

**THE CURRENCY OF CULPABILITY: A CRITICAL ANALYSIS OF GUILTY PLEA  
DISCOUNTS**

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## A. INTRODUCTION

What price should a legal system demand for justice, and at what cost to its moral integrity? The practice of offering sentence discounts to defendants who plead guilty lies at the intersection of justice's competing practical and philosophical imperatives. Ostensibly, these discounts reward responsibility: incentivising admissions of wrongdoing, alleviating the suffering of victims, and relieving systemic burdens on courts. Yet, this practice also casts justice in a troubling light: as a state-sanctioned transaction in which culpability becomes a currency, where time can be bought in exchange for entering a guilty plea. By reducing sentences not on culpability alone but on procedural expedience, guilty plea discounts risk recasting justice as a commodified process rather than a principled moral enterprise.

This essay critically examines guilty plea discounts in two contrasting jurisdictions: the United States (US) and Scotland, to illuminate how differing legal norms and institutional contexts shape their operation and ethical consequences.<sup>1</sup> The US, dominated by plea bargaining, highlights the dangers of prosecutorial overreach and systemic inequities that incentivise even innocent defendants to plead guilty under immense pressure. Scotland, in contrast, with a fixed framework for reduction, demonstrates a greater regard for sentencing proportionality. This comparative approach provides a unique analytical advantage to uncover how variations in sentencing frameworks amplify or mitigate the ethical tensions inherent in guilty plea discounts.

Engaging deeply with the work of Kant, Rawls, and virtue ethicists, this essay will argue that such discounts risk violating defendants' autonomy, reducing their moral agency to mere procedural compliance. With emphasis on dignity and institutional integrity, discounts are shown to further exacerbate systemic inequalities, transforming coercion into a pervasive injustice for marginalised defendants, trivialising the gravity of criminal conduct and resulting in the distortion of the moral equilibrium between harm and culpability. While utilitarian defences, emphasising efficiency and victim relief, are not dismissed outright, they are critically problematised for their ethically fraught compromises.

This essay concludes by advancing the novel perspective that guilty pleas must be reconceptualised as instruments of relational justice rather than transactional efficiency. This framework reimagines discounts as mechanisms that foster moral accountability and preserve the dignity of all stakeholders: defendants,

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<sup>1</sup> Scotland was selected for comparative analysis due to its distinct legal and ethical approach to guilty plea discounts, which contrasts sharply with the deeply entrenched plea-bargaining practices of the United States. While empirical data and scholarly literature on Scotland's system remain relatively limited, this very lacuna renders it a compelling site for normative inquiry. Its inclusion allows for the examination of a jurisdiction where guilty plea discounts are implemented within a more proportionate and structurally restrained framework – one that has thus far received insufficient theoretical engagement. Investigating Scotland alongside the United States not only highlights critical jurisdictional divergences but also contributes to addressing a gap in the existing literature on comparative sentencing ethics.

victims and society at large. Within this model, discounts are no longer commodified rewards but tools for cultivating substantive acts of remorse, restitution, and restorative engagement. Such a transformation requires transparency in sentencing, robust safeguards against coercion, and an emphasis on justice as a moral relationship rather than a procedural calculus.

## **B. THE RISE OF PLEA BARGAINING: FROM EXPEDIENCE TO INSTITUTIONAL NORM**

The practice of guilty plea sentence discounts is not an incidental innovation, but the product of a systemic evolution shaped by the growing demands of overburdened legal systems. Historically, adversarial justice systems were predicated on rigorous trials where evidence was tested, and culpability was meticulously adjudicated. However, by the late 19<sup>th</sup> century, surging caseloads in common law jurisdictions exposed the unsustainability of this model, with plea bargaining emerging as a pragmatic response, allowing defendants to forgo trial in exchange for reduced sentences, alleviating pressures on courts and conserving resources.<sup>2</sup>

In the US, urbanisation and industrialisation in the early 20<sup>th</sup> century led to a surge in criminal activity.<sup>3</sup> By the 1930s, with the onset of the Great Depression, courts became overwhelmed with increasing case backlogs, and the criminal justice system struggled to cope with the demand.<sup>4</sup> To address these pressures, plea bargaining was formalised in the 1970 *Brady v. United States* decision, recognising its value in reducing trial backlogs by offering defendants reduced sentences in exchange for guilty pleas.<sup>5</sup> By 1991, crime in the US reached its peak with over 14 million crimes recorded, including a sharp increase in violent crimes and property offences.<sup>6</sup> This crisis in the criminal justice system made plea bargaining central to the legal process, helping to expedite case resolution and alleviate the strain on courts.

