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# CRIMINOLOGY

## THE RELATIONSHIP BETWEEN PUBLIC PERCEPTIONS OF CRIME SERIOUSNESS AND SUPPORT FOR PLEA-BARGAINING PRACTICES IN ISRAEL: A FACTORIAL-SURVEY APPROACH

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The settlement of criminal cases through bargained guilty pleas has been the focus of increasing research interest over the past few decades. Generally, a plea bargain is reached through an informal process of negotiation in which the prosecutor and the defense counsel reach an out-of-court settlement. In such a settlement, the defendant admits guilt in return for some concession on the part of the prosecution (e.g., reducing the number and/or seriousness of the original criminal charges, or recommending a more lenient punishment than would otherwise be expected). From the prosecutor's viewpoint, plea bargaining results in speedy and certain conviction, especially when the evidence against the defendant is somewhat weak, thereby avoiding the possibility of acquittal in court, not to mention cost of the trial in terms of time and resources. From the judge's point of view, plea bargaining reduces the workload of the court. Research suggests that benefits such as these have led to increasing resort to plea bargaining. Indeed, in some jurisdictions, a vast majority of criminal defendants plead guilty after negotiation between the parties as a matter of course.<sup>1</sup>

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<sup>1</sup> See G. NICHOLAS HERMAN, *PLEA BARGAINING* (1997); CANDACE MCCOY, *POLITICS AND PLEA BARGAINING: VICTIM'S RIGHTS IN CALIFORNIA* (1993); HEDIEH NASHERI, *BETRAYAL OF DUE PROCESS: A COMPARATIVE ASSESSMENT OF PLEA BARGAINING IN THE UNITED STATES AND CANADA* (1998).

However, despite its high frequency, plea bargaining remains one of the most controversial procedures in the criminal justice system; some commentators perceive it as an inevitable and even desirable practice,<sup>2</sup> whereas others consider it to be pernicious and immoral.<sup>3</sup> Such negative views of plea bargaining have led to attempts to eliminate it completely, or to forbid its use for selected offenses.<sup>4</sup>

In the context of this controversy, it is commonly argued that the public is generally located in the anti-plea bargaining camp, viewing it often with suspicion and great distaste.<sup>5</sup> This claim is based on the premise that members of the public abhor injustice and that, in their opinion, plea bargaining prevents justice from being served. Because a negotiated plea to a lesser offense or to a lesser punishment invariably leads to a lesser sentence, plea bargaining allows offenders to receive lesser punishments than they would have received had the prosecution proved the more serious offense at trial. Accordingly, the lay public is expected to voice disapproval when the judicial system lets an offender escape from a relatively serious punishment simply because an agreement between his/her defense counsel and the prosecutor has been reached.<sup>6</sup> Because the public tends to concur with conservative "law and order" advocates who favor tough policies for criminals,<sup>7</sup> it is often assumed that the public will condemn the practice of plea bargaining for being soft on offenders by virtue of the relatively lenient

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<sup>2</sup> E.g., MCCOY, *supra* note 1; Debra S. Emmelman, *Trial by Plea Bargain: Case Settlement as a Product of Recursive Decision-Making*, 30 LAW & SOC'Y REV. 335 (1996).

<sup>3</sup> E.g., ANDREW ASHWORTH, *THE CRIMINAL PROCESS: AN EVALUATIVE STUDY* (1998); Michael Gorr, *The Morality of Plea Bargaining*, 26 SOC. THEORY & PRAC. 129 (2000); Gary D. LaFree, *Adversarial and Nonadversarial Justice: A Comparison of Guilty Pleas and Trials*, 23 CRIMINOLOGY 289 (1985); George B. Palermo et al., *Plea Bargaining: Injustice for All?*, 42 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 111 (1998).

<sup>4</sup> E.g., MCCOY, *supra* note 1; MICHAEL L. RUBINSTEIN ET AL., U.S. DEP'T OF JUSTICE, ALASKA BANS PLEA BARGAINING (1980); Howard C. Daudistel, *On the Elimination of Plea-Bargaining: The El Paso Experiment*, in PLEA BARGAINING 57 (William F. McDonald & James A. Cramer eds., 1980); Milton Heumann & Colin Loftin, *Mandatory Sentencing and the Abolition of Plea Bargaining: The Michigan Felony Firearm Statute*, 13 LAW & SOC'Y REV. 393 (1979); Otwin Marenin, *The State of Plea Bargaining in Alaska*, 18 J. CRIME & JUST. 167 (1995).

<sup>5</sup> E.g., MCCOY, *supra* note 1; Stanley A. Cohen & Anthony N. Doob, *Public Attitudes to Plea Bargaining*, 32 CRIM. L. Q. 85 (1989).

<sup>6</sup> Patricia A. Payne, *Plea Bargaining: A Necessary Evil?*, in CRITICAL ISSUES IN CRIME AND JUSTICE (Albert R. Roberts ed., 1st ed. 1994).

<sup>7</sup> E.g., Alfred Blumstein & Jacqueline Cohen, *Sentencing of Convicted Offenders: An Analysis of the Public's Views*, 14 LAW & SOC'Y REV. 223 (1980); Francis T. Cullen et al., *Public Opinion About Punishment and Correction*, in 27 CRIME AND JUSTICE 1 (Michael Tonry ed., 2000); Richard C. McCorkle, *Punish and Rehabilitate? Public Attitudes Toward Six Common Crimes*, 39 CRIME & DELINQ. 240 (1993); Julian V. Roberts, *Public Opinion, Crime, and Criminal Justice*, in 16 CRIME AND JUSTICE 99 (Michael Tonry ed., 1992).

sentences handed down on offenders who admit guilt as a result of plea bargaining.<sup>8</sup>

### THE PRESENT STUDY

The main premise of the present study is that, although the assertion that the public does not like plea bargaining seems logical, the assumption of general and uniform disapproval of this practice may not be valid and, therefore, needs to be tested. First, with the exception of a study by Cohen and Doob,<sup>9</sup> there has been no direct empirical investigation of such public perceptions. Second, homogeneous public views are often assumed to exist not only with regard to plea bargaining but also with regard to other crime topics (for example, criminal sanctions). However, research findings reveal that when appropriately analyzed, public attitudes are far from being homogeneous.<sup>10</sup> Third, it is difficult to pinpoint exactly how the public perceives plea bargaining due to the existence of considerable variation on many of its central characteristics. Plea bargaining practices may vary with respect to procedural features, the parties directly involved, their specific role in the negotiations, the kinds of concession offered, the stage in the criminal process in which the negotiation may be conducted, and the type of offenses to which it is applied.<sup>11</sup> The first hypothesis of this study deals with plea bargaining variability:

If a wide range of plea bargaining practices are presented to respondents for evaluation, public disapproval for plea bargaining will not be homogenous, as generally assumed. On the contrary, considerable heterogeneity will be found in public perceptions of such procedures.

In this study, a factorial survey approach was used in order to take into account the variability of plea bargaining practices. As will be explained later,<sup>12</sup> the factorial survey approach involves presenting respondents with short, multidimensional descriptions of complex phenomena (such as plea

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<sup>8</sup> Ronald Fagan, *Public Support for the Courts: An Examination of Alternative Explanations*, 9 J. CRIM. JUST. 403 (1981); Robert E. Scott & William J. Stuntz, *Plea Bargaining as Contract*, 101 YALE L.J. 1909 (1992).

<sup>9</sup> Cohen & Doob, *supra* note 5; see also Fagan, *supra* note 8.

<sup>10</sup> E.g., Cullen et al., *supra* note 7; Francis T. Cullen et al., *Is Rehabilitation Dead? The Myth of the Punitive Public*, 16 J. CRIM. JUST. 303 (1988); Timothy J. Flanagan & Susan L. Caulfield, *Public Opinion and Prison Policy: A Review*, 64(2) PRISON J. 31 (1984); McCorkle, *supra* note 7; Roberts, *supra* note 7; Douglas R. Thomson & Anthony J. Ragona, *Popular Moderation Versus Governmental Authoritarianism: An Interactionist View of Public Sentiments Toward Criminal Sanctions*, 33 CRIME & DELINQ. 337 (1987).

