisher 2003, Smith 2005). For these jurisdictions, we include in **Table 1** the year in which plea bargaining was formally adopted by statute or was formally approved by high courts (as indicated in the **Supplemental Material**). The Philippines formally recognized plea bargaining in 1940. Among civil law and other non–common law jurisdictions, jurisdictions like Germany, Hungary, Italy, Japan, Poland, South Africa, South Korea, Spain, Sweden, and Taiwan had already adopted penal orders or other trial-avoiding conviction mechanisms in the nineteenth century or the first decades of the twentieth century.

Although there are earlier examples, **Table 1** also shows that in the past few decades, plea bargaining and other trial-avoiding conviction mechanisms have spread widely in criminal procedure

[1]However, this was not the case in Latin America, where most jurisdictions did not have public and oral trials and where criminal cases were adjudicated in written proceedings, typically kept secret from third parties (Langer 2007).

Table 1 Plea bargaining, penal orders, and related trial-avoiding conviction mechanisms with dates of statutory introduction or recognition by high courts in 60 countries[a]

Country	Plea bargaining (or equivalent)	Penal order (or equivalent)
Angola	NA	NA
Argentina	1997	NA
Australia	1996	NA
Belgium	2016	NA
Bolivia	1999	NA
Bosnia and Herzegovina	2003	2003
Brazil	NA	NA
Bulgaria	1999	NA
Canada	1995	NA
Chile	2000	2000
China	2012	NA
Colombia	1991	NA
Costa Rica	1996	NA
Croatia	2002	1998
Czech Republic	2012	1973
Ecuador	2000	NA
El Salvador	1998	NA
England & Wales	1970	NA
Estonia	1996	NA
France	2004	1972
Georgia	2004	NA
Germany	2009	1877
Guatemala	1992	NA
Honduras	1999	NA
Hungary	1998	1896
India	2005	NA
Indonesia	NA	NA
Israel	1972	NA
Italy	1988	1930
Japan	2004	1885
Latvia	2004	2005
Macedonia	2010	2004
Malaysia	2010	NA
Moldova	2003	NA
Montenegro	2009	2004
Netherlands	NA	2006
New Zealand	2011	NA
Nicaragua	2001	NA
Nigeria	2002	NA
Panama	2008	NA
Peru	1994	NA

(*Continued*)

Table 1 (*Continued*)

Country	Plea bargaining (or equivalent)	Penal order (or equivalent)
Philippines	1940	NA
Poland	1997	1928
Portugal	NA	1987
Romania	2010	NA
Russian Federation	2001	NA
Scotland	1995	NA
Serbia	2009	2001
Slovenia	2012	2003
South Africa	1999/2001	1955
South Korea	NA	1954
Spain	1882	2015
Sweden	NA	1942
Switzerland	2007	2007
Taiwan	2003/2004	1935
Ukraine	2012	NA
United Arab Emirates	NA	2018
United States	1970/1975	NA
Uruguay	2016	NA
Venezuela	1993	NA

Abbreviation: NA, not available.

[a]Based on legal experts' input, statutes, judicial opinions, and secondary literature on reported jurisdictions, as described in detail in the **Supplemental Material**.

codes and other statutes or have been recognized and approved by high courts among the jurisdictions in our sample.[2] **Table 2** summarizes the diffusion patterns of these mechanisms in the past five decades.

In the case of the United States, there is a rich historical literature on the causes of the adoption and expansion of plea bargaining in the nineteenth century, well before plea bargaining was

Table 2 Diffusion trend of trial-avoiding conviction mechanisms across 60 countries in the past five decades

Time period	Number of countries	Percentage of new adoptions in remaining countries
Before 1970	11	0%
1970–1979	5	10%
1980–1989	1	2%
1990–1999	15	35%
2000–2009	17	61%
2010–2018	8	73%

[2]International human rights bodies and international criminal jurisdictions have also accepted and put some limits on the use of these mechanisms: see, for example, *Natsvlishvili and Togonidze v. Georgia* (2014), *The Prosecutor v. Ahmad Al Faqi Al Mahdi* (2016), and UN Hum. Rights Comm. (2016). The reader is also referred to Bachmaier (2018), Carlson (2018), Langer (2005), and Combs (2007).

recognized and validated by statutes and the US Supreme Court. Historians have proposed different theories for this rise, including caseload pressures, increasing complexity of the criminal trial, institutional changes and professionalization in policing and prosecution, and sociopolitical pressures exogenous to the courtroom (see Smith 2005 for a summary of this literature). There is no parallel literature of qualitative or quantitative empirical studies (for instance, in the tradition of institutional sociology) on the causes of the contemporary adoption of trial-avoiding conviction mechanisms globally or even in specific jurisdictions other than the United States.

Rather than empirically exploring its causes, the existing literature has typically reported the reasons invoked by a legislature, ministry of justice, or operators of the criminal justice system for the adoption of these mechanisms. These reasons include handling an increasing case docket, improving a criminal justice system's efficiency in managing its cases, responding to the pressures that new defendants' rights might put on the efficiency of the criminal process, increasing conviction rates and fighting impunity, reducing pretrial detention, protecting the rights of victims, improving the ability of a criminal justice system to deal with complex cases, and allowing for cooperation agreements with defendants to tackle corruption and organized crime (Fair Trials 2017, Langer 2004, Lewis 2009, Thaman 2010b, Turner 2009).

Other possible causes for the adoption of these mechanisms have not been invoked or have been invoked less often by legislatures, ministries of justice, and courts. These include the adoption of adversarial criminal procedure codes (e.g., in Latin American jurisdictions) (Langer 2007); the cultural and political influence from the United States and other jurisdictions and international agencies over third jurisdictions (Langer 2004); a transnational trend towards delegating more procedural power to prosecutors (Jehle & Wade 2006; Langer 2006; Langer 2007; Luna & Wade 2010, 2012); and the self-interest of judges, prosecutors, and defense attorneys who may welcome these mechanisms as a way to reduce their workloads (Bergman et al. 2017) or increase their authority and power (Langer 2004).

The empirical qualitative and quantitative exploration of the reasons for the adoption of these mechanisms in individual jurisdictions, specific regions, or across the globe could be part of a global research agenda on this topic. Analysis of the reasons for the adoption of these mechanisms should also include jurisdictions that have not adopted those mechanisms, e.g., the three included in our sample in **Table 1**.

EMPIRICAL STUDIES OF PLEA BARGAINING AND OTHER TRIAL-AVOIDING MECHANISMS IN INDIVIDUAL JURISDICTIONS

This section reviews the empirical studies on plea bargaining and other ways to reach a conviction without a trial in individual jurisdictions around the world. However, the review can only be cursory because most empirical studies in individual jurisdictions do not discuss the global trends that are the focus of this piece.

Despite justified complaints that there is insufficient research on guilty pleas and plea bargaining in the United States (Johnson et al. 2016), there is a rich tradition of qualitative and quantitative studies of plea bargaining in the United States compared to work done on other countries, as shown below. Qualitative studies relying on observation of proceedings, interviews, or case studies covering one or more US jurisdictions, sometimes combined with individual case-level data analysis, have focused on issues such as how and why guilty pleas are used to adjudicate most criminal cases and why so few defendants raise their criminal procedure rights (Feeley 1979); the ways prosecutors, defense attorneys, and judges are socialized into the use of plea bargaining and how they and their organizations constitute work groups that produce guilty pleas (Eisenstein & Jacob 1977, Feeley 1979, Heumann 1977); how prosecutors use the law to encourage or obtain

guilty pleas (Alschuler 1968, Lynch 2016); what role judges play in the bargaining process (King & Wright 2016, Turner 2006); and how plea bargaining works in white-collar cases (Mann 1985) and misdemeanor cases and lower courts (Feeley 1979; Kohler-Hausmann 2014, 2018). These studies are important for this article's argument on the administratization of criminal convictions because they have documented how the large majority of criminal cases in the United States are adjudicated without a trial and how police and prosecutor decisions are often dispositive of criminal cases.

There have also been criminological, economic, psychological, and sociolegal studies that are more quantitative (for a review of this literature, see Johnson et al. 2016), based on individual case-level data, experiments, and surveys. Studies have reached opposite conclusions on whether there is a plea discount or trial penalty for those who do not plead guilty; some studies concluded that there is not a trial penalty (Abrams 2011, 2013; LaFree 1985; Smith 1986), whereas other studies concluded that there is such a trial penalty (e.g., Kim 2015, Ulmer et al. 2009). Relatedly, the literature has discussed whether plea discounts can be explained using a focal concerns perspective or operate under "the shadow of the trial" (e.g., Bushway et al. 2014). There have been studies on what factors affect prosecutors' charging and plea bargaining decisions, including evidentiary factors, pretrial detention, victims' and defendants' characteristics (such as gender, race, willingness to testify, and prior record), sentencing guidelines, and prosecutors' reelection pressures (Bandyopadhyay & McCannon 2014; Kutateladze et al. 2012, 2015; Rehavi & Starr 2014; Shermer & Johnson 2010; Spohn et al. 2001; Vance & Oleson 2013). There have been quantitative empirical studies based on individual case-level data, exoneration data, surveys, and experiments regarding whether, to what extent, and why innocent defendants plead guilty (Dervan & Edkins 2013, Redlich et al. 2009); whether and to what extent death penalty notices increase the probability of defendants pleading guilty (Thaxton 2013); to what extent guilty pleas have contributed to wrongful convictions (Gross 2008); and whether and to what extent plea bargaining affects sentences (Piehl & Bushway 2007).

There have been empirical studies on trial-avoiding mechanisms in some non-US jurisdictions, although they are fewer in number and often use a smaller set of research methodologies and tools and theoretical perspectives. For instance, in England and Wales, qualitative studies based on interviews, surveys, and other techniques showed that despite claims that plea bargaining was not practiced there, implicit and explicit bargains on guilty pleas and pressures to plead guilty did take place, and those studies analyzed the specific contours of these practices (Baldwin & McConville 1977). Studies also concluded that a substantial percentage of defendants who plead guilty claim to be innocent and that their cases are likely to end with an acquittal at trial (Baldwin & McConville 1977). Other researchers explored the attitudes of the general public, crime victims, witnesses, and offenders toward plea sentencing reductions, finding, for example, that there is more support for sentencing reductions for guilty pleas entered early in the criminal process (Dawes et al. 2011). There has also been a recent wave of quantitative empirical studies on sentencing based on individual case-level data obtained from the release of judicial sentencing surveys; such studies have used multivariate regression analyses and concluded that almost all defendants that plead guilty receive a discount of one third or less, that these discounts largely comply with the sentencing discounts established by English law, and that there is no substantial evidence of disparity among the courts in sentencing, but there are some unwarranted sentencing disparities across cases among offense categories and other case or defendant characteristics (see, e.g., Pina-Sánchez et al. 2018, Roberts & Bradford 2015).

In Germany, empirical studies relying on surveys or interviews mostly of judges, prosecutors, and defense attorneys have documented the practice of German agreements or understandings [for summaries of these studies, see Altenhain et al. (2013) and Locker (2015)]. These studies

have examined the percentage of criminal verdicts reached through agreements, with practitioners reporting that 16–36.5% of verdicts and 27–61.5% of white-collar-crime verdicts are reached through them (Altenhain et al. 2007, 2013; Schünemann 1990). Studies have also reported that the rate of use of agreements varies by the number of trials a judge has, by the judge's age and gender, by type of court, and by region (Altenhain et al. 2013). Always according to self-reporting by practitioners, there would be between a one-fourth and one-third reduction in sentence after an agreement (Altenhain et al. 2013), and judges rarely deviate from the range of sentences indicated in the agreements (Altenhain et al. 2013). These studies have also analyzed to which types of crimes and cases the agreements are mostly applied (finding that they are applied in high percentages to economic and drug offenses) (Altenhain et al. 2013, Hassemer & Hippler 1986, Schünemann 1990); who initiates conversations about the agreements (finding judges to have an important role in this regard) (Altenhain et al. 2013, Taubald 2009); who participates in the discussions over the agreements (finding defendants to be typically excluded) (Altenhain et al. 2013); why judges, prosecutors, and defense attorneys enter into agreements (Altenhain et al. 2013); and to what extent German judges, prosecutors, and defense attorneys meet the requirements of the agreements as established by guidelines or rules set by judicial decisions and by statute (concluding that they often circumvent these requirements) (Altenhain et al. 2007, 2013). There has also been work exclusively on agreements before white-collar-crime courts (Altenhain et al. 2007, Siolek 1993). The main limitations in the German studies come from their predominant reliance on surveys and interviews because there are risks of self-reporting bias in these types of studies and their unit of analysis is not the individual case or defendant but the interviewee. The use of a larger set of methodologies would help address these limitations.

In France, there have been empirical studies done by economists, sociologists, legal scholars, and official bodies based on interviews, surveys, observations, the collection of individual case-level samples from individual jurisdictions, and official data. These studies have found that different offices of the prosecutor and jurisdictions use the *plaider coupable* (the French equivalent of plea bargaining) to substantially different degrees (Desprez 2007, Grunvald 2013). Studies have reported that it is the prosecutor, typically based on information provided by the police, that decides whether to use the *plaider coupable* on a given case and that there is no charge bargaining between prosecution and defense. However, possibly because of different practices between French jurisdictions, qualitative studies have differed on whether there is a negotiation over the sentence between prosecution and defense (Desprez 2007, Soubise 2018). Studies have also explained that since the participation of a defense attorney is required for the *plaider coupable* but can be waived for trials, prosecutors may exercise pressure on defendants to accept being tried without a lawyer (Soubise 2018). Also, possibly because variation among French jurisdictions, studies have reached different conclusions on whether sentences of effective imprisonment are used for defendants who plead guilty (Ancelot & Doriat-Duban 2010, Desprez 2007, Houllé & Vaney 2017, Saas et al. 2013). The interview of the defendant with the prosecutor may take between 15 and 20 minutes, whereas the hearing to approve the proposed sentence by the judge may take between 2 and 3 minutes (Desprez 2007). Judges approve the sentence proposed by the prosecutor in the large majority of cases, and they only reject it when the defendant does not appear before the court (Desprez 2007, Perrocheau 2010, Warsmann 2005). The majority of cases adjudicated through the *plaider coupable* and penal orders take between three and six months (Danet et al. 2013). There have also been studies reporting demographic data on defendants who plead guilty under the *plaider coupable* and penal orders (Lenoir et al. 2013), and multivariate regression analysis based on a sampling of individual cases has found that the location of the court affects the sentencing outcomes of defendants who plead guilty, but that the type of lawyer, the level of resources, and the gender of the defendant do not (Ancelot & Doriat-Duban 2010). Studies have also concluded

that the *plaider coupable* and penal orders in combination with diversion mechanisms have produced a net-widening effect by diminishing the percentage of criminal cases that are dismissed unconditionally (Grunvald 2013). Importantly for this article's argument that there is a global trend toward the administratization of criminal convictions, many of these empirical studies have concluded that the introduction of these mechanisms in France has increased the power of the police, prosecutors, and other administrative staff over criminal cases (Desprez 2007, Grunvald 2013, Perrocheau 2010, Soubise 2018) and replaced the trial (Desprez 2007).