Similarly, in Scotland, the 1990s saw a rise in criminal activity, culminating in a peak in 1991, with 572,921 crimes recorded.<sup>7</sup> This spike was driven by significant increases in non-sexual violent crimes and crimes of dishonesty, which rose to 430,153 cases recorded.<sup>8</sup> The dramatic rise during this period, coupled with an already overwhelmed legal system, led to the introduction of sentence reductions for early guilty

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<sup>2</sup> Mark Haller, 'Plea Bargaining: The Nineteenth Century Context' (1979) 13 Law & Society Review 273.

<sup>3</sup> Louise Shelley, *Crime and Modernization: The Impact of Industrialization and Urbanization on Crime* (Southern Illinois University Press 1981) 16-28, 74-80.

<sup>4</sup> Dan Allosso, *US History II: Gilded Age to Present* (Minnesota Libraries Publishing Project) ch 7 <<https://mlpp.pressbooks.pub/ushistory2/>> accessed 10 November 2025.

<sup>5</sup> *Brady v. United States* 397 US 742 (1970).

<sup>6</sup> US Department of Justice, *Crime in the United States 1994: Uniform Crime Reports* (NCJRS 1995).

<sup>7</sup> Scottish Government, *Recorded Crime in Scotland: 2018-2019* (2019) <<https://www.gov.scot/publications/recorded-crime-scotland-2018-19/pages/13/>> accessed 10 November 2025.

<sup>8</sup> *ibid.*

pleas under Criminal Procedure (Scotland) Act 1995, s 196(1)(a). Defendants who pleaded guilty at an early stage were offered up to a one-third reduction in their sentences, aimed at reducing court congestion and encouraging swift case resolution.

### **C. A PHILOSOPHICAL CRITIQUE**

The adoption of guilty plea sentence discounts, while rooted in pragmatic responses to overloaded legal systems, precipitates significant ethical concerns that merit rigorous scrutiny. Designed to alleviate judicial congestion, these discounts also risk undermining the foundational principles of justice by prioritising efficiency over moral integrity. The shift from a system focused on substantive, impartial adjudication to one centred on procedural expedience raises critical questions about fairness, autonomy, and the very nature of culpability. This section will interrogate how such discounts threaten to commodify justice, reducing moral accountability to mere transactional exchange.

#### **(1) The Law as a Moral Institution**

The ethical implications of guilty plea sentence reductions become starkly evident when examined through Dworkin's concept of law as integrity.<sup>9</sup> Dworkin envisions the law as far more than a procedural framework designed to deliver efficient outcomes; it is a moral enterprise underpinned by a coherent set of principles that reflect and reinforce society's deepest ethical commitments. For the law to retain its legitimacy, it must transcend mechanical expediency and embody a unified and principled vision of justice. Guilty plea discounts, however, disrupt this moral architecture by subordinating the substantive ideals of justice to the demands of administrative efficiency, thereby transforming the law into a transactional system divorced from its moral obligations to uphold accountability and dignity.

At the heart of Dworkin's theory lies the imperative that every legal decision must affirm the autonomy and moral worth of individuals.<sup>10</sup> Guilty plea discounts violate this foundational tenet by commodifying culpability, reducing moral accountability to a procedural currency. Under this practice, culpability becomes negotiable – a commodity to be traded in exchange for a lighter sentence. This transactional model shifts the focus of justice from principled adjudication to systemic expedience, undermining the law's role as a moral arbiter. By incentivising defendants to forfeit their right to a full trial

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<sup>9</sup> Ronald Dworkin, *Law's Empire* (Fontana Press 1986) 188-192.

<sup>10</sup> *ibid* 178-184.

in favour of efficiency, the justice system compromises the autonomy of the defendant, diminishing them from active participants in justice to passive instruments of bureaucratic expediency. The defendant's moral accountability, which ought to be central to the legal process, is eclipsed by pragmatic concerns, rendering justice an administrative mechanism rather than a moral enterprise.

## (2) A Trade-Off Between Leniency and Human Dignity

Despite its superficial pragmatic appeal, the utilitarian argument raises further concerns regarding human dignity. From a Kantian perspective, such efficiency-driven practices risk instrumentalising defendants, rendering them means to an end rather than ends in themselves.<sup>11</sup> Kant's categorical imperative insists on respecting the intrinsic value of individuals, their autonomy and moral agency.<sup>12</sup> However, guilty plea discounts, by prioritising expediency, effectively reduce defendants to procedural instruments – tools solely used to give the impression of alleviating systemic burdens rather than agents deserving of impartial adjudication.

