UNIVERSITY OF FLORIDA
PHI ALPHA DELTA

LEGAL REVIEW

ufpad.com

All opinions presented throughout reflect those of each individual author and do not represent the University of Florida chapter of Phi Alpha Delta, the University of Florida, as well as the Phi Alpha Delta organization as a whole.

University of Florida Phi Alpha Delta Legal Review

Vol. I

Fall 2025

Table of Contents

Officers

President

Ilan Kohan

Vice-President

Bella Berger

Treasurer

Devin Kinnally

Secretary

Grace Dannelly

Editors

Director of Journal

Audrey Bolin

Assistant Director of Journal

Amelia Frias

Assistant Director of Journal

Thomas Cerniglia

Assistant Director of Journal

Kayla Feeney

Cover Design

Isabella Truong

Justice Better Late than Never

Alyssa Abraham ’27

Fall 2025

Abstract

Cold cases that are decades old, such as the Golden State Killer or the Chameleon Killer, are now being solved with the development of new forensic science and genetic genealogy. Investigators are more capable of solving crimes today than ever before, aided by innovations such as sophisticated fingerprint and ballistic analysis, IA facial recognition, and the increasing presence of surveillance. Of these innovations, perhaps the most groundbreaking of them all is direct-to-consumer DNA testing services. DNA samples are added to public genealogical databases, which have become powerful tools for helping investigators identify unknown individuals and suspects. With these advancements in modern criminology, justice in cold cases can finally be served. Or can it? Delayed justice can bring truth and closure to victims and their families. However, delivering justice decades later may cause more harm than good because of limits imposed by statutes of limitations, evidence deterioration, and privacy concerns. This article will explore the legal and ethical dilemmas of delayed justice through legal positivism and natural law perspectives. From a legal positivist perspective, justice must respect procedural law to preserve fairness in the legal system. Legal positivists argue that certain cold cases, if solved after the statute of limitations, cannot be brought to court as well, and have other stipulations about the evidence and due process procedures. Conversely, the natural law perspective asserts that morality transcends time and technicalities and that justice must prevail even if it is delayed. By comparing these perspectives and analyzing the ethical impact of various solved cold cases, the article will seek to answer the question of whether justice is truly better late than never.

I Introduction

On April 24, 2018, the infamous Golden State Killer, who committed 12 homicides, 45 rapes, and more than 120 residential burglaries, was arrested. His crimes date from 1976 to 1986, and he had successfully eluded police for 40 years. For decades, California police attempted to capture the serial killer using traditional detective work that proved to be unsuccessful. Finally, they decided to try a new method that was a little unconventional. Identifying the Golden State Killer directly proved to be too difficult, so they decided to identify his relatives using a commercial DNA testing website instead. Law enforcement created a fake profile and sent the DNA found from the crime scenes to find genetic relatives.[1] The website had identified a partial match between

[1] Guerrini, Christi J., Jill O. Robinson, Devan Petersen, and Amy L. McGuire. "Should Police Have Access to Genetic Genealogy Databases? Capturing the Golden State Killer and Other Crim-

the Golden State Killer DNA and a distant relative. This helped substantially reduce the number of suspects, and eventually, law enforcement reconstructed the family tree and was able to narrow down their search to correctly identify the Golden State Killer as a former police officer, James DeAngelo. This revelation had officially ended the Golden State Killer's reign of terror, gave closure to hundreds of victims, and sentenced DeAngelo to 11 long overdue life sentences in California state prison. With rapid developments in forensic science and technology, law enforcement is more capable than ever before of solving crimes, even crimes committed decades ago. One of the most profound developments in this area is direct-to-consumer DNA testing services like 23andMe and Ancestry DNA. These companies allow individuals to submit DNA samples, which are then analyzed using genotyping chips that identify thousands of genetic variants to produce detailed ancestry and heritage reports for consumers.[2] Over time, as these tests rose in popularity, an extensive public genealogy database has developed, which is extremely useful for law enforcement. By comparing DNA evidence from unsolved crimes to current profiles stored in these direct-to-consumer databases, law enforcement can identify genetic relatives and, in many cases, pinpoint exact suspects in cold cases, as they did in the Golden State Killer case.[3] Previously, law enforcement relied on the Combined DNA Index System (CODIS), which could only compare DNA profiles found at crime scenes to those of known offenders and arrestees.[4] Today, however, access to direct-to-consumer genetic databases has dramatically expanded that scope. These modern databases include profiles from millions of ordinary individuals, not just criminals like in the CODIS system, greatly increasing the likelihood of finding genetic matches. As a result, investigators can now identify suspects and even victims in decades-old cold cases with far greater ease and accuracy. However, these breakthroughs raise complex legal and ethical questions. This paper examines these questions through the lenses of legal positivism and natural law in order to determine whether some cases are better off unsolved. While legal positivism reveals the temporal limits of justice, the natural law perspective ultimately better reflects society's enduring moral obligation to seek the truth and accountability, even if punishment is no longer possible.