In Canada, a few studies using a variety of methodologies have documented the contours of plea discussions and plea agreements (Ericson & Baranek 1982). Individual studies have also examined the attitudes and views of police officers on plea bargaining in impaired driving cases (Jonah et al. 1999), by crown attorneys on plea bargaining and dangerous offenders (Bonta et al. 1996), and by the public on plea bargaining more generally (Cohen & Doob 1989). Studies have also examined what factors affect the likelihood of plea bargaining (Kellough & Wortley 2002), the effect of initial guilty pleas on the final disposition of the case (Hagan 1974), and whether plea bargaining results in significant concessions to the accused (Solomon 1983) [for a summary of the empirical bibliography on plea bargaining in Canada, see Verdun-Jones (2016)].

There have also been more isolated efforts to understand other jurisdictions based on official statistics, observations of criminal proceedings, interviews, and individual case-level data. In Latin America, there have been a few academic studies based on official data, interviews, and court observations [see, e.g., Ciocchini (2018) on the province of Buenos Aires, Argentina] as well as some brief reports analyzing a random sampling of cases as part of a broader investigation on the operation of the criminal process in a few jurisdictions [see, e.g., Fondevila et al. (2016) on the state of Mexico, Mexico, and Bergman et al. (2017) on the city of Buenos Aires, Argentina]. For at least one of the mentioned jurisdictions, these studies have provided data about the frequency of trial-avoiding conviction mechanisms and other basic information about them (Bergman et al. 2017); analyzed the low accountability of the police toward the defense, the prosecution, and the judges when cases are adjudicated through these mechanisms (Fondevila et al. 2016); documented a gap between legal regulations and the actual practice of these mechanisms (Bergman et al. 2017); and described the attitudes of and criticisms by prosecutors, judges, and defense attorneys regarding trial-avoiding conviction mechanisms, among other issues (Ciocchini 2018).

There have also been studies based on a variety of methodologies on the contours of trial-avoiding conviction mechanisms in individual jurisdictions such as the state of Victoria, Australia [see Flynn & Freiberg (2018) on plea negotiations], China [see McConville & Choong (2011) on summary trial before the 2012 revision], and Russia (Semukhina & Reynolds 2009). Studies on individual jurisdictions have also examined what factors affect the defendant's decision to plead guilty [see Cheng (2013) and Cheng et al. (2018) on Hong Kong] and whether defendants get sentencing discounts for consenting to the application of trial-avoiding conviction mechanisms (for a brief review of two studies on Russia, see Solomon 2012). There have also been studies on public knowledge and public attitudes toward trial-avoiding conviction mechanisms in Hong Kong (Cheng 2016), Israel (Herzog 2004), and Russia (Semukhina & Reynolds 2009).

Although these studies represent important efforts, it is fair to say that the empirical study of plea bargaining and other trial-avoiding conviction mechanisms in individual jurisdictions around the globe is still in its infancy. For many countries and jurisdictions, there are not even official statistics on the frequency with which these mechanisms are used, and there has not been academic research studying how they work in practice and interact with other phenomena. Even for countries and jurisdictions for which there are data and studies on these mechanisms, important research methodologies and tools (such as participant or proceedings observation, interviews, multivariate analysis, and randomized, natural, or quasi-experiments) and theoretical perspectives

(ranging from critical social theory to economic analysis) have been largely or fully absent. The recent wave of empirical studies in England and Wales based on the release of the Crown Court Sentencing Survey shows how important it is that courts, offices of the prosecutor, public defender offices, sentencing commissions, and other public agencies create and make available (and facilitate researchers' sampling of) individual case-level data to at least have observational data that enable more empirical studies on individual jurisdictions. It is also important that these organizations, their employees, and other people that participate in the administration of criminal justice be opened to observation studies, interviews, and surveys.

Given how important these mechanisms have become, the factors that drive them, the frequency with which they are used, how and why they are used, by whom they are used, and their effects are crucial to understanding how the administration of criminal justice works in many corners of the world.

Although a few of these empirical studies have highlighted how plea bargaining and other trial-avoiding conviction mechanisms have empowered prosecutors (e.g., Alschuler 1968, Desprez 2007, Grunvald 2013, Lynch 2016, Perrocheau 2010, Soubise 2018), they have not adopted a comparative perspective that would enable an assessment of regional or global trends, something that this article's description of the administratization of criminal convictions tries to do.

Also, only a handful of these empirical studies, predominantly those on the United States, have theorized on the significance of plea bargaining and other trial-avoiding conviction mechanisms and on how they may be part of broader managerial trends in criminal justice away from adjudication (Feeley 1979; Kohler-Hausmann 2014, 2018; Soubise 2018). However, these empirical studies have not discussed the phenomenon of administratization of criminal convictions covered in this article.

There is a nonempirical legal literature on criminal justice in the United States that describes how prosecutors have become de facto adjudicators of criminal cases in administrative-like proceedings (Barkow 2006, Langer 2006, Lynch 1998). However, as discussed below, this nonempirical literature has not concentrated on the police and other administrative agencies other than offices of the prosecutor. In addition, for the most part, this literature has not had a comparative dimension and has not studied regional and global trends.

THE COMPARATIVE STUDY OF PLEA BARGAINING, TRIAL-AVOIDING CONVICTION MECHANISMS AND THE GLOBAL ADMINISTRATIZATION OF CRIMINAL CONVICTIONS

The comparative law literature has noticed the spread of plea bargaining around the world and has described the differences among trial-avoiding conviction mechanisms (Hodgson 2015, Langer 2004, Thaman 2010b, Turner 2009, Turner & Weigend 2020). There was also a recent study by a nongovernmental organization on this trend (Fair Trials 2017). Statutes and judicial opinions have varied in approach, including the type of criminal offenses to which trial-avoiding conviction mechanisms are applied (e.g., all crimes versus less serious crimes); what may be consented to or negotiated among the different participants (e.g., some jurisdictions accept charge, fact, and sentence bargaining, whereas others only accept sentence bargaining); the role that prosecutors, defense attorneys, judges, victims, and others may or may not play in trial-avoiding conviction proceedings (e.g., some jurisdictions accept the participation of the court or the victim in negotiations or require the victim's consent, whereas others do not); whether the defendant has to admit the commission of the offense or may simply consent to the application of the trial-avoiding conviction proceeding; whether all defendants in a case have to accept the application of the trial-avoiding conviction mechanism; when the trial-avoiding conviction mechanism may apply (e.g.,

at any point during formal proceedings or only after the pretrial phase is over); what information and evidence the defense gets access to before consenting to the application of the trial-avoiding conviction mechanism; and what other requirements the trial-avoiding conviction mechanisms must meet (Hodgson 2015; Langer 2004, 2006; Thaman 2010b; Turner 2009; Turner & Weigend 2020). There have also been a few qualitative comparative studies on the use of these mechanisms in two or more jurisdictions (e.g., Turner 2006).

To move beyond formal legal analysis and comparison between statutes and judicial decisions and engage in a comparative sociolegal analysis of the diffusion of plea bargaining–type mechanisms across jurisdictions, one must discuss two issues. The first issue is to which universe of legal regulations, mechanisms, and practices plea bargaining belongs. In this regard, this article considers that plea bargaining is a way to reach a conviction without a trial and should thus be analyzed together with other mechanisms used to reach criminal convictions without a trial. An important trend in the comparative criminal justice and criminal procedure literatures has instead been to consider plea bargaining–like mechanisms as one type of consensual criminal procedure or procedural mechanism that is an alternative to trial. In addition to plea bargaining, these categories also include mechanisms such as dismissal with conditions, victim–offender conciliation/mediation, and simplified and abbreviated trial proceedings (see, e.g., Thaman 2010a, Tulkens et al. 2002). This approach presents several challenges for a meaningful comparison among jurisdictions. The first problem is that it groups within the same universe criminal justice regulations, mechanisms, and practices that may have very different functions and bring about very different legal consequences. For instance, although victim–offender conciliation/mediation may aim to be a nonpunitive response to a set of criminal offenses, guilty pleas, plea bargains, penal orders, and equivalent mechanisms are by definition punitive because they are a way to reach criminal convictions and punishment.

Another challenge for the approaches that consider plea bargaining as an example of a procedural mechanism that is an alternative to trial is that one may not be able to make a meaningful comparison of the criminal justice mechanisms and practices grouped into these categories without looking at the whole universe of criminal justice dispositions. For instance, one may not meaningfully compare dismissals with conditions in different jurisdictions (such as those based on diversion or the opportunity principle) without also analyzing formal and informal dismissals without conditions in those jurisdictions. However, making such a panoramic comparison of criminal jurisdictions across the world is often impossible given the unavailability of data and the fact that certain dispositions, such as informal dismissals by the police, may not be measurable. In addition, a meaningful comparison of all criminal dispositions in multiple criminal jurisdictions requires a theory of what one wants to study, and the analyses focusing on procedural mechanisms alternative to the trial or consensual criminal procedures often do not articulate such a theory.

To tackle the first issue, this article proposes the use of the concept of trial-avoiding conviction mechanism as a way to define and identify the relevant universe of legal regulations, mechanisms, and practices to which plea bargaining–type mechanisms belong.[3] Guilty pleas and plea bargaining are ways to reach a criminal conviction without a trial. Consequently, despite formal differences between procedural mechanisms in different jurisdictions, one can analyze plea bargaining within

[3]The concept of trial-avoiding conviction mechanism includes any procedural mechanism that enables reaching a criminal conviction without a trial. As such, it is different from the concept of the trial-waiver system recently used by Fair Trials (2017) in its global survey. Among other reasons, this is because Fair Trials' concept includes cooperation agreements that may be used neither to reach a criminal conviction against a cooperating defendant nor to avoid the trial against the cooperating defendant. In other words, cooperation agreements may include dismissal of all charges against a cooperating defendant or a sentence reduction after a cooperating defendant is tried and convicted.

the universe of procedural mechanisms that jurisdictions use to reach a criminal conviction without a trial.

Classical empirical studies in the United States in the 1960s characterized plea bargaining as conviction without trial and even used the concept to compare different US jurisdictions (Newman 1966). The concept has also been used in comparative law analyses (see, e.g., Heberling 1973, Van Cleave 1997). However, the concept of conviction without trial (i.e., of trial-avoiding conviction mechanisms) has not been used for a global sociolegal perspective like the one pursued in this article, which identifies a global trend in criminal adjudication in many jurisdictions around the world and provides a meaningful framework for multicountry comparisons in this regard.

The comparison of these mechanisms should be relevant given that, although there is variation among jurisdictions in the way criminal convictions are recorded (Aebi et al. 2017) and in the implications of a criminal conviction (see, e.g., Pinard 2010), typically a criminal conviction (*a*) is a public pronouncement that communicates that an individual has been found guilty of the commission of a criminal offense; (*b*) is a precondition for the application of punishment (fines, probation, prison, death penalty, etc.); (*c*) may bring the forfeiture of property connected to the crime; (*d*) enables collateral consequences, such as restrictions on the ability to vote, to run for office, to work, to access public housing, etc.; and (*e*) labels a person as someone with a criminal record. These five features are true of criminal convictions in most of the world. In this sense, criminal convictions are a particular, distinctive, and quasi-global legal artifact.

This does not mean that the study of how criminal convictions are produced could not also be part of broader panoramic perspectives on how criminal convictions fit within the whole set of criminal dispositions in criminal justice systems. However, because at their core guilty pleas and plea bargains are a way to produce convictions without a trial, the production of convictions without a trial provides a criterion to define the universe of procedural regulations, mechanisms, and practices to which they belong. In addition, even if the analysis of criminal convictions can be later integrated into the whole set of criminal dispositions, we can study methods of conviction and learn something significant about criminal justice systems and adjudication processes given the importance and the distinctive features of criminal convictions.[4]

The second issue one has to engage with to analyze the diffusion of plea bargaining–type mechanisms around the world is what the meaning and implications of such a diffusion are. Some literature has looked for deeper trends and explored whether the diffusion and application of trial-avoiding conviction mechanisms across specific jurisdictions has changed the way lawyers understand the criminal process and Americanized and adversarialized the adopting jurisdictions (Langer 2004) and whether it has contributed to empowering prosecutors around the world (Jehle & Wade 2006; Langer 2006; Langer & Sklansky 2017; Luna & Wade 2010, 2012).

This article argues that the spread and adoption of plea bargaining and other trial-avoiding conviction mechanisms imply a global trend toward the administratization of criminal convictions. Criminal convictions have been administratized in two ways. First, the adoption of plea bargaining and other trial-avoiding conviction mechanisms has given a larger role to nontrial, nonjudicature adjudicators in deciding who gets convicted and for which crimes. These actors include prosecutors, the police, and other administrative agencies. Second, these mechanisms are implemented through proceedings that reach criminal convictions while circumventing the trial and the rights

[4]This applies even for trial-avoiding conviction mechanisms that deal with minor cases such as penal orders. An anonymous reviewer argued that one cannot meaningfully study penal orders without also studying conditional dismissals, given that they apply in similar cases. However, if, for instance, in a given jurisdiction an increase in the use of penal orders were accompanied by a decrease in the use of conditional dismissals, it would still be significant that a higher number of defendants have been convicted for the commission of an offense and thus have gotten a criminal record.

and requirements associated with it, such as publicity, confrontation, cross-examination, compulsory process, proof beyond a reasonable doubt, and the right against self-incrimination. The defendant's admission of guilt or formal consent is assumed to legitimize the application of these mechanisms.