The coercive dynamics inherent in guilty plea discounts starkly illustrate the ethical hazards of prioritising procedural expediency over the autonomy and dignity of defendants. The sharp disparity between sentences following a guilty plea and those imposed after a contested trial operates as a *de facto* penalty for exercising the right to trial, pressuring defendants into pleading guilty. This pressure is acutely felt by the most vulnerable, those with cognitive impairments, socio-economic disadvantages, or inadequate legal representation, who may plead guilty not out of culpability but from fear of harsher consequences. In such instances, the utilitarian pursuit of efficiency irreconcilably clashes with the deontological imperative to uphold defendants' moral agency, reducing criminal proceedings to a mechanistic process of convenience rather than a principled forum for justice.

Moreover, Rawls' difference principle, which permits inequalities only if they benefit the least advantaged members of society, is flagrantly undermined by guilty plea discounts.<sup>13</sup> Far from benefiting the vulnerable, these discounts exacerbate their disadvantage by exploiting their precarious position within the legal system. Defendants with limited means or understanding are forced into decisions that perpetuate systemic inequities, while those with greater resources retain the ability to contest charges without undue fear of disproportionate repercussions. This structural imbalance renders the legal process fundamentally

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<sup>11</sup> Immanuel Kant, *Critique of Judgment* (Hafner Press 1951) 323-324.

<sup>12</sup> Immanuel Kant, *Grounding of the Metaphysics of Morals* (2nd edn, Hackett Publishing Company 1994) 25, 30 and 42.

<sup>13</sup> John Rawls, *A Theory of Justice* (2nd edn, Harvard University Press 1999) 69-74, 81-97.

unfair, contravening Rawls' vision of a justice system that seeks to mitigate, rather than entrench, societal inequalities.

By failing to align with Rawlsian principles, guilty plea discounts expose their ethical deficiencies on both individual and structural levels. They undermine the very idea of justice as fairness by creating a system in which outcomes are determined not by culpability but by an individual's ability to navigate systemic coercion. Such practices erode the moral foundation of justice, transforming it from a mechanism for equity into one that perpetuates inequality and disregard of one's own dignity.

### **(3) The Issue of Performative Remorse**

Beyond utilitarian considerations, guilty plea discounts are frequently defended on ethical grounds as a recognition of remorse.<sup>14</sup> A guilty plea, it is argued, signals an offender's acceptance of responsibility, acknowledgment of wrongdoing, and willingness to atone. Under this rationale, discounts are not mere procedural incentives but rewards for moral contrition. From a virtue ethics perspective, this defence finds its foundation in Aristotle's emphasis on the cultivation of moral character, which underscores the value of actions rooted in genuine repentance and moral growth.<sup>15</sup> Acknowledging guilt is seen as the offender's first step toward self-reflection, accountability, and rehabilitation. By fostering these virtues, guilty plea discounts align sentencing practices with broader goals of restorative justice and the moral development of offenders.

However, when guilty pleas are entered strategically to secure leniency or "buy time," they undermine the very ethical framework that virtue ethics seeks to preserve. Aristotle's conception of virtue demands authenticity; actions must be motivated by genuine moral intent rather than self-serving expedience.<sup>16</sup> Performative remorse, contrived contrition feigned to manipulate the justice system, erodes this foundation, replacing sincerity with calculated deception. This is especially corrosive in the context of criminal justice, as offenders who have already committed a transgression compound their wrongdoing by dishonestly exploiting mechanisms designed to reward accountability. Far from fostering moral growth, such practices entrench dishonesty as an acceptable mode of behaviour, perpetuating a cycle in which the system's leniency mechanisms incentivise further immorality.

This institutionalised deception has far-reaching societal consequences. A justice system that rewards insincerity as a path to leniency signals a troubling abdication of its moral responsibilities. It ceases

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<sup>14</sup> Kate Rossmannith, 'Affect and the Judicial Assessment of Offenders: Feeling and Judging Remorse' (2015) 21 *British Journal of Sociology of Law* 167-168.

<sup>15</sup> Aristotle, *Nicomachean Ethics* (Batoche 1999) 30-36.