<sup>11</sup> Emmelman, *supra* note 2; HERMAN, *supra* note 1; NASHERI, *supra* note 1.

<sup>12</sup> See *infra* notes 30-38 and accompanying text.

bargaining) for their evaluation.<sup>13</sup> This method overcomes many of the limitations of other, albeit simpler, survey methods used for assessing public perceptions of plea bargaining practices.<sup>14</sup>

It should be emphasized that plea bargaining does not constitute an end in itself, but rather a judicial means for settling criminal cases out of court. The second hypothesis of this study takes into account the wide variety of criminal offenses that might be subject to plea bargaining agreements:

Public perceptions of plea bargaining will be significantly affected by public attitudes towards the type of criminal offense settled by such an agreement. In other words, heterogeneous public attitudes toward different criminal offenses, ranging theoretically from complete approval to complete disapproval, will lead to heterogeneous public attitudes toward the plea bargaining practices used in settling them.

This hypothesis allows for the possibility of a linear relationship between public attitudes toward various plea bargaining practices and types of crime; the greater the public disapproval toward the criminal act, the greater the public disapproval for a negotiated out-of-court settlement.<sup>15</sup> Operationally, variation in public attitudes toward various criminal offenses is usually assessed in terms of the perceived *seriousness* of such offenses. The appropriateness of this approach is exemplified in the following brief review of crime-seriousness studies.

#### CRIME-SERIOUSNESS AND PUBLIC ATTITUDES TOWARD PLEA BARGAINING

Analysis of public perceptions of the seriousness of criminal offenses has been featured as a major subject of criminological research since the publication of Sellin and Wolfgang's influential work, *The Measurement of Delinquency*, in 1964.<sup>16</sup> Typically, such research involves the deployment of surveys requiring respondents to evaluate criminal offenses by their perceived seriousness. Findings in this area help shed light on topics such as individual and societal reactions to, and evaluations of, crime, cultural

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<sup>13</sup> See PETER H. ROSSI & RICHARD A. BERK, JUST PUNISHMENTS: FEDERAL GUIDELINES AND PUBLIC VIEWS COMPARED (1997); Peter H. Rossi & Andy B. Anderson, *The Factorial Survey Approach: An Introduction*, in MEASURING SOC. JUDGMENTS 15 (Peter H. Rossi & Steven L. Nock eds., 1982).

<sup>14</sup> See Cohen & Doob, *supra* note 5.

<sup>15</sup> For similar trends in public opinion toward other criminal procedures, see Julian V. Roberts, *Public Opinion, Criminal Record, and the Sentencing Process*, 39 AM. BEHAV. SCIENTIST 488 (1996); Bohsiu Wu, *Determinants of Public Opinion Toward Juvenile Waiver Decisions*, 51 JUV. & FAM. CT. J. 9 (2000).

<sup>16</sup> THORSTEN SELLIN & MARVIN E. WOLFGANG, *THE MEASUREMENT OF DELINQUENCY* (1964).

belief systems, the role of law in the society, and the relationship between seriousness of a crime and punishment.<sup>17</sup>

Such studies point to the existence of wide general agreement and stability across different social sectors and population groups with regard to the relative seriousness of behaviors considered to be criminal.<sup>18</sup> Because public conceptions of seriousness appear to emphasize the consequences of the crime and the harm inflicted on victims, crimes of violence (especially those in which the victims die or are severely injured) are usually perceived by the public as the most serious offenses, followed by (in descending order) property, white-collar, and victimless crime.<sup>19</sup> Research has also shown that the greater the perceived seriousness of an offense, the lower the level of disagreement among respondents, as expressed by the dispersion of values around the means; hence, the low variation regarding the perceived high seriousness of violent offenses.<sup>20</sup> These findings lend basic support to the consensus model of the criminal law, which predicts a close match between the attitudes of various social groups toward the definition of certain acts as criminal offenses, their perceived seriousness, and the reflection of this agreement in the criminal law.<sup>21</sup>

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<sup>17</sup> See generally Blumstein & Cohen, *supra* note 7; Darnell F. Hawkins, *Perceptions of Punishment for Crime*, 1 *DEVIANT BEHAVIOR* 193 (1980); Michael O'Connell & Anthony Whelan, *Taking Wrongs Seriously: Public Perceptions of Crime Seriousness*, 36 *BRIT. J. CRIMINOLOGY* 299 (1996).

<sup>18</sup> E.g., Rossi & Berk, *supra* note 13; MARVIN E. WOLFGANG ET AL., U.S. DEP'T OF JUSTICE, *THE NATIONAL SURVEY OF CRIME SEVERITY* (1985); Francis T. Cullen et al., *Consensus in Crime Seriousness: Empirical Reality or Methodological Artifact?*, 23 *CRIMINOLOGY* 99 (1985); Michael Levi & Simon Jones, *Public and Police Perceptions of Crime Seriousness in England and Wales*, 25 *BRIT. J. CRIMINOLOGY* 234 (1985); Peter H. Rossi et al., *The Seriousness of Crimes: Normative Structure and Individual Differences*, 39 *AM. SOC. REV.* 224 (1974).

<sup>19</sup> See Cullen et al., *supra* note 18; Levi & Jones, *supra* note 18; O'Connell & Whelan, *supra* note 17.

<sup>20</sup> See Cullen et al., *supra* note 18; Levi & Jones, *supra* note 18; O'Connell & Whelan, *supra* note 17. Moreover, substantial structural correspondence has also been found in public perceptions of crime seriousness and punishment severity. Joseph E. Jacoby & Francis T. Cullen, *The Structure of Punishment Norms: Applying the Rossi-Berk Model*, 89 *J. CRIM. L. & CRIMINOLOGY* 59 (1999); O'Connell & Whelan, *supra* note 17; Peter H. Rossi et al., *Beyond Crime Seriousness: Fitting the Punishment to the Crime*, 1 *J. QUANTITATIVE CRIMINOLOGY* 59 (1985) (supporting the view that considerations of proportionality underlie popular conceptions of justice); Roberts, *supra* note 7, at 133.

<sup>21</sup> See Rossi & Berk, *supra* note 13; Jacoby & Cullen, *supra* note 20; Peter H. Rossi & J. Patrick Henry, *Seriousness: A Measure for All Purposes?*, in *HANDBOOK OF CRIMINAL JUSTICE EVALUATION* 489 (Malcolm W. Klein & Katherine S. Teilmann eds., 1980); Charles W. Thomas et al., *Public Opinion on Criminal Law and Legal Sanctions: An Examination of Two Conceptual Models*, 67 *J. CRIM. L. & CRIMINOLOGY* 110 (1976); Mark Warr et al.,

Perceptions of crime seriousness have been shown to be a reliable proxy for public attitudes (approval vs. disapproval) toward criminal offenses.<sup>22</sup> Accordingly, a reformulated version of the second hypothesis predicts an association between crime-seriousness perceptions and public attitudes to plea bargaining:

Heterogeneity in public perceptions of crime seriousness will be associated with heterogeneity in public perceptions of plea bargaining proceedings. A significant negative linear relationship is expected between public perceptions of crime seriousness and public support for plea bargaining practices. More specifically, public approval of plea bargaining in the case of offenses usually perceived to be more serious (i.e., violent offenses) will be significantly lower than in the case of offenses usually perceived to be less serious (i.e., victimless offenses), even to the point of showing support for plea bargaining in such cases.<sup>23</sup>

### POLICY IMPLICATIONS

This study has clear implications for legislative and judicial policy. First, the views of the public at large regarding judicial practices such as plea bargaining are an important factor in the considerations and deliberations of the criminal justice system.<sup>24</sup> Indeed, it is crucial for the judicial system to enjoy the respect of those who are served by it.<sup>25</sup> Research has shown that public preferences and beliefs, particularly concerning crime seriousness, influence policy decisions in the criminal justice system.<sup>26</sup> Odegard emphasized popular support as a central component of the concept of legitimacy, his implication being that policy mirrors people's attitudes and conforms to the sense of justice of the

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*Contending Theories of Criminal Law: Statutory Penalties Versus Public Preferences*, 19 J. RES. CRIME & DELINQ. 25 (1982).