The concept of administratization of criminal convictions does not assume an idealized picture of criminal trials. It acknowledges that defendants in many cases and in many jurisdictions do not meaningfully exercise their trial rights. Around the world, judges and jurors are the ultimate trial adjudicators, criminal trials tend to be public, and defendants have formal trial rights that they may exercise. When convictions are reached without a trial, however, the police and the prosecutors have more weight in determining who gets convicted and for which crime, they make these investigations and charging decisions in nonpublic proceedings, and the defendant waives their formal trial rights.

The concept of administratization of criminal convictions builds on the literature arguing that prosecutors have become the de facto sole adjudicators of many criminal cases in the United States and Europe (Barkow 2006, Jehle & Wade 2006, Langer 2006, Luna & Wade 2010, Lynch 1998), but it also includes cases that are adjudicated with substantial participation and decision-making power and authority by the police and other administrative agencies—i.e., not only by prosecutors. It further includes procedures in which prosecution and defense coadjudicate the criminal case—i.e., in which the prosecutor is not the de facto sole adjudicator—as long as these criminal convictions are reached without a trial. In addition, although the literature on prosecutors as de facto judges has concentrated on a whole array of criminal justice decisions (e.g., not only convictions but also conditional and unconditional dismissals, indictments, etc.), the concept proposed in this article concentrates on how criminal convictions are produced.

The concept of administratization of criminal convictions also enables us to clearly distinguish this global trend in criminal adjudication from other phenomena, such as convictions reached through negotiation or coercion. Convictions reached without a trial may or may not include negotiations between the defense and the prosecutor or the court. They may or may not include coercion against the defendant, like the coercion involved when prosecutors threaten defendants with disproportionate sentences if they do not accept to be convicted without a trial (Langer 2006). However, what defines these mechanisms is neither negotiation nor coercion but rather their administrative character. It is also worth mentioning that these mechanisms do not imply privatization of criminal convictions, as the people making de facto decisions about who gets convicted and for which crime are public officials, not private individuals.

The discussion of a few trial-avoiding conviction mechanisms may help illustrate these points.[5] Plea bargaining in the United States provides the first illustration of this phenomenon. The adjudication model established by the US Constitution and its amendments includes a trial by jury in which defendants may exercise their right to counsel, confrontation, cross-examination, compulsory process, proof beyond a reasonable doubt, and their right against self-incrimination. In plea bargaining, however, the defendant pleads guilty and waives their trial rights in exchange for a charge, fact, or sentence reduction or other type of concession (see, e.g., Fed. R. Crim. P. 11). In plea bargaining, the court has the formal role of checking that the guilty plea is voluntary and intelligent and that there is a factual basis for it, but the de facto adjudicator of criminal cases and criminal convictions is the prosecutor, who, either by themselves or in combination with the

[5]The four jurisdictions that are discussed in the following paragraphs (the United States, England and Wales, France, and Chile) were chosen for the following reasons: Their trial-avoiding conviction mechanisms are formally very different; two are civil law and two are common law jurisdictions; two jurisdictions are from the Americas and two are European; and three jurisdictions are considered developed and one jurisdiction is considered a developing country.

defense, often decides who gets convicted through their control over charging, underlying facts, and even sentencing (Barkow 2006, Langer 2006, Lynch 1998). Because by pleading guilty the defendants waive their trial rights and their right to a trial, there is no trial to hold the police and other investigative agencies accountable, and the prosecutor provides the main screening of the work by the police. This means that plea bargaining empowers not only prosecutors but also the police and other administrative agencies in deciding who gets convicted and for which crimes (Skolnick 2011).

Other common law jurisdictions also use guilty pleas extensively as a way to adjudicate criminal cases and use explicit negotiations between the prosecution and the defense or implicit or explicit understandings between the defense and the judge to encourage guilty pleas and avoid trials (Brook et al. 2016). For instance, in England and Wales, guilty pleas in the criminal process and sentencing discounts for defendants who plead guilty have existed for a long time (Baldwin & McConville 1977, 1979; Beard 2017; R. Comm. Crim. Justice 1993). Judicial decisions, statutes, and sentencing guidelines have created incentives for defendants so that the earlier they plead guilty, the higher the sentencing discounts they get [e.g., Criminal Justice Act of 2003 § 144(1); Criminal Justice and Public Order Act of 1994 § 48 (replaced); *R v. Hollington and Emmens* (1986); Sentencing Counc. Engl. Wales 2017). Recent empirical studies have concluded that courts substantially follow this pattern in their sentencing decisions (Pina-Sánchez et al. 2018, Roberts & Bradford 2015). This empowers police and prosecutors because defendants have incentives not to challenge the police's investigations or prosecutors' decisions and to shorten the pretrial judicial process as much as possible (McConville 2002, McEwan 2011).

Judges are also allowed to tell the defense upon request what the maximum sentence for the defendant would be if the defendant were to plead guilty [*R v. Goodyear* (2005)], another way to encourage guilty pleas. In addition, courts have considered it accepted practice for the prosecution and the defense to hold off-the-record discussions over the charges and their underlying facts as well as indications of the sentence in exchange for guilty pleas [*McKinnon v. United States* (2008)], and the Code for Crown Prosecutors of 2018 §§ 9.1–9.7 explicitly accepts the possibility of charge and fact bargaining.

There are important formal and substantial differences between plea bargaining in the United States and England and Wales. For instance, the Attorney General's guidelines do not permit Crown prosecutors to grant immunity (Brook et al. 2016), there has been formal emphasis in England on encouraging early guilty pleas through an established sliding sentencing discount schedule, and judges may have a larger role in encouraging guilty pleas and may retain more sentencing power in England and Wales than in the federal system and several other jurisdictions in the United States (Ashworth & Roberts 2013) (although not in all of them; see Turner 2006, King & Wright 2016). Although the importance of these differences cannot be denied, the result of these mechanisms is similar to what happens in the United States. When defendants in England and Wales are convicted on the basis of their guilty pleas, convictions get administratized because police and prosecutors have a large role in determining who gets convicted and for which crime, the process of guilt determination does not include the procedural rights and safeguards of the traditional English and Welsh trial, and the procedure is formally legitimized by the defendant's formal consent to a conviction without a trial.

Without underestimating the substantial degree of variation in the form and practice of guilty pleas and plea bargains within and among common law jurisdictions (Brook et al. 2016, King & Wright 2016, Turner 2006), there is arguably even more variation in trial-avoiding conviction mechanisms across civil law and other non–common law jurisdictions (Langer 2004). This is the case because, whereas in common law jurisdictions there is typically a single set of legal arrangements to reach a criminal conviction without a trial (i.e., guilty pleas and implicit or explicit

agreements, negotiations, or incentives to plead guilty), in many non–common law jurisdictions there are multiple legal arrangements to achieve a criminal conviction without a trial.

For instance, Chile introduced a new criminal procedure code between 2000 and 2005 that establishes an oral and public trial in which the defendant may exercise classical trial rights such as the right to counsel, confrontation, cross-examination, compulsory process, and proof beyond a reasonable doubt [Código Procesal Penal (Cód. Proc. Pen.) art. 340] (Langer 2007). This oral and public trial is held in front of a criminal trial court composed of three professional judges—there is no trial by jury in Chile. The same code, however, also establishes three other ways in which a defendant may be convicted. All three are formally adjudicated by a single judge in a criminal court called the Court of Guarantees, whose role also includes checking and supervising the pretrial investigation by the Public Prosecutor Office and deciding matters presented by the parties in an adversarial fashion at the pretrial stage of the proceedings (see, e.g., Riego 2008).

First, the *procedimiento monitorio* (admonitory proceedings), like penal orders in other jurisdictions, allows the prosecutor to propose a penalty of a fine in petty crime cases (*faltas*) that becomes effective if the judge formally approves the fine and the defendant does not object to it (Cód. Proc. Pen. art. 392). If the defendant pays the fine within 15 days of being notified of it, the fine is reduced by one fourth (Cód. Proc. Pen. art. 392c).

Second, the *juicio simplificado con reconocimiento de culpabilidad* (simplified trial with admission of guilt) applies to cases in which the prosecutor requests a penalty of up to 540 days of imprisonment (Cód. Pen. art. 56, Cód. Proc. Pen. art. 388) and in which the defendant admits guilt. The prosecutor may reduce the recommended sentence (Cód. Proc. Pen. art. 395). In cases of theft and robbery, the prosecutor may request the application of a lower sentencing range than otherwise applicable, which may enable the defendant to receive a suspended sentence of imprisonment (Cód. Proc. Pen. art. 395, para. 2; Riego 2017). If the prosecutor requests this simplified trial and the defendant admits their guilt, the court may enter a conviction without a trial (Cód. Proc. Pen. art. 395). The court may not impose a punishment greater than the one requested by the prosecutor (Cód. Proc. Pen. art. 395, para. 3). Unlike with other crimes, in cases of theft and robbery, the judge is not allowed to apply a lower sentencing range unless the prosecutor so requests; when a defendant has a prior conviction, the judge is required to apply the upper half of the sentencing range, unless the prosecutor requests a lower sentence (Cód. Pen. art. 449; Cód. Proc. Pen. art. 395, para. 2; Riego 2017).

Third, the *procedimiento abreviado* (abbreviated proceedings) applies to cases in which the prosecutor requests a punishment of up to 10 years of imprisonment for theft and robbery or up to 5 years of imprisonment for other crimes, and the defendant has to admit their guilt and consent to the application of the abbreviated proceedings (Cód. Proc. Pen. art. 406). The prosecutor may consider the admission of guilt by the defendant to be an attenuating circumstance of collaborating with authorities in establishing the facts; if an indictment has been issued, the prosecutor is allowed to amend the charges or the requested sentence to make the abbreviated proceedings applicable (Cód. Proc. Pen. art. 407, para. 3). In cases of theft and robbery, if the defendant admits their guilt, the prosecutor may request the application of a lower sentencing range, which may enable the defendant to receive a suspended sentence of imprisonment (Cód. Proc. Pen. art. 407, para. 4; Riego 2017). Before entering a conviction, the judge has to check at a hearing that the defendant's consent is free and voluntary, that the defendant knows of their right to demand a full trial, and that they understand the terms of the agreement and the consequences that may follow from it (Cód. Proc. Pen. art. 409). The judge may not impose a punishment higher than the one the prosecutor requested (Cód. Proc. Pen. art. 412). Unlike with other crimes, in cases of theft and robbery the judge is not allowed to apply a lower sentencing range than the default unless the prosecutor so requests; and when a defendant has a prior conviction, the judge is required

to apply the upper half of the sentencing range, unless the prosecutor requests a lower sentence (Cód. Proc. Pen. art. 407, para. 4; Cód. Proc. Pen. art. 449; Riego 2017).

These three Chilean mechanisms differ in important respects. The *procedimiento monitorio* applies to petty crimes, does not require a hearing, does not explicitly leave room for negotiations over punishment, and assumes that the defendant consents to the application of the procedure if they do not explicitly object. As such, this mechanism resembles penal orders in other jurisdictions. The *juicio simplificado* applies to criminal offenses with up to 540 days of imprisonment, aims at skipping the pretrial phase and moving the case toward resolution through an admission of guilt or a trial in front of a single judge, leaves room for negotiations between prosecution and defense, and requires the court to explicitly ask the defendant whether they admit the commission of the offense. The *procedimiento abreviado* applies to even more serious cases in which the defendant may receive up to 10 years of imprisonment in cases of theft and robbery, requires the defendant to explicitly admit their guilt and consent to the application of the abbreviated proceedings, leaves room for negotiations over the defendant's consent, and requires that the judge check that the defendant's admission of guilt and consent are voluntary and intelligent.

These Chilean mechanisms also differ in important ways from US and English and Welsh plea agreements. For instance, whereas US and English and Welsh plea agreements may in principle apply equally to any crime, the Chilean mechanisms do not apply to the most serious crimes and have specific regulations to encourage their application to theft and robbery cases. In addition, because the alleged victim of the crime or other parties with interest in the results (such as public enforcement agencies) may be a private prosecutor who works jointly or in parallel with the public prosecutor in Chile, the private prosecutor may have somewhat formalized procedural powers to question the application of the *procedimiento abreviado* (Cód. Proc. Pen. art. 408). Also, at least in theory, in Chile the judge may still acquit a defendant that has admitted their guilt and consented to the application of the *procedimiento abreviado* (Cód. Proc. Pen. art. 412, Falcone Salas 2005), which, according to statistics we received from the Chilean judiciary as part of the research for this project, happens in approximately 1% of the cases.

Studying the differences among trial-avoiding conviction mechanisms in different jurisdictions can provide important insights into many phenomena, including, for instance, whether and to what extent the predominant Anglo-American adversarial conception of the criminal process has been adopted in other jurisdictions and internalized by operators (Langer 2004), whether there are negotiations between the defense and the prosecutor or the judge, and whether and in which ways public officials exercise coercion over the defendant (Langer 2006). However, what these three Chilean proceedings share with the US and English and Welsh plea agreements is that they all imply an administratization of criminal convictions since they all enable reaching a criminal conviction without an oral and public trial and its associated rights, and they all give the police and the prosecution an important role in deciding who gets convicted, for which crimes, and what the sentences will be.[6] In addition, in all of these mechanisms, the defendant has to admit their guilt or consent to the application of the mechanism.

France provides another illustration of this phenomenon. The French criminal procedure code of 1958 establishes an oral and public trial as the main adjudication mechanism in which the defendant is entitled to exercise classical trial rights. The most serious criminal offenses are adjudicated by a mixed court composed of professional judges and laypeople (*cour d'assises*) [Code de Procédure Pénale (C. Pr. Pén.) art. 240 et seq.], the intermediate criminal offenses by three professional

[6]In this sense, because the Chilean criminal procedure reform was part of the wave of adversarial criminal procedure reforms in Latin America documented by Langer (2007), future research could explore whether this wave of adversarial reforms brought with it an administratization of criminal convictions in the region.

judges (*tribunal correctionnel*) (C. Pr. Pén. art. 398), and the least serious criminal offenses before one professional judge (*tribunal de police*) (C. Pr. Pén. art. 523).