<sup>16</sup> *ibid* 25-30.

to serve as a forum for cultivating virtue or reinforcing ethical norms, instead legitimising the very behaviours it ostensibly seeks to deter. This degradation of moral standards undermines public confidence in the justice system, fostering cynicism and mistrust. If offenders can manipulate the system through performative compliance, the law forfeits its role as a moral arbiter and becomes complicit in the erosion of societal ethics. Such practices do not merely distort the relationship between culpability and accountability; they corrode the justice system's capacity to act as a vehicle for moral rehabilitation.

Critics such as Field and Tata have rightly argued that remorse and guilt are conceptually distinct.<sup>17</sup> A system that conflates procedural compliance with genuine contrition risks rewarding the mere appearance of repentance rather than its substantive moral content. This conflation not only distorts sentencing outcomes but also compromises the adversarial process's capacity to rigorously test claims of accountability. In prioritising procedural expedience over the verification of genuine remorse, the system abandons its role as a principled adjudicator of justice and instead reduces itself to a transactional entity. Performative remorse, rather than advancing the goals of justice, subverts them, enabling offenders to exploit legal mechanisms while evading the ethical responsibility that sentencing should demand.

Unregulated guilty plea discounts exacerbate this problem by failing to distinguish between genuine moral accountability and strategic deceit. Without mechanisms to verify sincerity, the justice system risks institutionalising dishonesty, eroding its legitimacy and moral coherence. Aristotle's virtue ethics warns against such degradation, demanding a justice system that fosters genuine moral growth rather than one that rewards calculated manipulation.<sup>18</sup> In the absence of robust safeguards, the continued existence of guilty plea discounts reinforces systemic inequities and perpetuates moral corruption, damaging not only individual offenders but the integrity of justice itself.

#### **D. UTILITARIAN EFFICIENCY: CAN JUSTICE BE SERVED WITHOUT IT?**

The ethical critique of guilty plea discounts highlights a troubling paradox: while these mechanisms claim to promote accountability and justice, their practical application often undermines these ideals, rewarding performative compliance and eroding the integrity of the justice system. However, defenders of guilty plea discounts frequently pivot to a pragmatic defence, asserting that such measures are essential to maintaining systemic efficiency in overburdened justice systems. This raises a critical question: can the pursuit of efficiency ever align with justice's foundational principles, or does it inevitably sacrifice fairness, dignity,

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<sup>17</sup> Stewart Field and Cyrus Tata, *Locating the Ideal Defendant: Punishment, Violence and Legitimacy* (Hart Publishing 2023) 10.

<sup>18</sup> Aristotle (n 15) 68.

and proportionality at the altar of expedience? The next section examines this utilitarian justification, questioning whether systemic efficiency can truly serve the moral purpose of justice or whether it perpetuates the very ethical failings it seeks to mitigate.

### **(1) Alleviating the Emotional Toll on Victims and Witnesses**

Finding support in Bentham's principle of utility, which asserts that the moral worth of an action is predicated on its capacity to promote the greatest net happiness for the greatest number, the ethical justification for guilty plea discounts becomes increasingly persuasive.<sup>19</sup> The utilitarian calculus, when applied, suggests that the emotional relief proffered to victims and their families through a more expedited resolution of cases substantially outweighs ethical reservations regarding incentivising defendants to waive their right to a full trial.

A salient consideration in this analysis is the phenomenon of secondary victimisation, whereby the victims of an initial crime become victims of the justice system itself.<sup>20</sup> The demands of sustained cross-examination, the emotional upheaval of confronting the accused and the inevitable re-traumatisation that accompanies public testimonies can contribute to a deterioration in mental health that far exceeds the psychological distress caused by the original offence. By extending the trauma of the offence through prolonged judicial proceedings, the system inadvertently subjects victims to an additional layer of suffering, often far more corrosive than the harm they initially experienced. It is within this framework that the expedient resolution offered by guilty plea sentence discounts becomes not merely a procedural convenience, but a moral imperative, mitigating further harm to victims.

### **(2) A Cost-Effective Resolution?**

In the context of an increasingly strained and underfunded judicial system, the utilitarian justification for guilty plea discounts extends beyond a pragmatic concession to resource scarcity and functions as a necessary mechanism for preserving the integrity and functionality of justice itself. In 2022, the UK allocated only £181 per capita for the justice system, a figure markedly disproportionate when compared to

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<sup>19</sup> Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Batoche 2000) 14-18.

