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‘Ethical Perspectives on the Guilty Plea’

The act of pleading guilty can both promote and erode a defendant’s self-respect. On the one hand, the guilty plea can be a commendable gesture of contrition and a public acceptance of legal responsibility. On the other hand, it can be used strategically; entered for personal gain in the form of a plea-based sentencing discount when the defendant is factually innocent. The guilty plea, then, has the capacity to generate quite contradictory sentiments, where we might at once morally approve and morally object to its existence.

The presentation begins by introducing the legal background and the concept of self-respect – defined in the philosophical literature as a person’s regard for his intrinsic worth – and then assesses both accounts of the guilty plea against this background. It argues that the state places a moral burden on the innocent defendant by incentivising him to ‘self-convict’, where the hidden cost is a loss of self-respect. A revised approach to the guilty plea for the 2020s would preserve its positive aspects while ensuring that it is kept in its proper place and balancing it against other forms of mitigation at sentencing, including remorse.

INTRODUCTION

1. LEGAL BACKGROUND
2. WHY THINK ETHICALLY ABOUT THE GUILTY PLEA?
 3. SELF-RESPECT: THE CONCEPT ITSELF
 4. THE GUILTY PLEA: ETHICAL CONCERNS
 - a) Incentivisation or inducement?
 - b) Vulnerable defendants and the question of time
5. THE MERITS AND LIMITS OF ETHICAL ANALYSIS

CONCLUSION