However, there are also two ways in which a criminal defendant may be convicted without a trial.[7] The first is the *ordonnance pénale* (penal order), which was introduced in France in 1972 for petty offenses and later extended in 2002 to intermediate offenses before the correctional tribunal (Pouget 2013). The prosecutor may apply this procedure to certain criminal offenses (such as theft, receipt of stolen goods, theft of services, destruction of public and private property, and use of illegal drugs) before the correctional tribunal. The requirements for its application include that the police investigation should indicate that the facts alleged against the defendant are simple and established and provide sufficient information on the personality of the defendant, the charges, and the resources of the defendant for the purposes of sentencing. Other requirements are that the offense is not serious enough to warrant imprisonment or a fine above a certain amount and that the use of the procedure does not undermine the rights of the victim (C. Pr. Pén. art. 495). Without a trial, the president of the correctional tribunal issues a penal order that acquits the defendant or convicts them and sentences them to a fine, unless they estimate that a trial would be useful or that an imprisonment sentence should be applied to the case (C. Pr. Pén. art. 495-1). The penal order is then transmitted to the prosecutor, who may object to it or execute it. Once notified of the penal order, the defendant has 45 days to object to it and ask for a public trial before the correctional tribunal. With the notification of the penal order, the defendant is informed that the correctional tribunal could set a punishment of imprisonment if found guilty at trial. Lack of objection by the defendant to the penal order makes it executable (C. Pr. Pén. art. 495-3). Similar (although less detailed and demanding) regulations apply to penal orders for petty offenses before the police tribunal (C. Pr. Pén. art. 524–528-2).

The other trial-avoiding conviction mechanism is the *comparution sur reconnaissance préalable de culpabilité* (appearance on prior acknowledgment of guilt), also known as *plaider coupable* (guilty plea), which was introduced in France in 2004 and, with a few exceptions, applies to all criminal offenses with a penalty of up to 10 years of imprisonment (C. Pr. Pén. art. 495-7, art. 495-16). The prosecutor may, by their own motion or by request of the defense attorney or the defendant, use this procedure as long as the defendant admits guilt (C. Pr. Pén. art. 495-7). The prosecutor may propose a penalty to the defendant, including an imprisonment sentence of not more than one year or more than half the penalty established for the offense (C. Pr. Pén. art. 495-8). A defense attorney has to be present during the admission of guilt by the defendant and the sentence proposal by the prosecutor (C. Pr. Pén. art. 495-8). Once the defendant agrees with the sentence proposed by the prosecutor, the prosecutor has to request its approval (*homologation* in the French original) by a judge who, at a public hearing, must hear the defendant and their defense attorney, verify the accuracy of the admitted facts and their legal characterization, and may then approve the punishment proposed by the prosecutor, articulating the grounds for the decision (C. Pr. Pén. art. 495-9). These grounds must include the verification that the defendant has admitted guilt and consented to the penalty in the presence of their attorney and that the proposed sentence is justified by the circumstances of the offense and the personality of the offender (C. Pr. Pén. art. 495-11). The prosecutor does not need to be present at the hearing (C. Pr. Pén. art. 495-9). If the judge does not approve the proposed sentence [something that, according to statistics and studies, occurs in up to 3.3% of the cases (Desprez 2007, Warsmann 2005)], the prosecutor may continue with the prosecution through the other available proceedings (C. Pr. Pén. art. 495-12).

[7]The composition is another mechanism in French law that has been compared to plea bargaining and has been analyzed elsewhere (e.g., Langer 2004). However, it is not analyzed here because it is not a way to reach criminal convictions; rather, it is a diversion mechanism through which, if the defendant fulfills certain conditions, the case gets dismissed (see C. Pr. Pén. art. 41-2).

There are important differences between *ordonnance pénales* and the *comparution sur reconnaissance préalable de culpabilité* in France. For instance, the latter applies to a larger range of crimes, allows for an imprisonment sentence, and requires that the judge hold a public hearing before deciding whether the agreement should be approved. There are also important differences between these mechanisms and plea bargaining in the United States. For instance, the French mechanisms apply to only a subset of crimes, the defendant may not waive their right to an attorney before pleading guilty under the *comparution sur reconnaissance préalable de culpabilité*, and the French mechanisms do not typically involve the heavy-handed techniques by prosecutors that we find in a subset of US plea bargains (Langer 2006). However, without underestimating these differences (which should be studied as part of an empirical and normative assessment of them), trial-avoiding conviction mechanisms administratize criminal convictions in France because they give more authority and power to the police and prosecutors to decide who gets convicted, for which crimes, and with which sentence in proceedings that do not include a trial with its attached defendant's rights. In fact, French and comparative scholars have noticed how the introduction of the *plaider coupable* has enhanced the power of the police and prosecutors over these criminal cases (Colson & Field 2011, Desprez 2007, Grunvald 2013, Perrocheau 2010, Soubise 2018) and replaced the trial in France (Desprez 2007).

To summarize, this section has argued that the diffusion of trial-avoiding conviction mechanisms has implied an administratization of criminal convictions. In all of these mechanisms, the defendant is not convicted after a trial in which evidence may be produced and tested by the defendant exercising their trial rights to confrontation, cross-examination, compulsory process, and against self-incrimination in a public hearing that anyone may attend. Rather, the defendant is convicted on the basis of evidence gathered by the police and the prosecution that, at most, has been checked by a judge or tribunal and that is assumed to be legitimized through the defendant's admission of guilt or consent.

Some of these mechanisms—such as a portion of US and English plea agreements and the Chilean *procedimiento abreviado* and *juicio simplificado con reconocimiento de culpabilidad*—may include negotiations between the defense and the prosecution or the judge on what potential benefit the defendant would get if they admit their guilt or consent to the application of the trial-avoiding conviction mechanism. These negotiating mechanisms may also include negotiations between these actors in which the defendant may get some potential benefit in exchange for providing information or testimony against accomplices or other people involved in the commission of crimes. When trial-avoiding mechanisms involve understandings or negotiations regarding collaboration of this sort, they can be considered functionally related to other legal tools that do not avoid trial but still encourage defendants to admit their guilt or provide information and testimony against other people in exchange for potential benefits, such as a mitigation of sentence after the trial.

However, negotiation is not what characterizes trial-avoiding conviction mechanisms as a whole. In many of these mechanisms, such as the Chilean *procedimiento monitorio*, the prosecutor proposes a sentence without even first talking with the defense. In England, the sentencing discounts for guilty pleas are established by statute, and thus the defense often does not even engage in a conversation with the prosecution before the defendant enters a guilty plea. In France, there may be a conversation between the prosecutor and the defendant about the sentence proposed by the prosecutor, but, at least in some jurisdictions, these conversations do not include a negotiation or back-and-forth on the potential punishment (Desprez 2007). Even in the United States, many plea agreements are not true negotiations but "more akin to modern supermarkets, in which prices for various commodities have been clearly established and labeled in advance," as Feeley (1979, p. 187) classically put it.

Similarly, some of these mechanisms—such as some US plea bargains and the Chilean *procedimiento abreviado* for thefts and robberies—may use coercion against the defendant; for example, they may threaten defendants with disproportionate penalties if they do not plead guilty or accept the application of the trial-avoiding conviction mechanism. However, coercion is not what characterizes trial-avoiding conviction mechanisms as a whole. In many of these mechanisms, such as the Chilean *procedimiento monitorio* and the French *ordonnance pénale*, prosecutors do not typically threaten defendants with disproportionate penalties if they challenge the use of these mechanisms to reach a criminal conviction.

The common thread among these mechanisms is administratization. Convictions based on the defendant's consent and evidence collected in these administrative proceedings give more power to the police, other administrative agencies, and the prosecutors to the extent that they are not challenged or made accountable through a trial and their decisions to arrest and charge an individual for a certain offense may be, de facto, the final or close-to-final verdict. Also, their decisions in this regard may not be accessible or transparent to third parties, citizens, and the media.

Because many of these trial-avoiding conviction mechanisms may only be applied if the prosecutor requests or at least consents to their application, this authority also empowers prosecutors vis-à-vis defendants and judges (and juries in jurisdictions that have them). The defendant may still choose to go to trial but, because of a lack of information or appropriate advice, they may not be fully aware of this possibility. Also, even when the defendant has sufficient information, by choosing to go to trial they often give up some real or apparent benefit that comes attached to the application of the trial-avoiding conviction mechanism. These powers thus may also make the prosecutor's decision to charge a given individual for a given crime, and even the prosecutor's recommendation on sentencing, the final decision on the case (Langer 2006).

The phenomenon of the administratization of criminal convictions raises important public policy questions even when there is neither negotiation nor coercion. These questions include (*a*) which public officials, professionals, actors, and institutions should be deciding on criminal convictions (police officers, other administrative agencies, and prosecutors versus judges and jurors); (*b*) what procedures should be used to make decisions about criminal convictions; (*c*) what procedures and safeguards should be established to hold the police, administrative agencies, prosecutors, judges, and the administration of criminal justice accountable; (*d*) whether the use of trial-avoiding conviction mechanisms is appropriate for all criminal offenses or only a subset of them; and (*e*) what requirements and safeguards should be established to enable trial-avoiding conviction mechanisms to advance the goals of the criminal process, such as adequately distinguishing between guilt and innocence, treating people fairly, and holding the administration of criminal justice accountable to society. This does not mean that all trial-avoiding conviction mechanisms and criminal justice systems are created equal regarding these and other public policy questions. However, these are questions that all jurisdictions should confront when discussing whether they should adopt trial-avoiding conviction mechanisms or amendments to them, which mechanisms and amendments they should adopt, which requirements and safeguards these mechanisms and the criminal justice system should include, which data should be collected on these mechanisms and criminal justice systems, and what should be studied, reported, and monitored regarding these mechanisms.

From a sociolegal perspective, given the importance and distinctive features of criminal convictions, we can study methods of conviction and learn something important about criminal justice systems and adjudication processes. We should continue to study the different ways jurisdictions produce and regulate criminal convictions through different trial-avoiding mechanisms (Langer 2004) and whether and to what extent they use negotiation and coercion. However, we can simultaneously acknowledge that there may be a common kernel or phenomenon that may be a fruitful

subject for criminological and sociolegal study. The questions that empirical and legal studies have analyzed regarding plea bargaining and other trial-avoiding conviction mechanisms in individual jurisdictions could thus be redefined as questions about how and why criminal convictions are produced, including how and why criminal convictions have been administratized and what effects and implications this administratization has had.

For instance, who are the decision-makers in the administratization of criminal convictions in different jurisdictions? How are judges, prosecutors, defense attorneys, and others socialized into the use of these methods, and do they work as a team to produce the defendant's consent to adjudicating their case without a trial? Are these mechanisms applied differently to defendants depending on their class, race, ethnicity, religion, gender, sexual orientation, immigration status, etc.? Have defendants, victims, their attorneys, or others resisted the administratization of criminal convictions, and have they been disciplined in any way for doing so? If so, how have they been disciplined? Do the sentences set at administratized criminal processes operate under the shadow of the trial? What factors lead defendants to consent to the administratization of their criminal convictions? Do innocent defendants consent to the application of these mechanisms? With what frequency? Studying these and other questions is beyond the scope of this article but could be part of a researcher's future agenda.

Reframing these questions as questions on the administratization of criminal convictions is not just a semantic point. Given the varieties of and differences among plea bargaining, penal orders, and other trial-avoiding conviction mechanisms not only among jurisdictions, but even within them, it may seem challenging at first, if not impossible, to study these mechanisms together and determine whether there are global trends in criminal adjudication. The concepts of trial-avoiding conviction mechanisms and administratization of criminal convictions are ways to capture such global trends, enabling comparison among jurisdictions and the study of the relationship between the administratization of criminal convictions and other phenomena.

One issue that could be explored in this regard is how the gap between the promise of an oral and public trial with its associated rights and the reality of the administratization of criminal convictions is justified and what institutional and social functions are at play in different jurisdictions. Another issue that could be explored is whether the global trend toward the administratization of criminal convictions is part of a global trend toward the administratization of criminal adjudication and criminal justice more generally that could include not only trial-avoiding conviction mechanisms but also other formal and informal criminal dispositions and mechanisms, such as formal and informal dismissals by the police; unconditional and conditional dismissals by the police, prosecutors, and judges; pretrial supervision; mediation and other alternative dispute resolution mechanisms; and acquittals. One could also explore whether the administratization of criminal convictions is part of a widespread weakening of the accuracy and perceived fairness of adjudicative processes or even a global move toward a managerial model of criminal law administration in which (unlike in the adjudication model) actual guilt becomes irrelevant and in which these mechanisms form part of a broader array of tools to mark, sort, supervise, and regulate certain populations (Kohler-Hausmann 2014, 2018; Natapoff 2018).

Such an analysis could also be part of future research on plea bargaining and other trial-avoiding conviction mechanisms. However, regardless of whether this trend toward the administratization of criminal convictions is part of one or more of these other shifts, this administratization is a phenomenon that deserves study in its own right.