<sup>20</sup> Carolina Gutiérrez, Elisa Colonel and Carlos Andrés Pérez, 'Theoretical Review of the Concept of Secondary Victimisation' (2009) SFP 49, 52-58.

the funding devoted to defence (£820 per capita) and transport (£640 per capita).<sup>21</sup> This imbalance underscores the systemic fiscal inadequacies that strain the judicial infrastructure, creating a pressing need for strategic allocation of resources to maintain the overall functionality of the legal system. In this context, guilty plea discounts should be seen not merely as procedural shortcuts, but as a necessary response to the systemic exigencies confronting an overstretched justice system.

The instrumentalisation of justice, often associated with the promotion of efficiency, need not be framed as an ethical compromise but as a defensible mechanism for the preservation of the system's core functions. The utilitarian rationale does not suggest that justice is synonymous with expediency but instead posits that expediency serves as a necessary precondition for ensuring that the system's substantive aims are achieved within the constraints of available resources. By expediting less contentious cases, guilty plea discounts enable the allocation of judicial attention to more complex and contested matters, where the pursuit of substantive justice requires thorough and impartial adjudication. Thus, rather than eroding the ethical foundation of justice, guilty plea discounts, when implemented thoughtfully, serve as a mechanism for ensuring that the legal system can fulfil its moral obligations without succumbing to systemic collapse. In this sense, the moral compromise attributed to efficiency is not inherent to the practice itself but lies in the broader context of the judicial system's ability to manage its ever-increasing caseload amidst fiscal limitations.

### **(3) Concluding Thoughts**

In conclusion, the utilitarian justification for guilty plea discounts, often criticised for undermining the moral integrity of justice, warrants a more nuanced examination within the context of a beleaguered and resource-deprived judicial system. These discounts cannot merely be dismissed as procedural expediences that erode fairness; rather, they must be understood as a crucial, albeit imperfect, adaptation to the exigencies of a system that, in the face of fiscal and systemic collapse, must prioritise the preservation of its core functions. When viewed through the lens of necessity, guilty plea reductions transcend their apparent instrumentalisation, emerging as a strategic means of balancing the pursuit of substantive justice with the pragmatic constraints imposed by limited resources. This recalibration of justice, although not without ethical trade-offs, positions expediency as a partially morally defensible tool for mitigating secondary victimisation and alleviating the undue psychological burden that protracted legal proceedings impose on

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<sup>21</sup> Bianca Castro, 'Justice System Underfunded by £3.5 billion, Bar Report Reveals' (2024) *Law Gazette* <<https://www.lawgazette.co.uk/news/justice-system-underfunded-by-35-billion-bar-report-reveals/5120744.article#:~:text=In%202022%2F23%2C%20funding%20for,overseas%20aid%2C%20the%20report%20said>> accessed 10 November 2025.

victims. By facilitating swifter resolutions, these discounts not only preserve the viability of the judicial process but also safeguard the system's capacity to adjudicate more complex cases with the thoroughness and impartiality they demand. In this respect, rather than undermining the ethical foundations of justice, guilty plea discounts represent a critical recalibration of justice's aims, ensuring that the system remains responsive to its moral obligations and capable of fulfilling its role in an increasingly resource-constrained environment. Far from signifying a departure from justice, this practice reflects a necessary evolution, a moral compromise embedded in the very act of preserving justice in a world where the cost of idealistic adjudication is increasingly untenable.

### **E. A COMPARATIVE JURISDICTIONAL EXAMINATION OF GUILTY PLEA DISCOUNTS**

A comparative analysis of guilty plea discounts across jurisdictions reveals how legal frameworks and systemic pressures shape their ethical implications. By examining Scotland and the United States, two systems that diverge sharply in their approach to procedural justice, the ethical vulnerabilities of guilty plea discounts are exposed. This analysis demonstrates that their defensibility hinges not only on their stated objectives but on the institutional safeguards – or lack thereof – that mediate their application. Scotland offers a model of measured proportionality, where guilty plea discounts remain a functional but restrained tool. In contrast, the United States exemplifies a justice system where guilty plea discounts have become instruments of systemic coercion, amplifying pre-existing inequities and eroding the moral fabric of justice.