<sup>22</sup> Roberts, *supra* note 7; O'Connell & Whelan, *supra* note 17.

<sup>23</sup> Note that not only may public attitudes toward plea bargaining be affected by perceptions of crime seriousness, but prosecutors' decisions concerning the prospects for a plea bargain are also affected by considerations of crime seriousness. See HERMAN, *supra* note 1; Jeffrey A. Roth, *Prosecutor Perceptions of Crime Seriousness*, 69 J. CRIM. L. & CRIMINOLOGY 232 (1978).

<sup>24</sup> Roberts, *supra* note 7.

<sup>25</sup> Cohen & Doob, *supra* note 5; Roberts, *supra* note 7.

<sup>26</sup> Timothy J. Flanagan, *Change and Influence in Popular Criminology: Public Attributions of Crime Causation*, 15 J. CRIM. JUST. 231 (1987); Deirdre Golash & James P. Lynch, *Public Opinion, Crime Seriousness, and Sentencing Policy*, 22 AM J. CRIM. L. 703 (1995); Nelson B. Heller & J. Thomas McEwen, *Applications of Crime Seriousness Information in a Police Department*, 12 J. RES. CRIME & DELINQ. 44 (1975); Roth, *supra* note 23; Martin E. Wolfgang, *Seriousness of Crime and a Policy of Juvenile Justice*, in DELINQ., CRIME & SOC'Y 267 (James F. Short, Jr. ed., 1976).

ordinary man or woman.<sup>27</sup> Accordingly, it is argued that a negative view of the judicial system and its common practices may adversely affect the public's trust in it, which, consequently, may undermine public readiness to obey the law.<sup>28</sup>

Second, it also important to identify those factors that aggravate/mitigate public attitudes toward plea bargaining. As mentioned, there have been calls for the modification and even complete or partial abolition of plea bargaining for some offenses.<sup>29</sup> Support for the hypotheses of the present study regarding differential public disapproval of plea bargaining is likely to hold implications for these and other proposals for change in plea bargaining practices.

### THE RESEARCH DESIGN

As with any public issue, public opinions regarding plea bargaining could be assessed using poll data. However, the simplistic formats of such polls (global, unspecific, undifferentiated crime and judicial categories) tend to elicit homogeneous, simplistic answers to complex issues. Moreover, control questions are usually not included, and the information provided to the respondents is limited. Hence, such polls preclude the possibility of drawing valid conclusions.<sup>30</sup>

The present research was constructed as a survey of public attitudes toward plea bargaining. Respondents were required to evaluate varied, hypothetical, specific crime and judicial situations, known as crime scenarios. This approach has been used widely in assessing public perceptions of crime seriousness<sup>31</sup> and other crime issues, including plea bargaining.<sup>32</sup> However, one of the main weaknesses of this method is its inability to take into account the multiple factors surrounding the scenario that may influence public attitudes toward its content.<sup>33</sup> As previously

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<sup>27</sup> Einar Odegard, *Legality and Legitimacy*, 35(4) BRIT. J. CRIMINOLOGY 525 (1995).

<sup>28</sup> Arye Ratner et al., *Not Bound by the Law: Legal Disobedience in Israeli Society*, 19 BEHAV. SCI. & L. 265 (2001); TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (1990).

<sup>29</sup> E.g., MCCOY, *supra* note 1; RUBINSTEIN ET AL., *supra* note 4; Daudistel, *supra* note 4; Heumann & Loftin, *supra* note 4; Marenin, *supra* note 4.

<sup>30</sup> See Brandon K. Applegate et al., *Determinants of Public Punitiveness Toward Drunk Driving: A Factorial Survey Approach*, 13 JUST. Q. 57 (1996); Alexis M. Durham et al., *Public Support for the Death Penalty: Beyond Gallup*, 13 JUST. Q. 705 (1996); Roberts, *supra* note 7; ROSSI & BERK, *supra* note 13; Thomson & Ragona, *supra* note 10.

<sup>31</sup> E.g., Rossi et al., *supra* note 18; SELLIN & WOLFGANG, *supra* note 16; Mark Warr, *What is the Perceived Seriousness of Crimes?*, 27 CRIMINOLOGY 795 (1989).

<sup>32</sup> See Cohen & Doob, *supra* note 5.

<sup>33</sup> See Applegate et al., *supra* note 30; Jacoby & Cullen, *supra* note 20; Roberts, *supra* note 7.



stated, this problem was overcome in the present study by applying a factorial design methodology.

The factorial design method uses multidimensional scenarios presented in a form that combines the benefits of controlled, randomized experimental designs and conventional surveys.<sup>34</sup> The scenarios are created by randomly selecting values (*levels*) from each of several variables (*dimensions*; one level per dimension per scenario) until each dimension is represented and a complete story is formed. Thus, although (statistically) there is a chance of two identical scenarios being evaluated, there is a high probability of each scenario being unique, and of all scenarios representing a random sample of all possible scenarios available from the universe of all levels across the chosen dimensions. Rossi and Anderson note that by permitting multiple dimensions of a crime scenario to vary randomly across scenarios and by controlling the personal characteristics of the respondents, this technique allows for exploration of the effects of several independent variables simultaneously, while permitting unbiased estimates of the contributions of each of them to the overall judgment of the respondent.<sup>35</sup> Due to these advantages, this method has been applied to examine various criminological issues.<sup>36</sup>

This possibility of controlling scenario dimensions and respondent characteristics seems to be decisive, particularly in studies assessing public perceptions of both crime seriousness and plea bargaining. The perceived seriousness of given criminal offenses is expected to influence respondents' attitudes toward plea bargaining (see second hypothesis). Although Cohen and Doob<sup>37</sup> found no variation in public perceptions of plea bargaining by social variables, research has repeatedly suggested that public perceptions of crime seriousness vary by social group.<sup>38</sup>

#### RESEARCH LOCATION

Israel, the location of the present survey, is well suited for the analysis of public perceptions of judicial practices such as plea bargaining. First, Israel's small population allows for the collection of a national sample

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<sup>34</sup> See Rossi & Anderson, *supra* note 13; ROSSI & BERK, *supra* note 13; Rossi et al., *supra* note 20.

<sup>35</sup> Rossi & Anderson, *supra* note 13; see also Rossi et al., *supra* note 20.

<sup>36</sup> E.g., Applegate et al., *supra* note 30 (public punitiveness); Jacoby & Cullen, *supra* note 20 (punishment norms); ROSSI & BERK, *supra* note 13 (federal guidelines); Rossi et al., *supra* note 20 (criminal punishments).

<sup>37</sup> Cohen & Doob, *supra* note 5.

<sup>38</sup> E.g., Levi & Jones, *supra* note 18; O'Connell & Whelan, *supra* note 17; Rossi & Henry, *supra* note 21; Rossi et al., *supra* note 18.

accurately representing "the public," thus enhancing the external validity of the research. Second, heterogeneity of the research sample may be important in assessing the attitudes of an assumed "homogenous" public. Apart from the usual variance found in modern societies with regard to demographic variables such as gender, age, education, and income, Israeli society is characterized by marked cultural heterogeneity resulting from social divisions between, for example, its Jewish majority and Arab minority, its secular and religious sectors, and its veteran and immigrant citizens.