THE RATE OF ADMINISTRATIZATION OF CRIMINAL CONVICTIONS

The previous section defined the phenomenon of the administratization of criminal convictions and illustrated it through the analysis of plea bargaining, penal orders, and related trial-avoiding

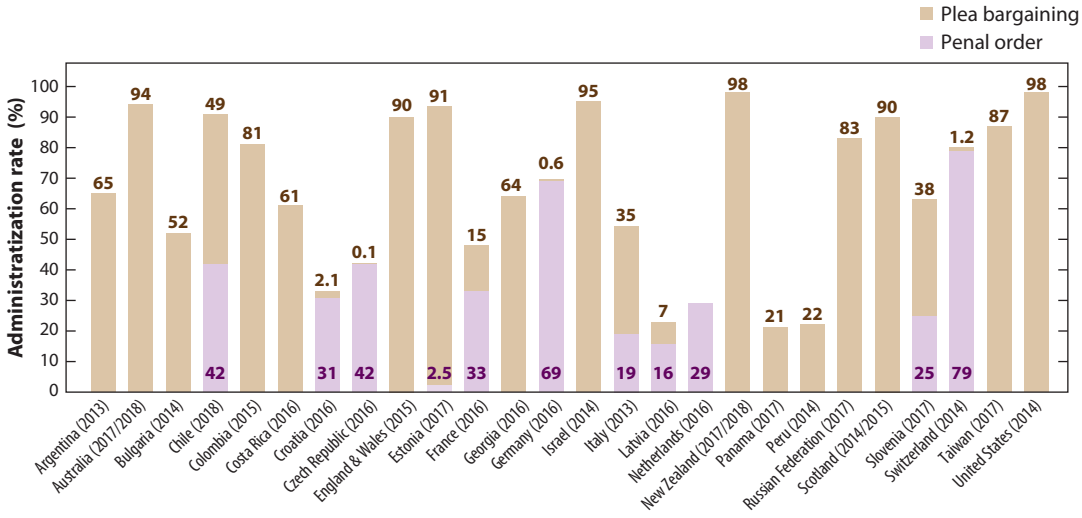

Figure 1

Rate of administratization of criminal convictions in 26 jurisdictions. The figure is based on data reported by official agencies, in official reports, and in academic research from surveyed jurisdictions as described in detail in the **Supplemental Material**.

conviction mechanisms in multiple jurisdictions. But even if the administratization of criminal convictions can be considered, at a certain level, a single phenomenon, this does not mean that it is present to the same extent in every jurisdiction. Is there a way to measure the degree of administratization in a given jurisdiction? This section articulates the rate of administratization of criminal convictions (RACC) as the percentage of criminal convictions that are reached through trial-avoiding conviction mechanisms out of the total number of convictions (obtained through these mechanisms and trial) in a given jurisdiction:

$$\text{RACC} = \frac{\text{Number of convictions obtained through trial-avoiding conviction mechanisms}}{\text{Total number of convictions}}.$$

Figure 1 indicates the rate of administratization of criminal convictions in 26 jurisdictions. The figure shows a high variation in the use of guilty pleas, plea bargaining, penal orders, and equivalent trial-avoiding conviction mechanisms, with the extremes being a rate of administratization of only 21% in Panama and a rate of 98% in New Zealand and the United States. What explains this variation?

A first possible hypothesis is that this variation comes from the differing regulation of trial-avoiding conviction mechanisms, because, as we have seen, some jurisdictions allow for the use of these mechanisms for all criminal offenses, whereas other jurisdictions exclude their use for serious or the most serious offenses. One could thus expect that, everything else being equal, the former jurisdictions will have a higher rate of administratization of criminal convictions than the latter.

However, **Figure 2** suggests that this hypothesis is not consistent with the data. If we look at the jurisdictions with the highest administratization rates, three exclude certain crimes (Chile, Estonia, and Taiwan). If we look at the jurisdictions with the lowest rates, the three lowest ones (Latvia, Panama, and Peru) have no established limits. The relative irrelevance of the exclusion of certain crimes in certain jurisdictions seems plausible given that lower criminal offenses may constitute the bulk of the caseload in most jurisdictions.

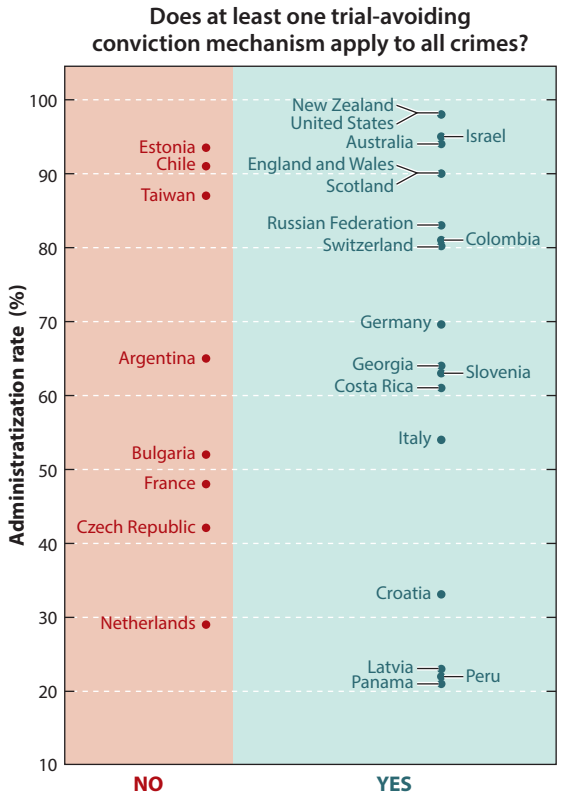

Figure 2

Does at least one trial-avoiding conviction mechanism apply to all crimes? The figure is based on an analysis of criminal procedure codes and data reported by official agencies, in official reports, and in academic research from surveyed jurisdictions as described in detail in the **Supplemental Material**.

Another possible hypothesis to explain variation in the use of trial-avoiding conviction mechanisms is caseload levels. The hypothesis is that, everything else being equal, the higher the caseload, the more pressure on the criminal justice system to use trial-avoiding conviction mechanisms, and therefore the higher the administratization rate (or, vice versa, the more a jurisdiction uses trial-avoiding conviction mechanisms, the more cases it receives). The comparison of the rate of administratization with the rate of formal contacts with the police per 100,000 people (which can include persons suspected, arrested, or cautioned and can be used as a proxy for a system's caseload) in **Figure 3** suggests that caseload variation might explain some of the differences in the administratization rates, as jurisdictions with higher administratization rates overall have a higher rate of formal contacts with the police than jurisdictions with lower administratization rates.

Another hypothesis is that, everything else being equal, the more punitive a system, the more tools prosecutors and judges have to encourage defendants to accept the application of a trial-avoiding conviction mechanism to get a sentencing discount or other benefit (or vice versa). With regard to punitiveness levels, even if the upward trendline in **Figure 4** is less pronounced than the trendline for caseload levels, the pattern indicates that a higher prison population rate (which can be considered a proxy for punitiveness levels) correlates with a higher rate of administratization of

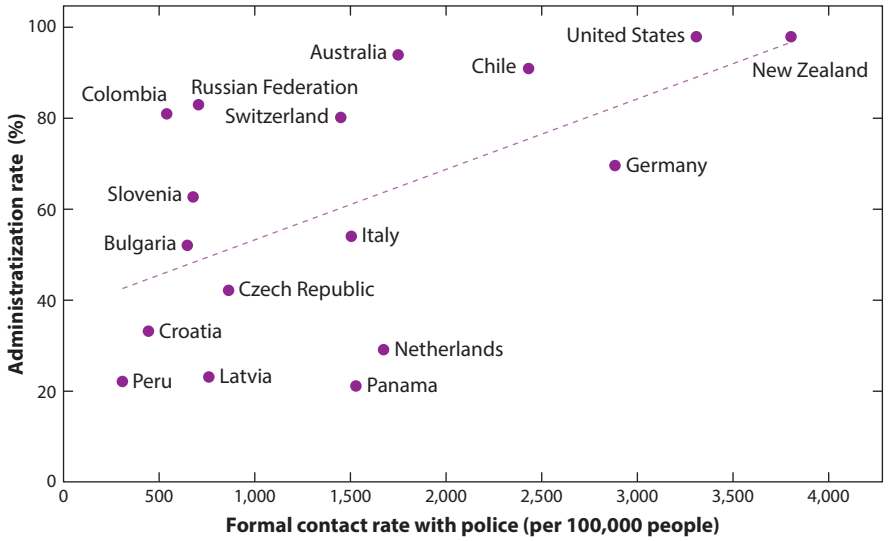

Figure 3

Administratization of criminal convictions and formal contact with the police. The figure is based on data reported by official agencies, in official reports, and in academic research, as described in detail in the **Supplemental Material**, and on data reported by the United Nations Office on Drugs and Crime (UNODC) (see UNODC 2017). The formal contact with the police rate uses the latest available data provided by the UNODC for each jurisdiction between 2013 and 2016.

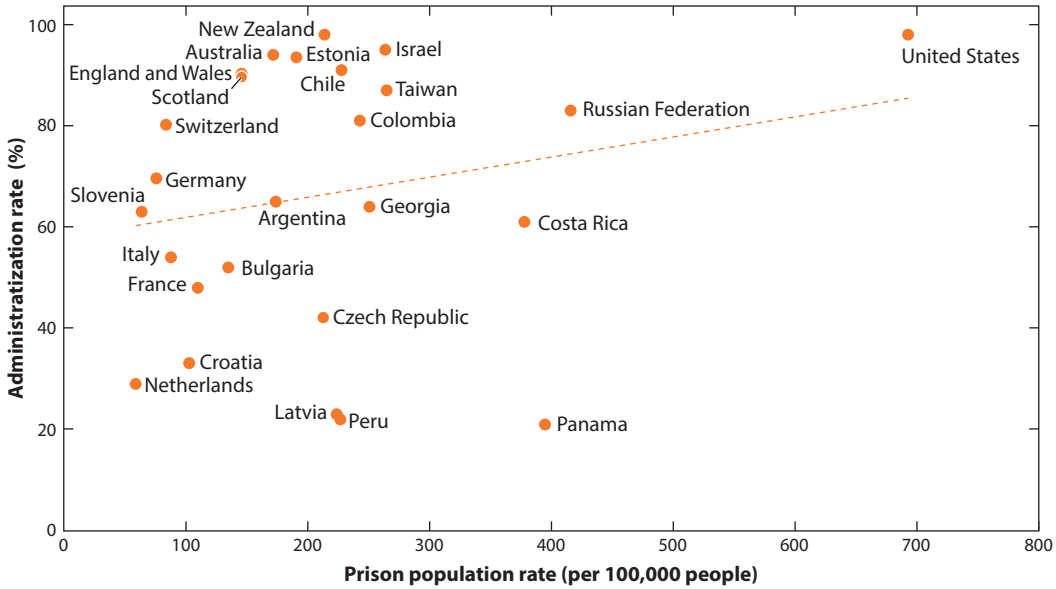

Figure 4

Administratization of criminal convictions and prison population rates. The figure is based on data reported by official agencies, in official reports, and in academic research, as described in detail in the **Supplemental Material**, and on data reported by the World Prison Brief (2020). Data for prison population rates for each jurisdiction are from the same year (or closest available year) as the data reported in **Figure 1** for each jurisdiction.

criminal convictions. However, these data should be interpreted with caution because the United States could be considered an outlier in terms of its imprisonment levels, and once the United States is removed, the upward trendline in **Figure 4** flattens substantially.

In any case, if data on the rates of administratization of criminal convictions from a larger sample of jurisdictions were collected, it would be worthwhile to test further the caseload and punitiveness hypotheses explored in **Figures 3** and **4**.

Trial complexity and legal and procedural cultures and models are two additional and independent hypotheses that might explain the variation in the rates of administratization across different jurisdictions. On trial complexity, Langbein (1979b) has argued that the trial by jury has become so complex and long that it is not a workable way to adjudicate most criminal cases, which explains the rise in guilty pleas and plea bargains in the United States. By this hypothesis, one would thus expect that, everything else being equal, jurisdictions with trial by jury would have higher rates of administratization of criminal convictions.

The pattern of **Figure 5** looks consistent with the hypothesis that trial by jury is correlated with greater use of plea bargaining and other trial-avoiding conviction mechanisms: Most jurisdictions with trial by jury are within the 80–100% range, whereas the bulk of the non-trial-by-jury jurisdictions are below 80%. However, one should be cautious in the interpretation of these data

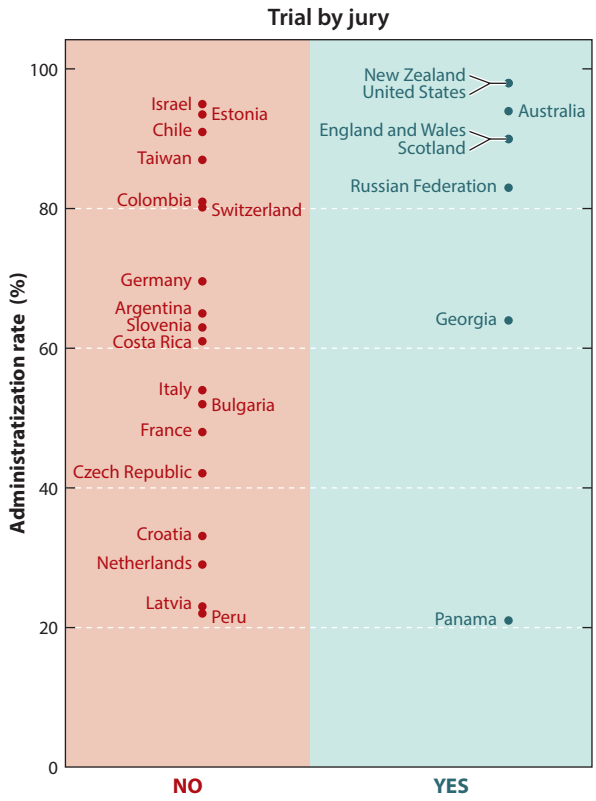

Figure 5

Administratization rate and trial by jury. The figure is based on criminal procedure and judicial regulations and on data reported by official agencies, in official reports, and in academic research from surveyed jurisdictions as described in detail in the **Supplemental Material**.

given that jurisdictions with trial by jury substantially overlap with common law jurisdictions that present a predominantly adversarial conception of the criminal process, variables that seem to have a higher explanatory value than the trial-by-jury hypothesis, as discussed in the following paragraphs.

A final hypothesis on legal and procedural culture and models is advanced by Langer (2004), who argued that there could be a relationship between accepting and using plea bargaining (and other trial-avoiding conviction mechanisms) and the predominance of a party-driven conception of the criminal process in a given jurisdiction, as these mechanisms afford the parties a large say in the adjudication of the case. Legal actors educated and socialized in common law adversarial systems would thus consider the use of guilty pleas, plea bargaining, and other trial-avoiding conviction mechanisms as a natural phenomenon (Langer 2004). By this hypothesis, one would expect that, everything else being equal, the more important the adversarial ideology or structures of interpretation and meaning in a given jurisdiction, the larger the rate of administratization of criminal convictions. **Figure *6a,b*** provides elements to assess this hypothesis.

