

# Contents

<i>Acknowledgments</i>	vii
<i>Abbreviations</i>	xi
Introduction	I
Delineating the issues: the forms and limits of plea bargaining	5
1. Waiver Rewards and Trial Penalties	10
Official tolerance of trial penalties: the Bordenkircher case	11
Separating waiver rewards from trial penalties	12
Detecting trial penalties	16
Objections to settlement hearings	23
Charges added consequent to failed plea negotiations	28
Strategic overcharging	31
Suboptimal sentencing schemes	35
Concluding remarks	36
2. Against Trial Penalties	38
Moral basis of the right to trial	39
The variety of defendants and the hazards of unilateral imposition of trial penalties	43
Further arguments against trial penalties	46
Trial penalties as a means to fair outcomes?	49
The exception that proves the rule?	53
Trial penalties and duress	54
A lingering doubt	60
Concluding remarks	62
3. Waiver Rewards and Deserved Punishment	63
Desert-based approaches to the justification of legal punishment	64
Rewards for acknowledging guilt	68
Expanding deserved punishment	72
The problem of innocent defendants	82
Charge bargaining	84
Waiver rewards in the non-ideal world	90
Concluding remarks	96
4. Remorse and Waiver Rewards	97
Two preliminary points	99
What is remorse?	100
Retributive arguments for remorse-based sentence mitigation	101
Remorse and crime reduction	112
Conclusions	117

5. Waiver Rewards and the Reduction of Crime	119
A preliminary point	120
Easterbrook's defense of plea bargaining	122
Initial problems with Easterbrook's account	125
The more subtle costs to robust plea bargaining	130
Bringing the background forward: is more punishment always better?	136
Concluding remarks	145
6. Rewarding Cooperation	146
Rewarding betrayal, penalizing loyalty	149
Absolute injustice and the duty to cooperate	151
Comparative justice	157
Cooperating witness reliability	161
Concluding remarks	166
7. Plea Bargains as Contracts	167
Initial doubts	171
Background conditions	173
Dubious prosecutorial tactics	176
Waiver rewards and the aims of punishment	181
Defendants' entitlements	183
Honorable negotiated settlements	188
8. Principled Criminal Prosecution and Half-Loaves	191
Some preliminary points	193
Criminal prosecution and principled state actors	196
Arguments in support of half-loaf plea bargaining	204
The problem of innocent defendants	212
Concluding remarks	215
9. Plea Bargaining and Getting at the Truth	217
A preliminary point	220
The deficiency of robust plea bargaining in getting at the truth	221
Will adversary trials fare better?	225
Could plea bargaining be made to better get at the truth?	230
Truth and the limits of charge-adjudication schemes	238
<i>Epilogue</i>	241
<i>Bibliography</i>	247
<i>Index</i>	255