Third, and more importantly, influenced by English common law, the Israeli judicial system and its criminal procedures are also adversarial in nature, and plea bargaining is conducted very similarly to the way described in the review. In criminal hearings, the judicial proceedings and the legal jurisdiction are in the hands of professional judges only; defendants may be represented by either private or public counsels, and the State is represented by district prosecutors. As in other adversarial systems, the prosecutor has exclusive discretion in invoking the indictment process and determining the criminal charges against the suspect. Prior to the commencement of court hearings, the prosecutor has the right to amend or change the charges. Thereafter, this right is transferred to the court. The prosecutor has the right to offer a plea bargain to the suspect or his/her attorney(s) at any point in the judicial process. If the plea bargain is accepted, the defendant will plead guilty to all or some of the charges included in the indictment, and/or face a set of amended charges, and/or request a reduced sentence. It should be noted that plea bargaining proceedings in Israel are regulated by High Court case law.<sup>39</sup> For example, the parties involved are required to bring the written plea bargaining agreement to the court and attach it to the investigative files, but the court is not bound by it, nor is the court obliged to base its judgment on it.<sup>40</sup> Last but not least, as elsewhere, the Israeli judicial system is characterized by case overload. This situation lends itself to proliferation of out-of-court plea bargaining settlements.

#### METHOD

The research data was collected from a random sample of the adult Israeli population (n = 606). The most recent Israeli telephone directories (2001) provided the sampling framework, and the application of a systematic random sampling method assured identical probability of

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<sup>39</sup> Maria R. Haberfeld & Sergio Herzog, *The Criminal Justice System in Israel*, in *COMPARATIVE AND INTERNATIONAL CRIMINAL JUSTICE SYSTEMS: POLICING, JUDICIARY, AND CORRECTIONS* (Obi N. Ignatius Ebbe ed., 2000).

<sup>40</sup> *Id.*

inclusion of all households listed.<sup>41</sup> Table 1 presents the main characteristics of the sample.

**Table 1**  
*Descriptive Statistics (n = 606)*

Variables	Range	Mean	SD
Gender (1 = Male)	0-1	.43	.49
Ethnicity (1 = Not Jewish)	0-1	.20	.42
Religiosity (1 = Traditional / Religious)	0-1	.24	.42
Veteran/Immigrant status (1 = New immigrant)	0-1	.27	.44
Income (1 = less than 5,000 NIS)	0-1	.35	.48
Age (in years)	15-90	35.56	13.58
Education (in schooling years)	1-22	13.55	2.38

Table 1 shows that the sample was 57% female, 80% Jewish (as opposed to Arab), 76% secular (as opposed to religious), and 73% were veteran (as opposed to new immigrant) citizens. These distributions showed a close fit with official national data on the Israeli population (52% women; 77% Jewish; 63% secular; 83% veteran).<sup>42</sup> About two-thirds of the sample reported monthly familial incomes higher than 5000 NIS (about \$1000). This finding is compatible with economic characteristics of the population (mean familial income: 8500 NIS). The sample was highly heterogeneous in terms of age (mean age: 35; SD = 13; range: 15-90), and its educational level was relatively high (13.5 years, i.e., some post-secondary education). Compared with the general population, the sample is biased in the direction of older and consequently, more educated correspondents due to the exclusion of respondents under the age of sixteen.

Respondents' attitudes regarding hypothetical scenarios representing varied criminal offenses and plea bargaining arrangements were collected by personal, anonymous questionnaires, administered by means of a telephone survey. Data collection took place during February and March of 2002. Two kinds of possible historical threats to the validity of the findings were controlled for in this study. First, a content analysis of Israel's major national newspapers revealed no coverage of possible or actual plea

<sup>41</sup> According to formal data of the Ministry of Communications, ninety-eight percent of households in Israel have telephones, although among certain groups of the population (e.g., Arabs) this percentage is a little lower (around ninety-five percent). Based on these data, the percentage of people not listed in the directories is fairly low.

<sup>42</sup> CENTRAL BUREAU OF STATISTICS, STATISTICAL ABSTRACT OF ISRAEL (2002) (providing data about the general population).

bargaining agreements around the time of the survey, which might have affected respondents' attitudes.<sup>43</sup> Second, terrorist, military, and criminal acts directly related to the Israel-Palestine conflict were excluded from the study. The present study focused only on criminal offenses typically committed both in Israel and abroad, and plea bargaining procedures commonly used for out-of-court settlements.

In light of the research design and the research question, the main traditional drawbacks of the telephone survey method (low response rate, inability to include a large number of items and scenario details in the questionnaire, and limited ability of the researcher to clarify and explain the survey to respondents) were outweighed by its advantages. First, this method allows access to a large number of respondents in a relatively short period of time, thus reducing the chances of historical threats to the internal validity of the research. Second, as noted, the external validity of the study was enhanced by the relative ease of obtaining a broad nationally representative sample.<sup>44</sup> To reinforce these advantages, efforts were also made to overcome some of the relative disadvantages of the telephone method. Additional re-calls were made to increase the response rate (which ultimately reached the high level of seventy percent);<sup>45</sup> the questionnaire was relatively short, citing only six different crime and plea bargaining scenarios (interview length: about seven to ten minutes); the content of the questionnaire, hence its final format, was checked in a pre-test using a small number of respondents; the language was kept as simple as possible; and the student surveyors were carefully trained by the researcher to prevent any possible bias.

#### DEPENDENT VARIABLE

The dependent variable of the research was given by respondents' subjective evaluations of various plea bargaining procedures applied in settling varied criminal cases. Respondents were required to evaluate plea bargaining agreements by choosing one value on a Likert scale<sup>46</sup> ranging

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<sup>43</sup> Based on a content analysis of the three daily newspapers (YEDIOTH AHRONOTH, MAARIV, and HAARETZ) with the largest circulation in Israel.

<sup>44</sup> Additional advantages of this method are its relatively low cost, ease of standardizing responses for comparison, minimal danger of the researcher biasing the respondents, and high level of anonymity.

<sup>45</sup> The response rate was calculated on the basis of valid household numbers, excluding businesses, fax connections, etc. A household was replaced after three unsuccessful attempts.

<sup>46</sup> The Likert-scale includes a series of statements, each of which expresses an attitude that is either clearly favorable or clearly unfavorable toward an object. These scales call for a graded response to each statement.

from one ("Do not support at all") to eleven ("Strongly support"). Because this categorical scale was essentially a wide-order scale, it was used as an interval scale. As a result, the values were analyzed statistically as means and as standard deviations for each level of the independent variables in order to identify significant differences in the scores assigned to them (more vs. less support). To increase the uniformity of the evaluative task, respondents were instructed to base their responses on their personal evaluation of the plea bargaining proceedings and not on their personal knowledge of the justice system.<sup>47</sup> Moreover, in order to differentiate between public attitudes toward plea bargaining and its assumed disappointing result, the plea bargaining outcomes were held constant in all scenarios: both in implicit or explicit guilty pleas, the judge approved the guilty plea and handed down a lighter sentence than would have been served had there been a conviction in court.

#### THE PLEA BARGAINING SCENARIOS

Six plea bargaining scenarios, varying randomly in dimension, were presented to each respondent. Their order was determined randomly. As illustrated at the end of Appendix 1, each scenario consisted of two parts: first, a specific criminal act and then, the plea bargaining procedure applied to settle it.<sup>48</sup>

The scenarios contained eight dimensions (A-H) (see Appendix 1), four related to the crime committed ((A) criminal offense, (B) perceived seriousness of the crime committed, (C) degree of injury/damage, and (D) offender's criminal record) and four related to the plea bargaining agreement ((E) type of plea bargaining agreement, (F) judge's involvement, (G) victim's participation, and (H) public disclosure of prosecutorial considerations).<sup>49</sup> As previously explained, to construct a given scenario, one level from within each of the eight dimensions was selected. Thus, the scenarios represented a random sample of all possible scenarios available from the universe of all levels across the chosen dimensions.<sup>50</sup>

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<sup>47</sup> For similar proceedings, see Rossi et al., *supra* note 18; SELLIN & WOLFGANG, *supra* note 16; Warr, *supra* note 31.

<sup>48</sup> For a similar approach, see Jacoby & Cullen, *supra* note 20.

<sup>49</sup> The decisions regarding the number of dimensions to include in each scenario and the number of scenarios to present to each respondent were pre-tested and guided by methodological considerations, such as the use of a telephone survey, interview length, and full understanding of the scenario.