The hypothesis regarding legal and procedural culture and models seems to be consistent with the data in **Figure *6a,b***, as common law jurisdictions that conceive of the criminal process in adversarial, party-driven terms have higher administratization rates. In this sense, it is worth noting that all common law jurisdictions have predominantly adversarial conceptions of the criminal process and have a rate of administratization of criminal convictions within the 90–100% range. In contrast, the bulk of civil law jurisdictions have a rate of administratization below 80%.[8] Inquisitorial jurisdictions have a rate of 80% or below, whereas the administratization rates of civil law jurisdictions that have recently introduced more adversarial criminal procedure codes range from 21% to 93.5%.

The group of jurisdictions that have adopted more adversarial codes in recent years should be disentangled further because there is wide variation in how adversarial these codes are and because these reforms have been implemented to different degrees. For instance, although the Chilean criminal procedure code conceives of the criminal process as driven by the parties before a passive court, the Bulgarian, Croatian, and Latvian codes have a less adversarial conception of the criminal process. In addition, the Peruvian criminal procedure code not only reflects a less adversarial conception of the criminal process, but it has also been more gradually and more poorly implemented than the Chilean code (Ponce Chauca 2008, Salas Beteta 2011). Thus, many actors in jurisdictions like Peru may not have fully internalized the new system or been subjected to the appropriate incentives and may thus be more reluctant about the widespread use of these mechanisms than actors in traditional common law jurisdictions (Langer 2004).

Similarly, the Estonian criminal procedure code of 2004 has a more adversarial conception of the criminal process than the Latvian criminal procedure code of 2005. The differences in the rate of administratization of criminal convictions between neighboring Estonia and Latvia may also be partially the result of different degrees of implementation of recent reforms because Estonia has persistently introduced multiple judicial and criminal procedure reforms to overcome Soviet inquisitorialism to an extent that Latvia has not appeared to reach (Solomon 2015). In

[8]This explanation is related to the ones advanced by the legal origins literature that use legal traditions as independent or instrumental variables to explain different phenomena, such as levels of corruption and size of equity markets, and emphasize the flexibility of common law jurisdictions (for a brief review, see Spamann 2015). But although the legal origins literature has concluded in multiple studies that common law has features that are correlated with positive outcomes, such as lower levels of corruption and larger equity markets, the descriptive statistics presented in this article do not suggest that common law is superior to civil law, because having a high rate of administratization of criminal convictions would not necessarily be a positive feature of the administration of criminal justice.

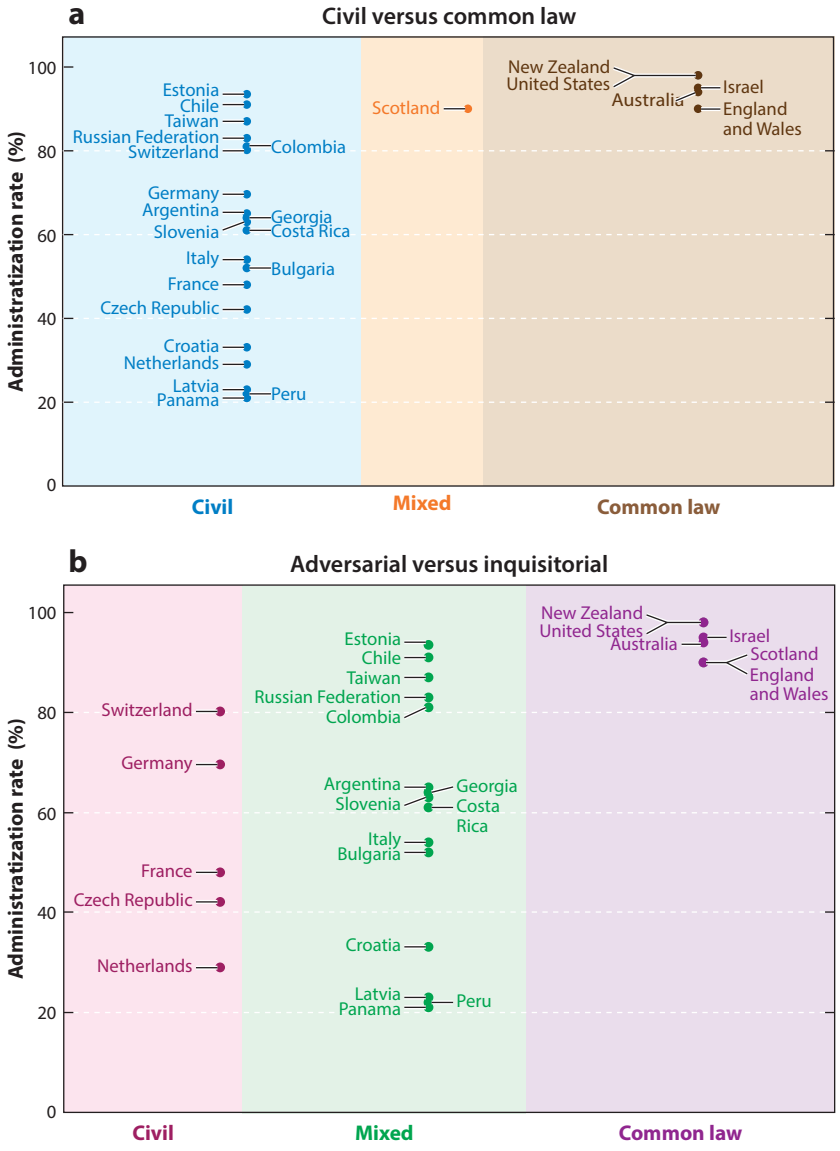

Figure 6

(*a*) Administratization rate and legal tradition. The figure is based on comparative law literature and on data reported by official agencies, in official reports, and in academic research from surveyed jurisdictions, as described in detail in the **Supplemental Material**. (*b*) Administratization rate and the adversarial and inquisitorial systems. The figure is based on criminal procedure codes and on data reported by official agencies, in official reports, and in academic research from surveyed jurisdictions, as described in detail in the **Supplemental Material**.

addition, partly responding to the right-to-speedy-trial cases by the European Court of Human Rights, Estonia has introduced substantial reforms to reduce the length of criminal proceedings (Kergandberg 2012, Laffranque 2015), and it has emphasized the speed of its court proceedings more generally to attract investment.

There are more possible hypotheses than the five articulated and explored here (i.e., exclusion of certain crimes in certain trial-avoiding conviction mechanisms, caseload levels, punitiveness levels, trial complexity, and legal and procedural culture and systems) that may explain the variation in the rates of administratization of criminal convictions in different jurisdictions. Other possible hypotheses include variation in subconstitutional procedural rules (Crespo 2018); variation in substantive criminal law that gives more or less leverage to prosecutors to get the defendant's consent to the application of trial-avoiding conviction mechanisms (Langer 2006); the degree of access to (appointed) counsel; pretrial detention decisions and levels; sentencing discounts for consenting to the application of the trial-avoiding conviction mechanisms to one's case; the amount of resources invested and the number of police, prosecutors, courts, and attorneys; self-monitoring and self-assessment programs and other organizational tools by offices of the prosecutor, courts, and public defenders; media and popular influence over prosecutors and courts; and broader institutional, economic, and labor market differences among jurisdictions, to mention just a few. The variation in the rates of administratization is a complex phenomenon that may have multiple causes and be associated with multiple phenomena.

The complexity of the phenomenon can also be observed if we compare the rate of administratization of criminal convictions not only across jurisdictions but also within individual jurisdictions since their adoption of trial-avoiding convictions mechanisms. **Table 3** provides data about the evolution of the rates of administratization of criminal convictions in 12 jurisdictions, taking as a starting point the year in which the jurisdiction adopted plea bargaining or other related trial-avoiding conviction mechanisms—with data missing for several years.

We tried to gather data from the first year (year 1) after the adoption of trial-avoiding conviction mechanisms under the hypothesis that use of these mechanisms may increase over time as criminal justice systems learn how to use them and as individual actors internalize them and may adapt the mechanisms to advance their own authority, power, and self-interest (Bergman et al. 2017, Langer 2004). The data we have on the first few years after the adoption of trial-avoiding mechanisms are generally consistent with this hypothesis, as most of these countries had an increase in the use of trial-avoiding conviction mechanisms over time. [In the case of Slovenia, this may also result from the fact that in year 9 (2012), guilty pleas were added to the already existing penal orders.]

Chile could be considered an exception because by year 2 it already had essentially the same rate of administratization that it has maintained over time. However, this may be a result of the fact that the Chilean mechanisms were implemented as part of broader criminal procedure reform gradually put into effect in different areas of the country between the end of 2000 and the middle of 2005. As a consequence, by 2005 (year 1 for Chile), the new mechanisms had already been in use in all regions of the country other than Santiago's metropolitan region for as much as 4.5 years. In addition, Chile spent substantial resources in training the operators of the criminal justice system before the reform was put into practice, and that may have allowed Chilean criminal justice operators to internalize the adversarial reform and hit the ground running when the reform came into effect throughout the country in mid-2005.

The Czech Republic might appear to be another exception because it had essentially the same rates of administratization in year 1 and year 5. In this case, we consider 2012 as year 1 because it was the year that the "agreement on guilt and punishment" [Criminal Procedure Code § 175a] was adopted and thus both "agreement on guilt and punishment" and "criminal orders " were in place. However, the Czech Republic is not an exception because more than 99% of the convictions reached through trial-avoiding mechanisms have been reached through criminal orders, the other type of Czech trial-avoiding conviction mechanism that, as **Table 1** illustrates, was adopted in 1973. It is not possible to assess whether Taiwan might be an exception because we have not been able to obtain data for the first four years.

Table 3 Rate of administratization of criminal convictions over time since the adoption of trial-avoiding conviction mechanisms in 12 jurisdictions[a]

Country	First year in effect	Years in effect																			
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Argentina	1997	–	–	–	–	34%	38%	41%	47%	48%	45%	47%	53%	56%	62%	65%	64%	65%	–	–	–
Chile	2005	–	89%	92%	93%	93%	92%	93%	93%	93%	92%	91%	90%	90%	91%	–	–	–	–	–	–
Colombia	2004	87%	89%	90%	91%	91%	89%	87%	83%	82%	81%	81%	–	–	–	–	–	–	–	–	–
Costa Rica	1996	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	47%	50%	56%	61%
Czech Republic	2012	41%	44%	43%	42%	42%	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
France[b]	2004	10%	25%	29%	32%	34%	40%	39%	42%	44%	44%	47%	47%	48%	–	–	–	–	–	–	–
Georgia[c]	2004	–	13%	28%	48%	52%	58%	80%	88%	89%	89%	70%	64%	64%	–	–	–	–	–	–	–
Latvia	2005	–	–	–	–	–	–	–	18%	20%	20%	21%	22%	–	–	–	–	–	–	–	–
Netherlands[d]	2008	–	5%	11%	24%	32%	31%	30%	25%	29%	–	–	–	–	–	–	–	–	–	–	–
Russian Federation	2001	–	–	–	–	–	–	–	–	–	–	–	–	79%	81%	83%	83%	83%	–	–	–
Slovenia[e]	2003	–	22%	21%	24%	22%	24%	23%	23%	37%	48%	56%	58%	60%	63%	–	–	–	–	–	–
Taiwan	2004	–	–	–	–	86%	86%	85%	84%	85%	86%	87%	87%	87%	87%	–	–	–	–	–	–

[a]Based on data reported by official agencies and in official reports from surveyed jurisdictions as described in the **Supplemental Material**.

[b]As explained in the text, penal orders are older; here the starting point is the first year with both penal orders and *comparution sur reconnaissance préalable de culpabilité*.

[c]For years 2, 3, and 4, the rate is calculated from the total verdicts, not just convictions.

[d]Because the penal order came into effect in February 2008, 2008 is considered year 1.

[e]Plea bargaining is in force since 2012. Here year 1 is 2003 to show the evolution before and after both mechanisms were effective. The pattern of increase in the use of these mechanisms is still observed.

The data in **Table 3** also suggest that in most jurisdictions the rate of administratization of criminal convictions goes up or stays relatively flat over time. However, Colombia's and Georgia's data suggest that a rate decrease is also possible. In the case of Colombia (perhaps an exception to the hypothesis discussed in the previous paragraphs in relation to **Table 3**), the data refer to the trial-avoiding conviction mechanisms that came into effect in 2005 (year 1), together with a new, more adversarial criminal procedure code. The high rate of administratization in the initial years may have to do with the length of pretrial proceedings, insufficient training and support of prosecutors under the new adversarial system, and logistical problems with holding trial hearings, all of which possibly prevented a higher number of trials in these years. The decrease in the rate of administratization after 2010 may be related to the passing of punitive reforms, such as Law 1453, that limited the sentence reductions for defendants pleading guilty and entering into plea agreements. The decrease in the rate of administratization may also be a result of the difficulties the Colombian criminal process has had in reaching criminal convictions through trials, an issue that over time might have created incentives for defendants not to plead guilty and not to enter into plea agreements (Sánchez Mejía 2017; see also e-mails and interview with A.L. Sánchez Mejía listed in the sources on Colombia in the **Supplemental Material**).

In the case of Georgia, the European Court of Human Rights, NGOs, the United Nations, and the US State Department, among others, have criticized and subjected to scrutiny the practice of Georgian plea bargaining because of concerns about corruption and failure to meet international human rights and judicial independence standards. These concerns are based on, among other things, Georgian plea bargaining's low levels of fairness, accountability, and transparency; the wide use of fines in its application; and the high conviction rate at trial [Coalit. Indep. Transpar. Judic. 2013, *Natsvlishvili and Togonidze v. Georgia* (2014), US Dep. State 2012, US Dep. State 2015]. It would be interesting to explore whether this reduction in the administratization rate relates to these criticisms and scrutiny or other phenomena. There have been reports that more recently courts have been "more thorough in determining the voluntariness of a defendant's plea agreement and the fairness of criminal sentence agreed to by the parties" (US Dep. State 2018). Both qualitative and quantitative empirical research could study whether this is the case, among other issues.

Rather than arriving at definitive answers, the main point of this section has been to illustrate the type of questions and analyses opened by the creation of a way to calculate a rate of administratization of criminal convictions. Both quantitative and qualitative studies and analyses could contribute to further exploration of this phenomenon in one or multiple jurisdictions.