## (1) Scotland: Proportionality as Ethical Restraint

Sheriff summary courts	Guilty plea at first calling		Guilty plea at intermediate diet		Guilty plea at trial diet		Total number of Guilty plea	
	Number of guilty pleas	Percentage of guilty pleas	Number of guilty pleas	Percentage of guilty pleas	Number of guilty pleas	Percentage of guilty pleas	Number of guilty pleas	Percentage of guilty pleas
Financial year								
FY2014/15	20,430	28%	10,137	11%	12,514	24%	43,081	20%
FY2015/16	19,540	27%	9,806	10%	14,613	25%	43,959	20%
FY2016/17	19,490	27%	9,427	11%	15,155	27%	44,072	21%
FY2017/18	16,956	26%	8,837	11%	15,043	27%	40,836	20%
FY2018/19	16,045	27%	8,246	11%	13,652	28%	37,943	21%
FY2019/20	16,748	25%	8,349	11%	13,091	29%	38,188	20%
FY2020/21	11,162	21%	4,556	7%	5,010	19%	20,728	14%
FY2021/22	11,917	21%	6,863	7%	12,756	22%	31,536	15%
FY2022/23	11,441	22%	6,078	7%	15,974	25%	33,493	16%

**Figure 1:** Number of guilty pleas at different diet stages of the accused in Sheriff summary courts by financial year.<sup>22</sup>

Scotland's approach to guilty plea discounts reflects a deliberate effort to balance efficiency with fairness, underpinned by structural safeguards that limit coercive pressures. Data from Sheriff Summary Courts illustrates a system where guilty pleas are incentivised but not over-relied upon. Early pleas at the first calling range from 21% to 28% between 2014 and 2022, while guilty pleas at the trial diet remain similarly consistent at 24% to 29% over the same period. Crucially, the total proportion of guilty pleas in Scotland has never exceeded 22%, indicating a restrained and proportionate reliance on this mechanism.<sup>23</sup>

One of the most critical features of the Scottish system is its rejection of financial bail, which decisively eliminates a major source of coercion present in other jurisdictions. In Scotland, pretrial liberty is not purchased but guaranteed through personal undertakings, reflecting a legal culture that prioritises procedural fairness over monetary leverage. By decoupling pretrial release from financial capacity, Scotland removes the financial duress that often forces economically vulnerable defendants in other systems to plead guilty prematurely. This structural safeguard ensures that decisions to plead guilty are made on the basis of culpability rather than socio-economic desperation.

Furthermore, the consistent application of guilty plea discounts across procedural stages signals a commitment to proportionality. Defendants who plead guilty at later stages, such as the trial diet, are not disproportionately penalised compared to those who plead earlier, reflecting a legal framework that avoids weaponising guilty plea discounts as punitive tools. This measured approach preserves defendants' autonomy while maintaining the justice system's integrity as a principled arbiter of culpability. While no

<sup>22</sup> Criminal Justice Board, *Management Information System* (Safer Communities Directorate, 24 May 2023) <<https://www.gov.scot/publications/foi-202300352445/>> accessed 10 November 2025.

<sup>23</sup> *ibid.*

system is immune to critique, Scotland’s restrained application of guilty plea discounts, combined with the absence of financial bail, mitigates many of the ethical risks associated with their use.

## (2) The United States: Efficiency at the Expense of Justice

The United States provides a stark counterpoint, illustrating how guilty plea discounts, when intertwined with structural inequities, can erode the moral legitimacy of justice. In a system where nearly 98% of federal convictions and 95% of state convictions arise from guilty pleas,<sup>24</sup> the reliance on plea bargaining is so pervasive that the US Supreme Court, in *Missouri v. Frye*, has described it as “a system of pleas, not a system of trials.”<sup>25</sup> This systemic reliance on plea bargains reflects a justice model that prioritises expediency, but at a profound ethical cost.

At the heart of this ethical failing lies the United States’ financial bail regime, which exacerbates the coercive dynamics of guilty plea discounts. Bail amounts in the United States are routinely set at exorbitant levels, disproportionately impacting economically disadvantaged defendants. Those unable to pay are forced to endure prolonged pretrial detention, creating an intolerable pressure to plead guilty – even when the defendant is innocent. The case of Myles Martin illustrates this grim reality: unable to pay \$115,000 in bail, Martin languished in jail for thirty months before his release.<sup>26</sup> For such defendants, pleading guilty becomes less a decision based on accountability and more a survival strategy, a means of escaping the punitive weight of pretrial incarceration.<sup>27</sup>

The entanglement of financial coercion and guilty plea discounts in the United States reduces justice to a transactional process. Defendants are faced with an impossible choice: plead guilty to secure immediate release or contest charges at the risk of prolonged detention and economic ruin. This dynamic perpetuates systemic inequities, where wealthier defendants are insulated from coercion while economically