<sup>50</sup> It should be noted that the construction of the scenarios deviated slightly from complete randomization; a few specific combinations of levels were excluded. For example, if the offender chose to plead guilty implicitly, that is, not as a result of a negotiated plea bargaining agreement, dimensions related to the plea bargaining procedure were not included

## INDEPENDENT VARIABLES

The independent variables of this study were given by two of the four dimensions related to the criminal act: *criminal offense* (dimension A) and *perceived seriousness* (dimension B). Due to the need for exclusivity and exhaustibility of the dimension levels, care was taken to span the entire range of possible variations in each dimension. Accordingly, the ten offenses described in the scenarios were highly diverse, from very grave (e.g., murder) to very minor (e.g., petty theft), and inclusive of many kinds of crime—violent, property, and victimless.<sup>51</sup> Unlike other studies of crime seriousness in which offenses were selected from lengthy existing lists,<sup>52</sup> in this study, offenses were randomly chosen from a larger pre-tested pool of various offenses representing the population of criminal offenses in Israel. It should be noted that despite the use of the factorial design approach, some characteristics of the offenses were kept uniform across all of the scenarios. All of the criminal acts were described in such a way that there could be no question as to the responsibility of the offenders and the consequences of their acts on the victims. Moreover, logic suggests that any increase in the number of victims would significantly alter the gravity of the incident. Therefore, all crime scenarios involved a single offender and a single victim (except for victimless offenses).

Respondents were requested to evaluate the seriousness of the criminal events by choosing one value on a Likert scale, ranging from one ("Not serious at all") to eleven ("Very serious"). As in the case of the dependent variable, this 'wide-order' categorical scale was used as an interval scale.<sup>53</sup>

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in the scenarios. These deviations resulted in low intercorrelations among the dimensions. Moreover, to increase the range of variation on the latter dimensions, they included baselines—no details on the specific dimension were included in the scenarios—and various plea bargaining possibilities.

<sup>51</sup> For the purpose of this study, victimless offenses were defined broadly (tax evasion, drug selling, and bribery) in order to juxtapose victimless crimes with victim-crimes, in which there are specific victims suffering direct harm.

<sup>52</sup> E.g., SELLIN & WOLFGANG, *supra* note 16; Rossi et al., *supra* note 18; WOLFGANG ET AL., *supra* note 18.

<sup>53</sup> O'Connell & Whelan, *supra* note 17. Despite the apparent disadvantages of the categorical method as opposed to the magnitude estimation method for the evaluation of crime scenarios, see WOLFGANG ET AL., *supra* note 18, only small differences in various measurement traits were found between them. E.g., SELLIN & WOLFGANG, *supra* note 16; Monica A. Walker, *Measuring the Seriousness of Crimes*, 18 BRIT. J. CRIMINOLOGY 348 (1978). Moreover, criticism has been leveled against some aspects of the magnitude estimation method. E.g., Levi & Jones, *supra* note 18, at 235-38; Terance D. Miethe, *Social Psychophysical Measurement: A Comparison of the Measurement Properties of Magnitude and Categorical Scaling and Social Perceptions*, 67 SOC. SCI. Q. 195 (1986). Thus, the categorical method was preferred.

Note that although respondents are typically reported as "ranking" the seriousness of the offenses, in this study, the rankings are in fact determined by ordering the seriousness means of each offense. Respondents evaluated the plea bargaining agreement (dependent variable) after evaluating the seriousness of the offenses.

Previous studies have shown the measurement of crime seriousness to be problematic because the "seriousness" concept may mean different things to different respondents; it can be defined in terms of the most appropriate level of punishment, the degree of injury/damage caused, the criminal intent of the offender, and/or the wrongfulness of the act.<sup>54</sup> Moreover, respondents have been found to make systematic use of different aspects of seriousness (wrongfulness, harmfulness) to evaluate different kinds of offenses.<sup>55</sup> However, despite the different interpretations respondents may give to the concept, similar findings have generally been obtained.<sup>56</sup> In this study, in order to increase the uniformity of the evaluative task, respondents were told at the beginning of the interview that all of the scenarios referred to acts defined as criminal offenses in Israel and, as with the dependent variable, their responses should be based on their personal evaluation of the seriousness of the offenses and not on their personal knowledge of the legal situation in the country.<sup>57</sup>

#### CONTROL VARIABLES

It was assumed that the criminal record of the offenders, the injury/damage inflicted by them, and the kind of plea bargaining agreement would also affect public attitudes toward plea bargaining. Accordingly, the remaining six (of the eight) dimensions included in the scenarios (dimensions C to H) served as control variables.

As mentioned, a quantitative multivariate analysis was applied to separate and interpret any effects of the scenario dimensions or of respondent characteristics. Therefore, after evaluating the plea bargaining scenarios, the respondents were asked to provide some personal details about themselves (variables I-O, detailed in Table 1). Thus, the control variables of the study were provided by six scenario dimensions (C-H) and seven demographic variables (I-O). The independent variables and both kinds of control variables were analyzed by multivariate regression analyses

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<sup>54</sup> WOLFGANG ET AL., *supra* note 18; O'Connell & Whelan, *supra* note 17, at 300.

<sup>55</sup> Warr, *supra* note 31.

<sup>56</sup> O'Connell & Whelan, *supra* note 17; Rossi & Henry, *supra* note 21.

<sup>57</sup> See SELLIN & WOLFGANG, *supra* note 16; Rossi et al., *supra* note 18; Warr, *supra* note 31.

of the respondents' evaluations of the plea bargaining agreement in each scenario.

## RESULTS

Table 2 presents the means and standard deviations of the respondents' perceptions of crime seriousness (independent variable, dimension B), evaluations of the plea bargaining proceedings (dependent variable) for the ten offenses considered in this study (independent variable, dimension A), and the statistical comparisons between these variables (F and Pearson tests) for the whole sample of respondents. For ease of interpretation, the various criminal offenses are ordered according to their perceived seriousness.

**Table 2**  
*Mean Rating and Ranking of 10 Criminal Offenses (Dimension A)*  
*by Perceived Seriousness (Dimension B) and*  
*Support for Plea Bargain (Dependent Variable) in the Whole*  
*Sample of Respondents (n = 606)*

Variable Criminal Offense	Number of Scenarios	Perceived Seriousness		Support for Plea Bargain	
		Mean	SD	Mean	SD
1. Wife murder	262	10.68	1.35	3.75	3.24
2. Girl rape	317	10.33	1.53	4.40	3.62
3. Vehicular homicide	306	10.10	1.71	5.66	3.64
4. Shop robbery	181	9.24	1.50	5.16	3.49
5. Wife assault	332	8.95	2.98	6.09	3.51
6. Apartment burglary	346	8.84	2.14	6.28	3.53
7. Clerk bribe	386	8.25	2.38	5.62	3.49
8. Watch theft	481	8.10	2.18	6.24	3.36
9. Drug selling	404	8.05	2.42	5.78	3.65
10. Tax evasion	414	6.63	3.26	7.14	3.33

F-test	103.39*	25.67*
Significant differences	(1, 2, 3) >	1 < (all, exc. 2)
	(4, 5, 6) >	2 < (all, exc. 4)
	(7, 8, 9) > 10	all < 10
Mean-SD Pearson	-.835*	.043
Seriousness-Opinion Pearson	-.856*	

\* p < 0.05



Table 2 shows that in general, violent offenses (wife murder, girl rape, vehicular homicide) were ranked as the significantly most serious offenses (means over ten out of a maximum score of eleven on the Likert scale). All such offenses featured a personal victim and severe harm (death, serious injury). At the opposite extreme, some property and victimless offenses (tax evasion, drug selling, watch theft) were ranked as the significantly least serious offenses. Unlike the most serious offenses, these scenarios do not have victims at all (selling drugs) or specific persons as victims (offenses against public and even private institutions). Note that the most serious offenses were associated with the lowest standard deviations, and the less serious the ranking of the offense, the higher its standard deviation. A very strong negative linear relationship (statistically significant at  $p < 0.01$ ) was found between the means and standard deviations of the perceived seriousness of the ten offenses.