CONCLUSION

This article has shown that plea bargaining, penal orders, and related trial-avoiding conviction mechanisms have been spreading in a substantial part of the world in the past five decades and especially in the past three. After reviewing the existing empirical literature on these mechanisms in individual jurisdictions, this article argued that plea bargaining, penal orders, and their variations can be conceptualized as trial-avoiding conviction mechanisms and that their spread can be understood as a global process of administratization of criminal convictions.

These mechanisms administratize criminal convictions by giving more power to the police, other investigative agencies, and prosecutors in deciding who gets convicted and for which crimes in proceedings that do not include a trial with its associated rights for defendants. These administratized proceedings are assumed to be legitimized through the defendant's admission of guilt or formal consent to the application of these mechanisms. These proceedings may include negotiations between the defense and the prosecutor or the judge and/or may include coercion; however, the common thread among them is their administrative character, not negotiations or coercion.

Even when trial-avoiding conviction mechanisms include neither negotiations nor coercion (unlike a subset of US plea bargains), the phenomenon of administratization of criminal convictions raises important questions for sociolegal study and public policy. These questions include which public officials, professions, actors, and institutions are and should be deciding criminal convictions; what procedures are and should be used to make decisions about criminal convictions; and whether and to what degree trial-avoiding conviction mechanisms advance the goals of the criminal process, such as adequately distinguishing between guilt and innocence, treating people fairly, and holding the administration of criminal justice accountable to society.

This article also articulated the rate of administratization of criminal convictions as a way to measure to what extent jurisdictions have used these mechanisms after their adoption. Our analysis shows that there is wide variation among jurisdictions and within jurisdictions over time and has explored why this may be the case.

The global empirical study of plea bargaining and other trial-avoiding conviction mechanisms is in its infancy. This article pointed out important gaps in the existing literature, proposed a new framework for such a study, and recommended further possible lines of inquiry.

DISCLOSURE STATEMENT

The author is not aware of any affiliations, memberships, funding, or financial holdings that might be perceived as affecting the objectivity of this review.

ACKNOWLEDGMENTS

I would like to thank Manon Cayrou, Matthew Fox, Sandro Germann, and Tom Pleiner for their research assistance, and very especially Ricardo Lillo Lobos for his work on, among other things, **Figure 1**, **Table 1**, and **Table 3**. I would also like to thank Kai Ambos, LaToya Baldwin Clark, Christoph Burchard, Jennifer Chacón, Andrew Manuel Crespo, Mirjan Damaška, Sharon Dolovich, Kirstin Drenkhahn, Malcolm Feeley, Stefan Harrendorf, John Jackson, Manon Jendly, Jack Katz, Adriaan Lanni, Tracey Meares, Sasha Natapoff, Benjamin Nyblade, Richard Re, Julian Roberts, Joaquim Savelsberg, Máximo Sozzo, Stephen C. Thaman, Sherod Thaxton, Joanna Schwartz, Marc Thommen, and an anonymous reviewer for their feedback on earlier versions of this project. I would also like to thank for their feedback and for helpful conversations the participants of the following events: The Transnational Ordering of Criminal Justice panel organized by Ely Aaronson and Gregory Shaffer at the 2018 Law & Society Association Annual Meeting; the Harvard Law School Criminal Justice Workshop in February 2019; the Workshop sobre Colaboração Premiada at Lisbon University in April 2019; my keynote lecture at the 8th Annual Conference of the Younger Comparativists Committee of the American Society of Comparative Law at McGill University in May 2019; a workshop at Diego Portales University, Santiago, Chile, in June 2019; and the 2019 Southern California Criminal Justice Roundtable. Thank you also to Ely Aaronson, Taiba Alsafar, Kai Ambos, Gustavo Badaró, Olexandr Banchuk, Károly Bárd, Andrey Borges de Mendoça, José Rodrigues Cambuta, Mark Cammack, James Chalmers, Dae-Hyun Choe, Eilyn Cruz Rojas, Rodrigo da Silva Brandalise, Ibrahim Danjuma, Paulo de Sousa Mendez, Wium de Villiers, J.J. Disini, Kirstin Drenkhahn, Zlata Đurđević, Daniel Foote, Dante Gatmaytan, Oren Gazal-Ayal, Jaan Ginter, Yehonatan Givati, Stefan Harrendorf, Jenia Iontcheva Turner, Radha Ivory, Ricardo Jacobsen Gloeckner, Wojciech Jasiński, Martina Jaussi, Mar Jimeno-Bulnes, David Johnson, Gerhard Kemp, Roman Kuybida, Gordana Lažetić, Fiona Leverick, Margaret Lewis, Ma Qin, Elena Militello, Chinwe A. Mordi, Tamara Morshchakova, Yong-Chul Park, Michiel Pestman, Mojca M. Plesničar, Radomir Prelević, Luca Ranzoni,

Kent Roach, Erika Róth, Eliseu José Sacoji, Astrid Liliana Sánchez Mejía, Filip Ščerba, Peter Solomon, Barbara Stando-Kawecka, Kristine Strada-Rozenberga, Kai-Ping Su, Andrzej Świtłiwski, Takashi Takano, Stephen C. Thaman, Marc Thommen, Ekaterina Trendafilova, Milena Tripkovic, Anita Ušacka, Salvedis Vārpiņš, Dirk van Zyl Smit, Megumi Wada, and the NGO Fair Trials for their help or input on different jurisdictions covered in this piece. Finally, I would like to thank for their excellent research, data presentation, and editing support Kevin Gerson, Shangching Huitzacua, Gabe Juárez, Elyse Meyers, and the UCLA Hugh and Hazel Darling Law Library; Henry Kim and the UCLA School of Law Empirical Research Group; and the Transnational Program on Criminal Justice at UCLA School of Law. Any mistakes are my responsibility.

LITERATURE CITED

Abrams DS. 2011. Is pleading really a bargain? *J. Empir. Leg. Stud.* 8:200–21

Abrams DS. 2013. Putting the trial penalty on trial. *Duquesne Law Rev*. 51:777–85

Aebi MF, Akdeniz G, Barclay G, Campistol C, Caneppele S, et al. 2017. *European Sourcebook of Crime and Criminal Justice Statistics 2014*. Helsinki, Finl.: Acad. Bookst. 5th ed., 2nd rev. print.

Alschuler AW. 1968. The prosecutor's role in the plea bargaining. *Univ. Chicago Law Rev.* 36:50–112

Altenhain K, Dietmeier F, May M. 2013. *Die Praxis der Absprachen in Strafverfahren*. Baden-Baden, Ger.: Nomos

Altenhain K, Hagemeier I, Haimerl M, Stammen K. 2007. *Die Praxis der Absprachen in Wirtschafstrafverfahren*. Baden-Baden, Ger.: Nomos

Ancelot L, Doriat-Duban M. 2010. La procedure de comparution sur reconnaissance préalable de culpabilité: l'éclairage de l'économie du droit sur l'équité du plaider coupable. *Arch. Politique Crim.* 32:269–87

Ashworth A, Roberts JV. 2013. The origins and nature of the sentencing guidelines in England and Wales. In *Sentencing Guidelines: Exploring the English Model*, ed. A Ashworth, JV Roberts, pp. 1–12. Oxford, UK: Oxford Univ. Press

Bachmaier L. 2018. The European Court of Human Rights on negotiated justice and coercion. *Eur. J. Crime Crim. Law Crim. Justice* 26:236–59

Baldwin J, McConville M. 1977. *Negotiated Justice: Pressures to Plead Guilty*. London: Martin Robertson

Baldwin J, McConville M. 1979. Plea bargaining and plea negotiation in England. *Law Soc. Rev.* 13:287–307

Bandyopadhyay S, McCannon BC. 2014. The effect of the election of prosecutors on criminal trials. *Public Choice* 161:141–56

Barkow R. 2006. Separation of powers and the criminal law. *Stanford Law Rev*. 58:989–1054

Beard J. 2017. *Reduction in sentence for a guilty plea*. Brief. Pap. 5974, House Commons Libr., London

Bergman M, Fondevila G, Langer M. 2017. *¿A quién y cómo se juzga en la Ciudad Autónoma de Buenos Aires? Una radiografía de la Justicia Nacional en lo Criminal y Correccional*. Buenos Aires: UNTREF

Bonta J, Harris H, Zinger I, Carriere D. 1996. *The Crown Files Research Project: A Study of Dangerous Offenders*. Ottawa: Solicit. Gen. Can.

Brook CA, Fiannaca B, Harvey D, Marcus P, McEwan J, Pomerance R. 2016. A comparative look at plea bargaining in Australia, Canada, England, New Zealand, and the United States. *William Mary Law Rev*. 57:1147–224

Bushway S, Redlich A, Norris R. 2014. An explicit test of plea bargaining in the "shadow of the trial." *Criminology* 52:723–54

Carlson KB. 2018. Trading on guilt: the judicial logic of plea bargains at the ICTY and its transplant to Serbia and Bosnia. In *International Practices of Criminal Justice: Social and Legal Perspectives*, ed. MJ Christensen, R Levi, pp. 131–48. New York: Routledge

Cheng KK. 2013. Pressures to plead guilty: factors affecting plea decisions in Hong Kong's Magistrates' Court. *Brit. J. Criminol.* 53:257–75

Cheng KK. 2016. Public approval of plea bargaining in Hong Kong: the effects of offender characteristics. *Int. Crim. Justice Rev.* 26:31–48

Cheng KK, Chui WH, Young SNM, Ong R. 2018. Why do criminal trials "crack"? An empirical investigation of late guilty pleas in Hong Kong. *Asian J. Comp. Law* 13:1–25

Ciocchini P. 2018. Reformers' unfulfilled promises: accountability deficits in Argentinean criminal courts. *Int. J. Law Context* 14:22–42

Coalit. Indep. Transpar. Judic. 2013. *Application of Plea Bargaining in Georgia*. Tbilisi, Georgia: Coalit. Indep. Transpar. Judic. **http://ewmi-prolog.org/images/files/3902Coalition_Criminal_Law_WG_Research_ENG_9th_forum.pdf**

Cohen SA, Doob AN. 1989. Public attitudes to plea bargaining. *Crim. Law Q.* 32:85–109

Colson R, Field S. 2011. *The Transformation of Criminal Justice: Comparing France with England and Wales*. Paris: L'Harmattan

Combs N. 2007. *Guilty Pleas in International Criminal Law: Constructing a Restorative Justice Approach*. Stanford, CA: Stanford Univ. Press

Crespo AM. 2018. The hidden law of plea bargaining. *Columbia Law Rev*. 118:1303–424

Danet J, Brizais R, Lorvellec S. 2013. La célérité de la réponse pénale. In *La Réponse Pénale: Dix ans de Traitement des Délits*, ed. J Danet, pp. 255–96. Rennes, Fr.: PUR

Dawes W, Harvey P, McIntosh B, Nunney F, Phillips A. 2011. *Attitudes to Guilty Plea Reductions*. London: Sentencing Counc. Engl. Wales

Dervan LE, Edkins VA. 2013. The innocent defendant's dilemma: an innovative empirical study of plea bargaining's innocence problem. *J. Crim. Law Criminol.* 103(1):1

Desprez F. 2007. L'application de la comparution sur reconnaissance préalable de culpabilité à Nimes et Béziers: au regard du principe de judiciarité. *Arch. Politique Crim.* 29:145–69

Eisenstein J, Jacob H. 1977. *Felony Justice: An Organizational Analysis of Criminal Court*. Boston, MA: Little Brown

Ericson RV, Baranek PM. 1982. *The Ordering of Justice: A Study of Accused Persons as Dependants in the Criminal Process*. Toronto: Univ. Tor. Press

Fair Trials. 2017. *The Disappearing Trial: Towards a Rights-Based Approach to Trial Waiver Systems*. London: Fair Trials. **https://www.fairtrials.org/wp-content/uploads/2017/12/Report-The-Disappearing-Trial.pdf**

Falcone Salas D. 2005. La absolución en el procedimiento abreviado. *Rev. Derecho Pontif. Univ. Catól. Valparaíso* 26:363–78

Feeley M. 1979. *The Process Is the Punishment: Handling Cases in a Lower Criminal Court*. New York: Russell Sage Found.

Fisher G. 2003. *Plea Bargaining's Triumph: A History of Plea Bargaining in America*. Stanford, CA: Stanford Univ. Press

Flynn A, Freiberg A. 2018. *Plea Negotiations: Pragmatic Justice in an Imperfect World*. Basingstoke, UK: Palgrave MacMillan

Fondevila G, Langer M, Bergman M, Vilalta C, Mejía A. 2016. *¿Cómo se juzga en el Estado de México?* Mexico City: CIDE

Goldstein AS, Marcus M. 1977. The myth of judicial supervision in three "inquisitorial" systems: France, Italy, and Germany. *Yale Law J.* 87:240–83

Gross SR. 2008. Convicting the innocent. *Annu. Rev. Law Soc. Sci.* 4:173–92

Grunvald S. 2013. Les choix et schémas d'orientation. In *La réponse pénale: Dix ans de traitment des délits*, ed. J Danet, pp. 83–112. Rennes, Fr.: PUR

Hagan J. 1974. Parameters of criminal prosecution: an application of path analysis to a problem of criminal justice. *J. Crim. Law Criminol.* 65:536–44

Hassemer R, Hippler G. 1986. Informelle Absprachen in der Praxis des deutschen Strafverfahrens. *Strafverteidiger* 8:360–64

Heberling JL. 1973. Conviction without trial. *Anglo-Am. Law Rev.* 2:428–72

Herzog S. 2004. Plea bargaining: less covert, more public support? *Crime Delinquency* 50:590–614

Heumann M. 1977. *Plea Bargaining: The Experiences of Prosecutors, Judges and Defense Attorneys*. Chicago: Univ. Chicago Press

Hodgson J. 2015. Plea bargaining: a comparative analysis. In *International Encyclopedia of the Social & Behavioral Sciences*, ed. JD Wright, pp. 226–31. Amsterdam: Elsevier. 2nd ed.

