

# Retribution, Rehabilitation, or Restitution for a Just Criminal Justice System

WHO 2020 2022 POLICY RESOLUTION #1

NSDA 2020

The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction.

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Greg Rehmke

grehmke@gmail.com • www.EconomicThinking.org

## Expanding justice throughout America's justice system

Stand Together

<https://standtogether.org/issues/expanding-justice-throughout-americas-justice-system/>



Why Prison Reform Matters in America

<https://www.charleskochinstitute.org/issue-areas/criminal-justice-policing-reform/why-prison-reform-matters/>

### Restorative Justice



FEDERAL COURT SYSTEM REFORM

JULY 1, 2015

Restorative Justice for Federal Court Reform



FEDERAL COURT SYSTEM REFORM

AUGUST 31, 2015

Focus on Victim Justice: A "Sea Change" for the Federal Court System

FEDERAL COURT SYSTEM REFORM

AUGUST 17, 2015

Notes for the Negative on Criminal Justice Reform



FEDERAL COURT SYSTEM REFORM

OCTOBER 31, 2015

Debate over Criminal Justice Delusions

[economicthinking.org/?s=prison](http://economicthinking.org/?s=prison)

NCFCIA Notes: Prison Jobs, Vouchers, & Justice  
BY GREGORY REHMKER APRIL 21, 2012



<https://youtu.be/mY83plbLsQc>

ARTICLE

PRISON VOUCHERS

ALEXANDER VOLOKH<sup>1</sup>

*School vouchers have been proposed as a way to bypass the political pathologies of school reform and improve school quality by transforming students and parents into consumers. What if we did the same for prisons—what if convicted criminals could choose their prison rather than being assigned bureaucratically? Under a voucher system, prisons would compete for prisoners, meaning that the prisons will adopt policies prisoners value. Prisons would become more constitutionally flexible—faith-based prisons, now of dubious legality, would be fully constitutional, and prisons would also have increased freedom to offer valued benefits in exchange for the waiver of constitutional rights. As far as prison quality goes, the advantages of vouchers would plausibly include greater security, higher-quality health care, and better educational opportunities—features that prison reformers favor for their rehabilitative value.*

## RESOLVED: That a comprehensive program of penal reform should be adopted throughout the United States.

Criminal justice reform has been a topic in several other debate leagues over the past few years with what appears to be quite positive results. The resolution committee wanted this topic to be in the mix but did not feel shackled to the other leagues' wordings. There are a few key issues that will help you unlock this unique topic. Please take notice of several points of resolutional analysis. First, there is no specified actor. This appears to open the door for unlimited possibilities, however, also notice that the program needs to be adopted throughout the United States. Secondly, this needs to be a comprehensive program which indicates something substantial. Affirmatives should not feel confined to reforming current laws but can have the freedom to develop a new program or bring back an old one. In any case, this should be an arresting topic to debate.



Why Prison Reform Matters in America

<https://www.charleskochinstitute.org/issue-areas/criminal-justice-policing-reform/why-prison-reform-matters/>

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2022 POLICY RESOLUTION #1

**Some arguments against retribution**

1. Criminal Justice System not reliable or just. Crime labs, few jury trials (just 3%).
2. Way too slow, so little deterrence.
3. Overcriminalization: far too many voluntary actions now crimes. *Feathers, short lobsters, orchids...*
4. Retribution/punishment terrible due to corrupt, mismanaged prisons.
5. Retribution is expensive for victims and taxpayers (union influence).
6. Rehabilitation or Restitution more just.

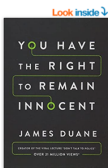
The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction.

Jury Trials: A Radical Reform for the Federal Court System?

What if... what if... students ran an a radical alternative case involving that when charged with a crime, the accused ought to have a right to a trial by a jury of peers? What? Impractical? Feasible?

Okay, maybe that's too much sarcasm... But it used to be that state and federal criminal court systems did require juries in criminal cases. There are very good legal, political, and historical arguments to require jury trials again in the federal court system. One website explores, in a post titled "How These Arguments Are Making Jury Trials Obsolete?"

In today's criminal justice



**Why Innocent People Plead Guilty**  
Jed S. Rakoff  
NOVEMBER 2014

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2022 POLICY RESOLUTION #1

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"Filling Up Prisons Without Fighting Crime: Mark Kleiman on America's Criminal Justice System." (2010)

UCLA Professor of Public Affairs Mark Kleiman is "angry about having too much crime and an intolerable number of people behind bars."