With regard to assessment of the plea bargaining agreement (the dependent variable), Table 2 shows that the two significantly most serious offenses—wife murder and girl rape—were associated with the lowest support for out-of-court plea bargaining settlements (means below four and five, respectively; range on Likert scale, one to eleven). Conversely, the strongest support for plea bargaining was obtained for the significantly least serious offense—tax evasion (mean over seven). Again, a very strong negative linear relationship (also statistically significant at  $p < 0.01$ ) was found between the crime-seriousness perceptions and attitudes toward plea bargaining. However, in contrast to perceived crime-seriousness, the standard deviations of attitudes toward plea bargaining were relatively large and almost identical for all the offenses considered. Accordingly, no linear relationship was found between the standard deviations and the corresponding means of public support for plea bargaining.

Table 3 presents the distribution of the extreme (one and eleven) and grouped (not serious vs. serious; no support vs. support) values of both variables (seriousness perceptions and attitude toward plea bargaining). For ease of interpretation, these values are presented only for the significantly most serious and least serious offenses, as indicated in Table 2.

**Table 3**  
*Distribution of the Ratings of Extreme (Serious and Non-Serious) Criminal Offenses (Dimension A) by Perceived Seriousness (Dimension B) and Support for Plea Bargain (Dependent Variable) in the Whole Sample of Respondents (n = 606; in percent)*

Seriousness scores Criminal offense	Scores 1-5 Low seriousness	Score 6 Medium seriousness	Scores 7-11 Serious	Total (N of scenarios)	Score 1 Not serious at all	Score 11 Very serious
1. Wife murder	1.9	0.8	97.3	100 (262)	0.4	90.1
2. Girl rape	2.1	1.3	96.6	100 (317)	0.3	75.4
3. Vehicular homicide	3.6	1.3	95.1	100 (306)	0.3	63.1
8. Watch theft	12.9	9.1	78.0	100 (482)	1.0	18.0
9. Drug selling	11.8	2.5	85.7	100 (404)	3.5	14.6
10. Tax evasion	35.5	12.6	51.9	100 (414)	9.4	16.4

**Table 3**  
(Continued)

Support scores Criminal offense	Scores 1-5 Low support	Score 6 Medium support	Scores 7-11 Great support	Total (N of scenarios)	Score 1 No support at all	Score 11 Support very much
1. Wife murder	71.4	6.5	22.1	100 (262)	39.3	6.1
2. Girl rape	63.1	6.3	30.6	100 (317)	38.8	9.8
3. Vehicular homicide	47.0	8.8	44.2	100 (306)	21.6	11.8
8. Watch theft	39.4	10.4	50.2	100 (482)	13.9	12.1
9. Drug selling	45.4	8.1	46.5	100 (404)	22.8	12.9
10. Tax evasion	29.2	10.1	60.7	100 (414)	9.4	22.0

Table 3 shows that almost all of the respondents in the sample (more than ninety-five percent) perceived the most serious offenses (wife murder, girl rape, vehicular homicide) as relatively serious (seriousness values from seven to eleven), and most respondents (two-thirds to over ninety percent) perceived them as "very serious" (extreme value of eleven). In the case of the least serious offenses (watch theft, drug selling, tax evasion), the proportion of respondents who provided low seriousness scores ranged from over one-tenth to over one-third. Note that one-tenth evaluated tax evasion as "not serious at all," and only fourteen to eighteen percent evaluated these offenses as "very serious."

As shown in Table 2, the values obtained for the plea bargaining agreements were inversely related to those obtained for the criminal offenses. In the case of the most serious offenses, most of the respondents (one-half increasing to seventy percent with perceived offense seriousness) did not support plea bargaining (support values from one to five), one- to two-fifths providing the lowest possible support value of one. However, for the least serious offenses, most of the respondents (one-half to sixty percent) supported plea bargaining, over one-fifth providing the highest support value of eleven for tax evasion.

The effect of these independent variables on the plea bargaining support values (dependent variable) was also analyzed using a multivariate regression model taking into account the control variables: the remaining scenario dimensions (C-H) and personal characteristics of the respondents (I-O). Table 4 presents the standardized regression coefficients of all of the scenario dimensions and respondent variables included in the models, for the whole sample of respondents. In addition, the regression analysis was also structured hierarchically by conducting a separate regression analysis for each independent and control variable. Each successive analysis includes all the variables from the preceding equation plus an additional variable. This analysis shows how much additional variance was explained by adding successive variables to the model.

**Table 4**  
*Standardized and Hierarchical Regression Coefficients for Support for Plea Bargain by Scenario Dimensions and Respondents' Personal Details in the Whole Sample of Respondents (n = 606)*

	Variable	Values	Stand. coeff.	R <sup>2</sup>
Independent variables	A. Criminal offense <sup>1</sup>	1. Girl rape	.101**	.071
		2. Vehicular homicide	.184**	
		3. Shop robbery	.140**	
		4. Wife assault	.123**	
		5. Apartment burglary	.185**	
		6. Clerk bribe	.183**	
		7. Watch theft	.171**	
		8. Drug selling	.170**	
		9. Tax evasion	.211**	
	B. Perceived seriousness	Interval (1 = "Not serious at all")	-.161**	.119
Control variables—Scenario dimensions	C. Degree of damage	0 = Relatively light; 1 = Serious	-.029	.119
	D. Offender's crim. record	0 = Yes; 1 = No	.172**	.173
	E. Type of plea bargain <sup>2</sup>	1. Charge (deleting) plea bargain	.021	.187
		2. Charge (replacement) plea bargain	.062**	
		3. Sentence plea bargain	.071**	
	F. Judicial involvement in plea bargain <sup>2</sup>	1. Judge as encouraging parties	.100**	.210
		2. Judge as arbitrator	.123**	
		3. Judge as active participant	.078*	
	G. Victim's participation in plea bargain <sup>2</sup>	1. Informed about the wish for plea bargain	.073**	.229
		2. Informed on the plea bargain's details	.067**	
		3. Allocation about the final plea bargain	.096**	
	H. Prosecutorial considerations in plea bargain <sup>2</sup>	1. Certain conviction	.098**	.242
		2. Time saving	-.134**	
		3. Money saving	.037	

**Table 4**  
(Continued)

Control variables— Respondents' dimensions	I. Gender	0 = Female; 1 = Male	.030	.243
	J. Age	Interval (in years)	.002	.243
	K. Education	Interval (in schooling years)	-.047*	.249
	L. Income	0 = more than 5,000 NIS; 1 = less	.058**	.259
	M. Ethnicity	0 = Jewish; 1 = not Jewish	.012	.260
	N. Religiosity	0 = secular; 1 = trad./religious	-.013	.260
	O. Status in the country	0 = veteran ; 1 = new immigrant	-.032	.261

  

Models data	Valid n	2,700
	R <sup>2</sup>	.261**
	Constant (unstandardized coeff.)	10.92**
	d.f.	31

\*  $p < 0.05$

\*\*  $p < 0.01$

<sup>1</sup> "Wife murder" is the reference group ( $n = 262$ ). The values are ordered according to perceived seriousness (dimension B).

<sup>2</sup> Each baseline represents the reference group ( $n = 717, 1260, 693$  and  $806$ , respectively).

Table 4 shows that even when other scenario dimensions and respondents' characteristics are taken into account, all of the values of the independent variables presented significant regression coefficients, adding considerable explanatory power to support for plea bargaining practices. For criminal offense (dimension A), the coefficients were positive. Compared to wife murder (the most serious offense; reference group), support for plea bargaining for all other offenses was significantly higher. Note that the strength of the significant coefficients increased linearly with the decrease in perceived seriousness. This finding is also expressed by the negative sign of the significant coefficient of the second independent variable—perceived seriousness (dimension B).