Houllé R, Vaney G. 2017. La comparution sur reconnaissance préalable de culpabilité, une procedure pénale de plus en plus utilisée. *Infostat Justice* 157:1–8

Jehle JM, Wade M, eds. 2006. *Coping with Overloaded Criminal Justice Systems: The Rise of Prosecutorial Power Across Europe*. Berlin: Springer

Johnson BD, King RD, Spohn C. 2016. Sociolegal approaches to the study of guilty pleas and prosecution. *Annu. Rev. Law Soc. Sci.* 12:479–95

Jonah B, Yuen L, Au-Yeung E, Paterson D, Dawson N, et al. 1999. Front-line police officers' practices, perceptions and attitudes about the enforcement of impaired driving laws in Canada. *Accid. Anal. Prev.* 31:421–43

Kellough G, Wortley S. 2002. Demand for a plea: bail decisions and plea bargaining as commensurate decisions. *Brit. J. Criminol.* 42:186–210

Kergandberg E. 2012. *European Court of the Human Rights: Court of Fourth Instance in Estonia?* Paper presented at The Role of Supreme Courts in the Protection of Human Rights Conference, Riga, Latv., May 2

Kim AC. 2015. Underestimating the trial penalty: an empirical analysis of the federal trial penalty and critique of the Abrams study. *Miss. Law J.* 84:1195–255

King NJ, Wright RF. 2016. The invisible revolution in plea bargaining: managerial judging and judicial participating in negotiations. *Tex. Law Rev.* 95:325–97

Kohler-Hausmann I. 2014. Managerial justice and mass misdemeanors. *Stanford Law Rev.* 66:611–93

Kohler-Hausmann I. 2018. *Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing*. Princeton, NJ: Princeton Univ. Press

Kutateladze BL, Lawson VZ, Andiloro NR. 2015. Does evidence really matter? An exploratory analysis of the role of evidence in plea bargaining in felony drug cases. *Law Hum. Behav.* 39:431–42

Kutateladze BL, Lynn V, Liang E. 2012. *Do Race and Ethnicity Matter in Prosecution? A Review of Empirical Studies*. New York: Vera Inst. Justice

Laffranque J. 2015. European human rights and Estonia: one- or two-way street? *Jurid. Int.* 23:4–16

LaFree GD. 1985. Adversarial and nonadversarial justice: a comparison of guilty pleas and trials. *Criminology* 23:289–312

Langbein JH. 1979a. Land without plea bargaining: how the Germans do it. *Mich. Law Rev.* 78:204–25

Langbein JH. 1979b. Understanding the short history of plea bargaining. *Law Soc. Rev.* 13:261–72

Langbein JH, Weinreb LL. 1978. Continental criminal procedure: "myth" and reality. *Yale Law J.* 87:1549–69

Langer M. 2004. From legal transplants to legal translations: the globalization of plea bargaining and the Americanization thesis in criminal procedure. *Harvard Int. Law J.* 45:1–64

Langer M. 2005. The rise of managerial judging in international criminal law. *Am. J. Comp. Law* 53:835–909

Langer M. 2006. Rethinking plea bargaining: the practice and reform of prosecutorial adjudication in American criminal procedure. *Am. J. Crim. Law* 33:223–99

Langer M. 2007. Revolution in Latin American criminal procedure: diffusion of legal ideas from the periphery. *Am. J. Comp. Law* 55:617–76

Langer M, Sklansky DA, eds. 2017. *Prosecutors and Democracy: A Cross-National Study*. New York: Cambridge Univ. Press

Lenoir A, Retiére JN, Trémeau C. 2013. Des délits et de leurs auteurs. . .. In *La Réponse Pénale*: *Dix ans de Traitment des Délits*, ed. J Danet, pp. 113–58. Rennes, Fr.: PUR

Lewis MK. 2009. Taiwan's new adversarial system and the overlooked challenge of efficiency-driven reforms. *Va. J. Int. Law* 49:651–726

Locker T. 2015. *Absprachen im Strafverfahren: Ein Überblick und alternative Verfahrensweisen*. Hamburg, Ger.: Diplomica

Luna E, Wade M. 2010. Prosecutors as judges. *Wash. Lee Law Rev.* 67:1413–532

Luna E, Wade M, eds. 2012. *The Prosecutor in Transnational Perspective*. New York: Oxford Univ. Press

Lynch GE. 1998. Our administrative system of criminal justice. *Fordham Law Rev.* 66:2117–51

Lynch M. 2016. *Hard Bargains: The Coercive Power of Drug Laws in Federal Courts*. New York: Russell Sage Found.

Mann K. 1985. *Defending White Collar Crime: A Portrait of Attorneys at Work*. New Haven, CT: Yale Univ. Press

McConville M. 2002. Plea bargaining. In *The Handbook of the Criminal Justice System*, ed. M McConville, G Wilson, pp. 353–77. New York: Oxford Univ. Press

McConville M, Choong S. 2011. *Criminal Justice in China: An Empirical Inquiry*. Cheltenham, UK: Edward Elgar

McEwan J. 2011. From adversarialism to managerialism: criminal justice in transition. *Leg. Stud.* 31:519–46

McKinnon v. United States, [2008] H.L. 59, [2008] 1 W.L.R. 1739 (Lord Brown)

Natapoff A. 2018. *Punishment Without a Crime: How Our Massive Misdemeanor System Traps the Innocent and Makes America More Unequal*. New York: Basic Books

Natsvlishvili and Togonidze v. Georgia, App. No. 9043/05, Eur. Ct. H.R., Apr. 29, 2014

Newman DJ. 1966. *The Determination of Guilt or Innocence Without Trial*. Boston, MA: Little Brown

Perrocheau V. 2010. La composition pénale et la comparution sur reconnaissance de culpabilité: quelles limites à l'omnipotence du parquet? *Droit Soc*. 74:55–71

Piehl AM, Bushway SD. 2007. Measuring and explaining charge bargaining. *J. Quant. Criminol.* 23:105–25

Pinard M. 2010. Collateral consequences of criminal convictions: confronting issues of race and dignity. *N. Y. Univ. Law Rev.* 85:457–534

Pina-Sánchez J, Brunton-Smith I, Guanquang L. 2018. Mind the step: a more insightful and robust analysis of the sentencing process in England and Wales under the new sentencing guidelines. *Criminol. Crim. Justice*. In press. **https://doi.org/10.1177/1748895818811891**

Ponce Chauca N. 2008. *La reforma procesal penal en Perú: avances y desafíos a partir de las experiencias en Huaura y la Libertad*. Santiago: CEJA. **http://biblioteca.cejamericas.org/handle/2015/5138**

Pouget P. 2013. La mise en place de la diversification du traitement des délits à travers la legislation. In *La réponse pénale: Dix ans de traitment des délits*, ed. J Danet, pp. 49–81. Rennes, Fr.: PUR

R. Comm. Crim. Justice. 1993. *Report of the Royal Commission on Criminal Justice*. London: HMSO. **https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/271971/2263.pdf**

R v. Goodyear, (2005) EWCA (Crim) 888

R v. Hollington and Emmens, (1986) 82 Crim. App. 281

Redlich AD, Summers A, Hoover S. 2009. Self-reported false confessions and false guilty pleas among offenders with mental illness. *Law Hum. Behav.* 34:79–90

Rehavi MM, Starr SB. 2014. Racial disparity in federal criminal sentences. *J. Political Econ.* 122(6):1320–54

Riego C. 2008. Oral procedures and case management: the innovations of Chile's reform. *Southwest. J. Law Trade Am.* 14:339–56

Riego C. 2017. El procedimiento abreviado en la ley 20.931. *Politica Crim*. 12:1085–105

Roberts J, Bradford B. 2015. Sentence reductions for a guilty plea in England and Wales: exploring new empirical trends. *J. Empir. Leg. Stud.* 12:187–210

Saas C, Lorvellec S, Gautron V. 2013. Les sanctions pénales, une nouvelle distribution. In *La réponse pénale: Dix ans de traitment des délits*, ed. J Danet, pp. 159–210. Rennes, Fr.: PUR

Salas Beteta C. 2011. La eficacia del proceso penal acusatorio en el Perú. *Prolegómenos Derechos Valores* 2:263–75

Sánchez Mejía AL. 2017. *Victims' Rights in Flux: Criminal Justice Reform in Colombia*. Berlin: Springer

Schünemann B. 1990. *Absprachen im Strafverfahren? Grundlagen, Gegenstände und Grenzen. Gutachten B. zum 58 Juristentag*. Munich, Ger.: C.H. Beck

Semukhina OB, Reynolds KM. 2009. Plea bargaining implementation and acceptance in modern Russia. *Int. Crim. Justice Rev.* 19:400–32

Sentencing Counc. 2017. *Reduction in Sentence for a Guilty Plea: Definitive Guideline*. London: Sentencing Counc. **https://www.sentencingcouncil.org.uk/wp-content/uploads/Reduction-in-Sentence-for-Guilty-Plea-definitive-guideline-SC-Web.pdf**

Shermer LO, Johnson BD. 2010. Criminal prosecutions: examining prosecutorial discretion and charge reductions in U.S. federal district courts. *Justice Q.* 27(3):394–430

Siolek W. 1993. Neues zum Thema Verständigung im Strafverfahren. *DriZ* 1993:422–30

Skolnick JH. 2011. *Justice Without Trial: Law Enforcement in Democratic Society*. New Orleans, LA: Quid Pro Books. 4th ed.

Smith BP. 2005. Plea bargaining and the eclipse of the jury. *Annu. Rev. Law Soc. Sci.* 1:131–49

Smith DA. 1986. The plea bargaining controversy. *J. Crim. Law Criminol.* 77:949–68

Solomon PH. 1983. *Criminal Justice Policy, From Research to Reform*. Toronto: Butterworths

Solomon PH. 2012. Plea bargaining Russian style. *Demokratizatsiya* 20:282–99
Solomon PH. 2015. Post-Soviet criminal justice: the persistence of distorted neo-inquisitorialism. *Theor. Criminol.* 19:159–78
Soubise L. 2018. Guilty pleas in an inquisitorial setting—an empirical study of France. *J. Law Soc.* 45:398–426
Spamann H. 2015. Empirical comparative law. *Annu. Rev. Law Soc. Sci.* 11:131–53
Spohn C, Beichner D, Davis-Frenzel E. 2001. Prosecutorial justifications for sexual assault case rejection: guarding the "gateway to justice." *Soc. Probl.* 48(2):206–35
Taubald C. 2009. *Konsensuale erledigung von strafverfahren in Deutschland und Frankreich*. PhD Thesis, Univ. Tübingen, Ger.
Thaman SC. 2010a. A typology of consensual criminal procedure: an historical and comparative perspective on the theory and practice of avoiding full criminal trials. In *World Plea Bargaining: Consensual Procedure and the Avoidance of the Full Criminal Trial*, ed. SC Thaman, pp. 297–395. Durham, NC: Carol. Acad. Press
Thaman SC, ed. 2010b. *World Plea Bargaining: Consensual Procedure and the Avoidance of the Full Criminal Trial*. Durham, NC: Carol. Acad. Press
Thaman SC. 2012. The penal order: prosecutorial sentencing as a model for criminal justice reform. In *The Prosecutor in Transnational Perspective*, ed. E Luna, M Wade, pp. 156–75. New York: Oxford Univ. Press
Thaxton S. 2013. Leveraging death. *J. Crim. Law Criminol.* 103:475–552
The Prosecutor v. Ahmad Al Faqi Al Mahdi, Case No. ICC-01/12–01/15, Judgment and Sentence (September 27, 2016)
Tulkens F, Cartuyvels Y, Wattier I. 2002. Negotiated justice. In *European Criminal Procedures*, ed. M Delmas-Marty, JR Spencer, pp. 641–87. Cambridge, UK: Cambridge Univ. Press
Turner JI. 2006. Judicial participation in plea negotiations: a comparative view. *Am. J. Comp. Law* 54:199–267
Turner JI. 2009. *Plea Bargaining Across Borders*. New York: Aspen Publ.
Turner JI, Weigend T. 2020. Negotiated case dispositions in Germany, England, and the United States. In *Core Concepts in Criminal Law and Criminal Justice*, Vol. 1, ed. K Ambos, A Duff, J Roberts, T Weigend, pp. 389–427. Cambridge, UK: Cambridge Univ. Press
Ulmer JT, Eisenstein J, Johnson BD. 2009. Trial penalties in federal sentencing: extra-guidelines factors and district variation. *Justice Q.* 27:560–92
UN Hum. Rights Comm. 2016. Commun. No. 2005/2010, CCPR/C/115/D/2005/2010, Feb. 19
UN Off. Drugs Crime (UNODC). 2017. *Criminal justice system process*. Statistics and Crime: UNODC. **https://dataunodc.un.org/crime/CJS_process**
US Dep. State. 2012. *Country reports on human rights practices for 2011: Georgia*. Bur. Democr. Hum. Rights Labor Rep., US Dep. State, Washington, DC. **https://2009-2017.state.gov/documents/organization/186565.pdf**
US Dep. State. 2015. *Country reports on human rights practices for 2014: Georgia*. Bur. Democr. Hum. Rights Labor Rep., US Dep. State, Washington, DC. **https://2009-2017.state.gov/documents/organization/236738.pdf**
US Dep. State. 2018. *Country reports on human rights practices for 2017: Georgia*. Bur. Democr. Hum. Rights Labor Rep., US Dep. State, Washington, DC. **https://www.state.gov/wp-content/uploads/2019/01/Georgia.pdf**
Van Cleave RA. 1997. An offer you can't refuse? Punishment without trial in Italy and the United States: the search for truth and an efficient criminal justice system. *Emory Int. Law Rev.* 11:419–69
Vance SE, Oleson JC. 2013. Displaced discretion: the effects of sentencing guidelines on prosecutors' charge bargaining in the District of Columbia Superior Court. *Crim. Justice Policy Rev.* 25:347–77
Verdun-Jones SN. 2016. Plea bargaining. In *Criminal Justice in Canada: A Reader*, ed. JV Roberts, M Grossman, pp. 168–84. Toronto: Nelson Educ. 5th ed.
Warsmann JL. 2005. *Rapport d'information de la commission des lois sur la mise en appli-cation de la loi n° 2004–204 du 9 mars 2004 portant adaptation de la justice aux évolutions de la criminalité*. Inf. Rep. AN 2378, Assem. Natl., Paris
World Prison Brief. 2020. *Highest to lowest: prison population data*. WPB, London. **http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All**