U.S. has to 5% of the world population. Yet 25 % of the world's prisoners. High incarceration rate isn't making us safer.

**FOR THE NEGATIVE**

*Retribution isn't the core problem.*

What is?

- Too many laws and regulations.
- Overcriminalization. Torts vs. crimes
- Mismanaged courts/prisons: "what every parent knows..."




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zero Percent [HOME](#) / [THE CLASHBROSERS](#) / [HOW TO GET INVOLVED](#) / [DONATE](#)



[www.zeropercentfilm.com/](http://www.zeropercentfilm.com/)

ZERO PERCENT is the story of the men of Hudson Link, an organization created by the inmates themselves that provides a full college degree through local universities. The results are so stunning, they have to be seen to be believed.

As famed author Victor Hugo once said, "He who opens a school door, closes a prison."

Become part of the solution. A portion of all sales from ZERO PERCENT go to Hudson Link to help them continue to educate more and more men in Sing Sing and beyond. Right now, Hudson Link is only in 5 out of 54 facilities in the state of New York.

For more information about Hudson Link, visit their website at [www.hudsonlink.org](http://www.hudsonlink.org).

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2022 POLICY RESOLUTION #1

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**Justice for victims and for criminals**

*Let the punishment fit the crime*

Two men met at the river where each had come to fish. Each had a grievance with the other, a feud that had been simmering

for weeks. Perhaps that is why, when their lines tangled, and words were exchanged. Words changed to blows. And then one stooped down, picked up a rock and clubbed the other one on the head.

The injured man did not die, but he required extensive medical care and a long recuperation. Eventually he was able to move around, supported by a cane.



<http://restorativejustice.org/>

The Centre for Justice & Reconciliation is a program of Prison Fellowship International. Its mission is to develop and promote restorative justice in criminal justice systems around the world.

Prison Fellowship International was founded in 1979 by Charles Colson to serve prisoners, ex-prisoners, and their families outside the United States. It is active in over 125 countries, working through chartered affiliates that employ hundreds of staff and engage with tens of thousands of volunteers.

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## Restorative Justice for Federal Court Reform

...[S]tronger reliance on restorative justice principles would involve enabling convicted criminals opportunities to develop job skills and earn income to better “pay for their crimes.” that is, to compensate victims and families for the damages they inflicted. Offenders can work to earn their way back into society and doing their best to provide restoration to victims of the crime they were convicted of committing.

<https://economicthinking.org/restorative-justice-for-federal-court/>

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## The Federal Court System

### • Federal Courts: Criminal Justice cases

#### Overcriminalization

Way too many imprisoned.  
Unjust and expensive.



[rightoncrime.com](http://rightoncrime.com)

- Reduce/reform pre-trial detention.
- Jury trials rather than plea-bargaining.
- End mandatory minimum sentences.
- Reform prisons.
- Too many economic and regulatory crimes.

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## Justice and Jury Trials

The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction.

### Amendment VI

In all criminal prosecutions, **the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed...**

- However, less than 5% of today's accused have reasonable opportunities for jury trials.
- Instead, prosecutors offer “plea bargains” where accused agrees to plead guilty to “lesser crime.”
- In some cases, saves time and money, but gives prosecutors power to pressure guilty pleas.

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SATURDAY, JUNE 27, 2015

### Jury Trials: A Radical Reform for the Federal Court System?

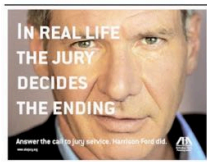
What if... what if... students ran a radical affirmative case insisting that when charged with a crime, the accused ought to have a right to a trial by a jury of peers? Wild? Impractical? Radical?

Okay, maybe that's too much sarcasm... But it used to be that state and federal criminal court systems did require juries in criminal cases. There are very good legal, political, and historical arguments to require jury trials again in the federal court system. One website explains, in a post titled “How Plea Bargains Are Making Jury Trials Obsolete”:

In today's criminal justice system, convictions come by agreement. The tradition of being tried by one's peers, established centuries ago and affirmed by the Sixth Amendment to the U.S. Constitution has all but disappeared.

The plea bargain has made jury trials obsolete.

Ninety-seven percent of federal criminal prosecutions are resolved by plea... may also be a sign of a system in need of repair.



### Why Innocent People Plead Guilty

Jed S. Rakoff

NOVEMBER 25, 2014 ISSUE

The criminal justice system in the United States today bears little relationship to what the Founding Fathers contemplated, what the movies and television portray, or what the average American believes.