It should be noted that other control variables also showed significant coefficients, some even reflecting a stronger effect on respondents' attitudes than some of the aforementioned independent variables. First, note the significant coefficient for *offender's criminal record* (dimension D), which is in the same direction as the aforementioned coefficients. The existence of a previous criminal record (a relatively more serious situation for the respondents) was associated with a significant decrease in support for plea

bargaining. Second, note some values of the *type of plea bargaining settlement* (dimension E), and mainly the significantly positive coefficients obtained for almost all of the values of *judicial involvement*, *victim participation*, and the *prosecutorial consideration* of "certain conviction," which significantly raised support for plea bargaining (dimensions F to H). Note, however, the significant negative coefficient for "time-saving" of the prosecution and the judiciary and the non-significant coefficient for "money saving" (dimension H). With regard to the personal variables, only respondent's *income* (dimension L) produced a significant ( $p < 0.01$ ), albeit relatively low, regression coefficient. As Table 4 shows, adding these variables in later equations added little explanatory power.

### DISCUSSION

As already stated, the literature on plea bargaining generally assumes that the public at large uniformly dislikes the practice of plea bargaining.<sup>58</sup> However, in view of the wide variability of plea bargaining proceedings and the seriousness of the offenses discussed during plea-bargain negotiations and the lack of empirical studies measuring the relationship between these two factors, such an assertion may not be valid.

The findings of the present study do not support this common assumption. In fact, wide variability was found in the evaluation of varied hypothetical plea bargaining scenarios. As predicted by the first hypothesis of this study, attitudes toward plea bargaining were widely distributed along a continuum, from significant disapproval (for the significantly most serious criminal offenses) to significant approval (for the significantly least serious offenses). This variability was expressed by significant differences in plea bargaining support values and means for various types of offenses and by relatively large standard deviations, regardless of type of offense (Tables 2 and 3). This last finding should be emphasized: unlike the significantly negative linear relationship between standard deviations and crime seriousness perceptions,<sup>59</sup> the dispersion of values for plea bargaining support remained constant along all the evaluated offenses. This finding points to the existence of wide variability in public attitudes toward plea bargaining with regard to all offenses, irrespective of their perceived seriousness, as predicted by the second hypothesis of this study.

The study also found that criminal and judicial variables (characteristics of the committed offense; nature of the plea bargaining

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<sup>58</sup> See McCoy, *supra* note 1; Payne, *supra* note 6; Cohen & Doob, *supra* note 5; Fagan, *supra* note 8; Scott & Stuntz, *supra* note 8.

<sup>59</sup> See Cullen et al., *supra* note 18; Levi & Jones, *supra* note 18; O'Connell & Whelan, *supra* note 17.

agreement) varying randomly in hypothetical scenarios significantly affected these heterogeneous plea bargaining perceptions (Table 4). The second hypothesis of the study, which predicted a significant negative linear relationship between perceptions of crime seriousness and support for out-of-court plea bargaining settlements, was completely supported by the research findings. On the one hand, violent offenses, such as wife murder, girl rape, and vehicular homicide (personal victim/serious injury) received the significantly highest seriousness means (and usually the smallest standard deviations) and, accordingly, they were ranked by the whole sample of respondents as the most serious offenses. In addition, the significantly lowest seriousness means (and usually the largest standard deviations) were obtained for offenses with no victim at all or no specific personal victim, such as theft from a shop, drug selling, and tax evasion. In general, these results are compatible with previous findings regarding consensual perceptions of crime seriousness.<sup>60</sup> On the other hand, respondents expressed significantly lower support for plea bargaining agreements in the case of the most serious offenses, and wider support for negotiated out-of-court plea bargaining settlements in the case of the least serious offenses (Table 2). These trends were also found when perceived crime seriousness and support for plea bargaining were presented (grouped and separated) for these extreme (serious vs. non-serious) offenses (Table 3). Moreover, these findings remained significant and maintained their high explanatory power even after other control variables, including other judicial and criminal factors and respondents' personal characteristics, were taken into account in a regression analysis (Table 4). Theoretically, these findings may be explained on both retribution and incapacitation grounds—the public expects that offenders who commit more serious offenses would receive more serious punishments and would be controlled for longer periods of time. Thus, it may be concluded that contrary to the assumption of homogeneous, global, low support for plea bargaining practices, there exists wide heterogeneity, influenced by, among other things, perceived offense seriousness: the more serious the offense, the lower the support for plea bargaining.<sup>61</sup> From the public's point of view, therefore, the introduction of formal guidelines that would limit or modify the practice of plea bargaining, abolishing it for serious offenses,<sup>62</sup> would obtain more

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<sup>60</sup> See SELLIN & WOLFGANG, *supra* note 16; WOLFGANG ET AL., *supra* note 18; Cullen et al., *supra* note 18; Levi & Jones, *supra* note 18; O'Connell & Whelan, *supra* note 17; Rossi et al., *supra* note 18.

<sup>61</sup> For similar results concerning other criminal procedures, see Roberts, *supra* note 15; Wu, *supra* note 15.

<sup>62</sup> For example, as attempted in California, New York, see MCCOY, *supra* note 1, at 29-34, and for Michigan, see Heumann & Loftin, *supra* note 4.



support than sweeping attempts to abolish plea bargaining practices completely for all types of offenses.<sup>63</sup>

In the view of the negative influence of offenders' criminal records on public support for plea bargaining (Table 4), recidivist offenders might also be disqualified from partaking in such out-of-court settlements. This finding is consistent with earlier results relating criminal history to public punitiveness.<sup>64</sup> Yet another significant finding of this study is the negative relationship between the traditional covertness and low visibility of plea bargaining procedures and public support for plea bargaining (Table 4). This finding points to the need to open the plea bargaining process to typical outside parties, such as judges, victims, and the public.<sup>65</sup>

In interpreting this predicted negative relationship between crime seriousness and public support for plea bargaining, it is worth mentioning the role of the written and electronic media<sup>66</sup>—the main source of information about crime and criminal justice issues for most people. Generally, the media tend to distort reality by drawing attention to serious violent offenses, on the one hand, and on the other, the apparent leniency of the judicial system in its handling of such crimes, as in the case of plea bargaining practices. Research into the effect of the media on these variables would undoubtedly shed more light on the issues raised in this study.

Finally, it should be added that unlike criminal and judicial variables, with the exception of income, public views of plea bargaining were hardly affected by social variation (Table 4). This finding, compatible with the findings of Cohen and Doob, is particularly important when the social context of the research is taken into account.<sup>67</sup> Israel, like the overwhelming majority of Western societies today, is internally divided along various social and cultural dimensions.<sup>68</sup> Nevertheless, Table 4 shows that personal characteristics of the respondents did not significantly affect public perceptions of plea bargaining practices. Thus, we can conclude that the heterogeneity in public attitudes to plea bargaining found in this study was not a function of the heterogeneity of the national sample of respondents. As predicted, it seems to reflect the heterogeneity of plea

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<sup>63</sup> For example, see RUBINSTEIN ET AL., *supra* note 4 (Alaska); Marenin, *supra* note 4 (Alaska); Daudistel, *supra* note 4 (El Paso).

<sup>64</sup> E.g., Applegate et al., *supra* note 30; Blumstein & Cohen, *supra* note 7.

<sup>65</sup> See MCCOY, *supra* note 1; Cohen & Doob, *supra* note 5.

<sup>66</sup> For a review, see Roberts, *supra* note 7.

<sup>67</sup> Cohen & Doob, *supra* note 5.

<sup>68</sup> See Sammy Smooha, *Internal Divisions in Israel at Forty*, 20 MIDDLE E. REV. 26 (1988).

bargaining practices and, basically, the heterogeneity of the criminal offenses and offenders in them.

### CONCLUSIONS

Although widespread, plea bargaining remains one of the most controversial practices in the modern judicial system. Some commentators emphasize its practical advantages; others tend to emphasize its theoretical limitations. Plea bargaining is widely assumed to have a bad public image. The literature on plea bargaining generally assumes that members of the public, as conservative advocates of "law and order," constitute reliable representatives of the "anti-plea bargaining" camp, perceiving plea bargaining simplistically as a judicial mechanism by which offenders ultimately receive lighter sentences than they deserve.<sup>69</sup> This assertion assumes that the public is uniformly and homogeneously opposed to plea bargaining practices.