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<sup>24</sup> Lucian Dervan, ‘Fourteen Principles and a Path Forward for Plea Bargaining Reform’ (American Bar Association 2024) <[<sup>25</sup> \*Missouri v. Frye\* 566 US 134 \(2012\) para 8.](https://www.americanbar.org/groups/criminal_justice/resources/magazine/2024-winter/fourteen-principles-path-forward-plea-bargaining-reform/#:~:text=Plea%20bargaining%20accounts%20for%20almost,of%20trials.%E2%80%9D%20Missouri%20v.> accessed 10 November 2025.</a></p></div><div data-bbox=)

<sup>26</sup> Nazish Dholakia, ‘How the Criminal Legal System Coerces People into Pleading Guilty’ (Vera Institute of Justice, 2024) <<https://www.vera.org/news/how-the-criminal-legal-system-coerces-people-into-pleading-guilty> -: ~:text=In 2022, nearly 90 percent, go to trial at all.> accessed 10 November 2025.

<sup>27</sup> *ibid.* The case of Myles Martin exemplifies the coercive dynamics of pretrial detention and plea bargaining within the US criminal justice system. Held in Hays County, Texas, from October 2019 to March 2022, Martin spent over two years in jail without trial due to his inability to pay an exorbitant bail and the chronic inaccessibility of his court-appointed attorney. Despite maintaining his innocence, Martin was repeatedly pressured to accept plea deals, including by jail staff and his own lawyer, who failed to investigate the case or file motions on his behalf. The prolonged detention, combined with inadequate legal representation and institutional pressure to plead guilty, created a system in which asserting one’s innocence became not only untenable but penalised, illustrating how structural deficiencies in bail and public defence can erode the right to a fair trial and render guilty pleas a mechanism of coercion rather than accountability.

disadvantaged individuals bear the brunt of these pressures. The result is a justice system that prioritises administrative efficiency and fiscal pragmatism over fairness, autonomy, and proportionality. By institutionalising coercion, the US forfeits the moral legitimacy of its plea practices, transforming justice into a commodified enterprise that privileges expedience over equity.

### **(3) Money vs. Moral Undertakings: The Ethical Divide**

The comparative lens reveals two contrasting trajectories: one in which guilty plea discounts are mediated by safeguards that uphold fairness, and another in which they amplify structural inequities. Scotland's rejection of financial bail demonstrates that guilty plea discounts need not function as coercive tools. By removing financial barriers, Scotland ensures that defendants' decisions to plead guilty are less likely to be driven by socio-economic desperation, preserving the justice system's commitment to fairness and dignity.

In the US, however, the confluence of financial bail and guilty plea discounts compounds the structural inequities of the system. By intertwining monetary coercion with procedural incentives, the US effectively transforms justice into a system of economic gatekeeping. This commodification not only erodes public confidence in the justice system but also perpetuates cycles of inequality, where the vulnerable are disproportionately pressured into surrendering their rights.

## **F. PROPOSED REFORMATION**

The pervasive ethical challenges surrounding guilty plea discounts necessitate transformative reforms that preserve justice's foundational principles while addressing systemic inequities and coercive pressures. True reform must transcend mere procedural adjustments to reimagine guilty plea discounts as instruments of moral accountability and fairness, ensuring that justice is not compromised for expediency. This section proposes three analytically robust and ethically sound reforms: the adoption of a relational justice model, the abolition of financial bail systems, and victim-centred practices to mitigate the emotional toll of trials. Each reform addresses specific ethical failings and aligns guilty plea discounts with the overarching goals of justice and fairness.

## **(1) A Relational Model of Guilty Plea Discounts**

The first reform redefines guilty plea discounts within a relational justice framework, shifting the focus from procedural timing to moral accountability and substantive rehabilitation. Under this model, reductions in sentencing would no longer be contingent solely on when a guilty plea is entered but would instead require verifiable acts of accountability and restorative engagement. These may include participation in restorative justice programs, engagement in meaningful dialogue with victims, or tangible efforts to make restitution.

This approach addresses the fundamental ethical flaw of existing guilty plea discount systems: the reduction of justice to a transactional process. By linking discounts to demonstrable moral growth, the relational model ensures that defendants engage authentically with the consequences of their actions. It also mitigates the problem of performative remorse by requiring substantive evidence of rehabilitation rather than incentivising strategic compliance. From a virtue ethics perspective, this reform aligns with Aristotle's emphasis on the cultivation of moral character, fostering genuine accountability over superficial admissions of guilt.