<https://economicthinking.org/jury-trials-radical-reform-for-federal/>

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**The U.S. Federal Court System settles 97% of cases with plea bargains rather than jury trials.**

*Government should not retaliate against individuals who exercise their right to trial by jury.*

# The Case Against Plea Bargaining

By **Timothy Lysen**  
Cato Journalist

**P**LEA BARGAINING HAS COME TO DOMINATE the administration of justice in America. According to one legal scholar, "Every two seconds during a typical workday, a criminal case is disposed of in an American courtroom by way of a guilty plea or nolo contendere plea." Even though plea bargaining pervades the justice system, I argue that the practice should be abolished because it is unconstitutional.

Impartial justice, one would think that the administration of criminal justice in America would be marked by adversarial trials — and yet, the opposite is true. Fewer than 10 percent of the criminal cases brought by the federal government each year are actually trial before juries with all of the accompanying procedural safeguards noted above. More than 90 percent of the criminal cases in America are never tried, much less proven, so justice. The overwhelming majority of individuals who are accused of crime forgo their constitutional rights and plead guilty. The rarity of jury trials is not the result of criminals who

THE RISE AND FALL OF ADVERSARIAL TRIALS



**economic thinking**  
Understanding and Creating Prosperity

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Florida, they said they were hunting for guns and drugs but ended up arresting 34 people for "barbering without a licence." ("Cops or Soldiers,"

**Volume 19 Number 2  
Fall 2014**

FEDERAL COURT SYSTEM REFORM  
AUGUST 11, 2015

Focus on Victim Justice: A "Sea Change" for the Federal Court System

Many reforms proposed for the federal court system have goals of reducing pretrial detention, plea-bargaining abuses, lowering the prison population, and reducing the high rate in which released prisoners are again arrested.



FEDERAL COURT SYSTEM REFORM  
JULY 1, 2015

Restorative Justice for Federal Court Reform

There are a number of big ideas to bring

<https://economicthinking.org/?s=criminal+justice>

## Economics of the Federal Court System

SUNDAY, JUNE 28, 2015

Reducing Pretrial Detention: A Conservative Case for Court Reform

Marc Levin, director of the Center for Effective Justice at the Texas Public Policy Foundation, makes a conservative case for reform on Townhall (June 25 and 26, 2015). He begins with the case for reducing prison before trial ("pretrial detention").

In early June, 22-year-old **Katie Browder** took his own life after spending three years, including 18 months in solitary confinement, on Rikers Island. New York City's troubled jail. Upon reading the story, one might be forgiven for thinking that Browder was serving time on account of being convicted of a crime. In fact, though, he served these three years as a pretrial detainee and the charge against him of stealing a backpack was ultimately dropped. While Browder had a prior offense, he would have secured release had he or his family been able to afford a \$3,000 bond.

**The Conservative Case for Pretrial Justice Reform and Seven Solutions for Right-Sizing the System**  
Mark Levin, June 28, 2015

**Way too many people in prison: unjust criminal justice system.**

## Economics of the Federal Court System

MONDAY, JULY 27, 2015

In Federal Courts "property is at the mercy of pillagers"

Should the federal court system defer to state and federal legislatures in the realm of economic legislation and regulations? After all, why not let democratically-elected legislatures propose, debate, and pass or not pass legislation regulating worker, food, building, and product safety standards?

Legislatures can research proposed safety regulations just as debaters research their affirmative cases. Other legislators, like negative teams in debate, can research and present arguments against badly-drafted or unjust legislation. And if laws passed turn out to be misguided, legislatures can later reform or abolish them.

**Overregulation, overuse of eminent domain, over-criminalization**

## The Federal Court System

**Federal Courts: Criminal Justice cases**

The Heritage Foundation  
Heritage Action More

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LEGAL ISSUES  
**Overcriminalization**

See the Map of Americans' Liberties Threatened

Factsheet on Overcriminalization

The Government vs. YOU

What Criminal Law Reforms Has Congress Proposed?

See the Map of Americans' Liberties Threatened  
Heritage has documented dozens of overcriminalization stories, now compiled in one easy-to-use map. Read More.



INSTITUTE for JUSTICE

CASES OFFICE

"The Institute for Justice and the rights of justice"

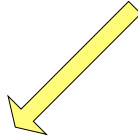




<http://www.constitution.org/fed/federa62.htm>

The Federalist No. 62

The Senate  
Independent Journal  
Wednesday, February 27, 1788  
[James Madison]



The internal effects of a mutable policy are still more calamitous. It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?

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• Justice in: retribution? crime reduction? rehabilitation? or **restitution?**

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