However, contrary to this common assumption, the findings of this study reveal wide heterogeneity in the public view of plea bargaining. Indeed, rather than constituting a discrete variable, public attitudes toward plea bargaining should be conceptualized as a continuous variable, ranging from complete disapproval to full support. Moreover, these heterogeneous views were found to be significantly affected by both criminal and judicial variables. Specifically, the more serious the settled case, as expressed by public perceptions of crime seriousness (and also by existence of a criminal record), the weaker the public support for plea bargaining, and vice versa.

This differential perception of plea bargaining for serious and non-serious offenses contraindicates claims of rigid homogeneity and punitiveness regarding public views on crime issues. Opinion polls have played a decisive role in perpetuating such claims, their results purporting to show increased public support for harsher criminal sanctions, such as the death penalty, and homogeneous perceptions regarding the overly lenient treatment of offenders by the courts. The conclusion of the present study serves to counter such claims. Contrary to common assertions of uniformity, public attitudes regarding crime issues are anything but simple. Indeed, they are "diverse, multidimensional, and complex."<sup>70</sup> The reason for contradictory findings in this area may well stem from the survey methodology. Research has shown that respondents tend to be less homogeneous and unequivocal when they are presented with more

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<sup>69</sup> Cohen & Doob, *supra* note 5, at 102.

<sup>70</sup> Flanagan & Caulfield, *supra* note 10, at 41; *see also* Cullen et al., *supra* note 10; Roberts, *supra* note 7; McCorkle, *supra* note 7; Thomson & Ragona, *supra* note 10.

information for their evaluation and when more sophisticated survey methods are used.<sup>71</sup> This explanation is reinforced by the experience of the present study. Compared to previous attempts to assess public attitudes toward plea bargaining by simpler survey methods, which revealed homogeneously negative perceptions,<sup>72</sup> the findings of this study indicate that rather than uniformly opposing plea bargaining, the public at large, regardless of social variables, appears to be located along a continuum of attitudes. Their evaluations are based on specific rather than global considerations; they are open, rather than close-minded; and they see plea bargaining as a flexible judicial means for settling criminal acts out of court rather than as a rigid goal in itself. Thus, additional variables not included in this study, such as victim restitution, may also bring about public support for plea bargaining settlements when applied to serious offenses.

Is it possible to generalize the findings obtained in the Israeli context to other societies? The answer to this question must surely be in the affirmative. First, as already noted, Israel is similar to most Anglo-American countries with regard to perceived crime-seriousness findings and plea bargaining practices. Second, this study excluded terrorist events and ideologically-motivated acts of violence, which could have set Israeli respondents apart from equivalent respondents in Anglo-American countries. This study analyzed criminal offenses and plea bargaining procedures typical of, and held in common with, other countries. Third, the regression findings showed that personal characteristics of respondents did not affect their attitudes toward plea bargaining. Such attitudes were basically affected by the offense committed and, to a lesser extent, by characteristics of the offender and the plea bargaining settlement.

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<sup>71</sup> See ANTHONY N. DOOB & JULIAN V. ROBERTS, AN ANALYSIS OF THE PUBLIC'S VIEW OF SENTENCING (1983); Roberts, *supra* note 7; Applegate et al., *supra* note 30; Durham et al., *supra* note 30.

<sup>72</sup> E.g., Cohen & Doob, *supra* note 5.

## APPENDIX 1

## DIMENSIONS AND LEVELS:

*A. Criminal Act and C. Degree of Injury/Damage*

1. A man suspected that his wife was cheating on him. When he was alone with her, he injured her and she died later / killed her by stabbing her.
2. A man returned home earlier than usual, discovered his wife with another man, and beat her lightly / seriously.
3. A man asked a girl out on a date and during it, raped her / forcefully.
4. A man driving his car at high speed in a residential area hit a pedestrian causing the pedestrian critical injury / death.
5. A man broke into an apartment and stole jewels and money worth NIS 500 / 10,000.
6. A man shoplifted a watch worth NIS 500 / 10,000.
7. A man entered a jewelry shop and, at gunpoint, stole NIS 500 / 10,000 from the cash register.
8. A man filed an income tax return declaring an income NIS 500 / 10,000 lower than his actual income.
9. A man sold marihuana and hashish / heroin and cocaine from his home.
10. A municipal employee received NIS 500 / 10,000 from a contractor and, in return, helped him win a contract.

*B. Perceived Crime Seriousness (filed by respondents)*

Values 1 ("Not serious at all") to 11 ("Very serious")

*D. Criminal Record of Offender*

1. Yes / 2. No

*E. Type of Plea-Bargain Agreement*

1. The defendant pleaded guilty on his/her own initiative, hoping to receive a lighter sentence. The judge approved the plea, sentencing the offender to a relatively low sentence (baseline).
2. An agreement was reached by which the defendant would plead guilty and, as a concession, the prosecutor would remove a charge from the indictment sheet.

3. An agreement was reached by which the defendant would plead guilty and, as a concession, the prosecutor would change the original charge to a less serious one.
4. An agreement was reached by which the defendant would plead guilty and, as a concession, the prosecutor would recommend that the judge hand down a relatively light sentence.

#### *F. Judicial Involvement in the Plea Bargain*

1. Before the trial, negotiation between the defense counsel and the prosecutor was conducted in the prosecutor's office (judge's role not mentioned; baseline).
2. Before the trial, the judge encouraged the defense counsel and the prosecutor to reach an agreement, noting the advantages of such agreement for the defendant (speedy disposition of the case, relatively light sentence). Then, negotiation between the defense counsel and the prosecutor was conducted in the prosecutor's office.
3. Before the trial, negotiation between the defense counsel and the prosecutor was conducted in the judge's office. The judge was present during the negotiations, serving as arbitrator.
4. Before the trial, negotiation between the defense counsel and the prosecutor was conducted in the judge's office. The judge participated actively in the discussions in reaching an agreement between the parties.

#### *G. Victim's Participation in Plea Bargain*

*(when the victim died—levels 1 and 4 of dimension A—the victim's family was included; this dimension was not included in victimless offenses: levels 8 to 10 of dimension A)*

1. (Not mentioned; baseline).
2. The prosecutor informed the (family of the) victim of the wish to reach an agreement with the defendant.
3. The prosecutor informed the (family of the) victim on the details of the agreement to be proposed to the defendant and noted his/her remarks.
4. The (family of the) victim expressed his/her (its) views concerning the agreement reached directly to the judge before accepting it.

#### *H. Prosecutorial Considerations in Plea Bargain*

1. (Not mentioned; baseline).
2. The prosecutor detailed the advantage of the plea bargain agreement to the public: The defendant would be convicted, with no risk of a possible acquittal (the evidence against the defendant was, in fact, weak).

3. The prosecutor detailed the advantage of the plea bargain agreement to the public: Important time would be saved by the court and prosecution for handling other cases.

4. The prosecutor detailed the advantage of the plea bargain agreement to the public: Considerable expense would be saved from the public budget for handling other cases.

**SAMPLED, FULL SCENARIO:**

A man broke into an apartment and stole jewels and money worth NIS 10,000. In your opinion, how serious was this act?

Not serious at all											Very Serious
1	2	3	4	5	6	7	8	9	10	11	

The man was caught by the police. He had a criminal record. Before the trial, negotiation between the defense counsel and the prosecutor was conducted in the judge's office. The judge participated actively in the discussions in reaching an agreement between the parties. An agreement was reached by which the defendant would plead guilty and, as a concession, the prosecutor would delete a charge from the indictment sheet. In the agreement, the prosecutor detailed the advantage of the plea bargain for the public: Important time would be saved by the court and the prosecution for handling other cases. The judge approved the agreement, sentencing the offender to a relatively low sentence.

To what extent do you support the judicial process in this situation?

Do not support at all											Strongly support
1	2	3	4	5	6	7	8	9	10	11	