## **(2) Abolition of Financial Bail Systems**

The second reform directly targets one of the most coercive and ethically indefensible aspects of guilty plea discount regimes: the financial bail system. Nowhere is this issue more pronounced than in the United States, where exorbitant bail amounts drive economically disadvantaged defendants into invidious situations, pressuring them to plead guilty to avoid prolonged pretrial detention, even if it means accepting a shorter jail sentence that compounds their financial and personal hardship. The abolition of financial bail would remove this systemic pressure, ensuring that pretrial liberty is not contingent on wealth but rather on criteria such as risk assessments or personal undertakings, as exemplified by Scotland's model.

The ethical argument for abolishing financial bail is both compelling and urgent. In its current form, financial bail institutionalises inequality, disproportionately penalising the most vulnerable while shielding the wealthy from equivalent pressures. This dynamic not only undermines the autonomy of marginalised defendants but also distorts the justice process by making plea decisions contingent on economic considerations rather than culpability. The abolition of financial bail would eliminate this "pay-or-plead" dilemma, restoring fairness by ensuring that all defendants, regardless of socio-economic status, have equal access to a fair trial.

### **(3) Victim-Centred Practices to Mitigate Emotional Toll**

The third reform recognises the often-overlooked emotional toll that trials impose on victims and witnesses – a factor frequently invoked to justify the existence of guilty plea discounts. Rather than relying on plea discounts to spare victims from testifying, justice systems should adopt victim-centred practices that alleviate emotional distress without compromising defendants’ rights or the adversarial process.

One such practice is the expanded use of pre-recorded testimony, allowing victims to provide their accounts in controlled environments without enduring the adversarial dynamics of the courtroom. Remote participation for victims could also be offered, reducing the psychological burden of face-to-face confrontation while preserving the integrity of the trial process. These innovations would address the systemic inefficiencies often attributed to trial proceedings while safeguarding the dignity and well-being of victims.

## **G. CONCLUDING REFLECTIONS**

Guilty plea sentence discounts epitomise the fraught tension between the ideals of justice and the pragmatics of expedience, revealing a justice system perilously close to abandoning its moral essence. What purports to be a mechanism of procedural efficiency and victim relief is, in fact, a practice that trades justice’s foundational principles: fairness, proportionality, and dignity – for administrative convenience. These discounts are not merely a procedural innovation; they are a philosophical rupture, transforming culpability into a commodity and the courtroom into a marketplace where moral accountability is bartered for leniency. In doing so, they erode the moral legitimacy of justice itself, reducing it to an exercise in bureaucratic calculation rather than an institution dedicated to equity and truth.

At their most pernicious, guilty plea discounts subvert the autonomy and dignity of defendants, particularly the vulnerable, coercing them into entering guilty pleas under the guise of pragmatism. Kantian ethics exposes this moral transgression, decrying the instrumentalisation of individuals whose worth is subordinated to systemic expedience. Simultaneously, Rawlsian justice condemns the structural inequities these mechanisms perpetuate, coercing those least equipped to navigate the system into surrendering their fundamental rights. The comparative lens reveals these failings with stark clarity: Scotland demonstrates how guilty plea discounts, when tempered by proportionality and the abolition of financial bail, can coexist with fairness. The US, by contrast, exemplifies a justice system degraded by its reliance on plea bargaining,

where wealth dictates liberty and guilt is manufactured through coercion, rendering justice stratified and ethically bankrupt.

Reform, then, is not merely desirable but morally imperative. The relational model proposed herein reimagines guilty plea discounts as instruments of moral restoration, tethering reductions to substantive acts of remorse, restitution, and rehabilitation. The abolition of financial bail is equally vital, severing the toxic link between wealth and pre-trial liberty, and ensuring that defendants' decisions are shaped by culpability, not socio-economic desperation. Victim-centred innovations provide an additional avenue, addressing the emotional toll of trials without compromising the moral integrity of the justice process. These reforms collectively offer a blueprint for restoring guilty plea discounts to their rightful place as mechanisms that serve justice rather than subvert it.

What this inquiry ultimately reveals is not merely a procedural dilemma but a profound existential crisis for justice systems worldwide. Guilty plea discounts, in their current form, signal a justice system that has lost its way, privileging resolution over rectitude, efficiency over ethics. Yet within this crisis lies an opportunity to redefine these mechanisms as tools of principled justice, capable of balancing systemic efficiency with the imperatives of fairness and accountability. The stakes could not be higher. The future of guilty plea discounts will not merely determine the fate of sentencing practices; it will decide whether justice retains its status as a moral ideal or devolves into a hollow administrative exercise, unworthy of the very name it bears.