

Administrative Criminal Procedure: Plea Agreements, False Convictions of Guilty Defendants and Judicial Review

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It is commonly assumed that judges decide the criminal responsibility of defendants in criminal cases. This assumption is true only for a small proportion of all criminal cases. The vast majority of criminal cases are now resolved in plea agreements. In plea bargaining, prosecutors and defense attorneys decide the criminal responsibility of defendants through negotiations, compromise and agreement about the facts and offenses that constitute the basis of criminal convictions, and often of the criminal sentence. As a result, criminal procedure has become for the most part administrative in character; criminal responsibility is determined in administrative settings through the actions of administrative agents, in the offices of the prosecutors, in offices in the court set aside for negotiations between prosecutors and defense attorneys, and in the hallways of courts. Judicial review of plea agreements is deferential, does not usually include examination of evidence, and is more similar to judicial review in administrative courts and the High Court of Justice than it is to judicial procedure in which judges decide criminal responsibility on the basis of evidence submitted to the court.

Administrative criminal procedure sacrifices factual accuracy in favor of other values: first, the resolution of criminal cases without a trial, because of the need to save resources; and second, persuading defendants to plead guilty and express contrition, because of the assumed deterrent and rehabilitative effect that taking responsibility has on the defendant pleading guilty. The criminal justice system succeeds in saving resources and in incentivizing the taking of responsibility, by giving prosecutors and judges the authority to offer lesser sentences to defendants who plead guilty in comparison to defendants who go to trial and have the judges hear witness testimony. The systematic granting of lesser sentences to defendants who plead guilty results in false convictions of guilty defendants. False convictions of guilty defendants occur when defendants