inals Using a Controversial New Forensic Technique." *PLOS Biology*. Accessed November 5, 2025. https://journals.plos.org/plosbiology/article?id=10.1371%2Fjournal.pbio.2006906.

[2]23andMe. "The Science behind 23andMe - Our Science & Testing Process." 23andMe.

[3]Tuazon, Oliver M, Ray A Wickenheiser, Ricky Ansell, Christi J Guerrini, Gerrit-Jan Zwenne, and Bart Custers. "Law Enforcement Use of Genetic Genealogy Databases in Criminal Investigations: Nomenclature, Definition and Scope." *Forensic science international. Synergy*, February 8, 2024. https://pmc.ncbi.nlm.nih.gov/articles/PMC10876674/.

[4]Codis Archive — Le. https://le.fbi.gov/science-and-lab/biometrics-and-fingerprints/codis-2.

II Background

In legal philosophy, legal positivism and natural law represent two opposing frameworks for understanding the relationship between morality and law. The separability thesis encompasses a significant framework in understanding legal positivism. This theory maintains that morality and law are conceptually distinct from each other. John Austin, a notable figure in legal positivism famously described the theory as "the existence of law is one thing; its merit or demerit is another".[5] A law can still be valid even if it is immoral. Legal positivism asserts that laws do not require ethical justification; they must be followed simply because they exist. The reasoning behind this theory is the fact that morals change over time. For example, slavery, colonialism, and discrimination were once considered moral but are now condemned. Morality also means something different to each individual, so it is hard to create a consensus on what laws are moral and what laws are not. Because morality is subjective and fluctuating in nature, it can be increasingly difficult to create uniform and stable laws. Legal positivism, therefore, holds that law is meant to last and endure changing opinions in order to provide stability, order, and credibility. Another relevant theory within legal positivism is the command theory. The command theory, according to Austin, requires laws to include "a sanction [for] threatening harm for non-compliance."[6] Laws, in order to be effective, must be enforced by the government to have true power. If no one obeys the written law because there are no sanctions for not doing so, then, in theory, the law is not valid. In essence, legal positivists view law as defined by what is formally written and enforced, not by what is morally right or wrong. On the other hand, natural law asserts that law is actually derived from universal moral principles. St. Thomas Aquinas, a foundational thinker in this theory, wrote that "good is to be done and evil avoided."[7] Morality, not lawmakers, defines laws. If a law is not moral, it lacks legitimacy. Accordingly, laws that are unjust, like Jim Crow laws, are not considered valid since they fail to uphold society's moral standards. Natural law also stresses the central role of human reason in discerning moral truth and laws. It is not enough to obey authority or blindly follow laws simply because they exist; humans must rely on their own reasoning to establish the validity of laws. In this paper these theories will be used to assess the merits and implications of solving cold cases.

[5] Bix, Brian. "John Austin." *Stanford Encyclopedia of Philosophy*, January 14, 2022. https://plato.stanford.edu/entries/austin-john/.

[6] Green, Michael J. Austin's command theory.. https://carneades.pomona.edu/2018-Law/02.Austin.html.

[7] Murphy, Mark. "The Natural Law Tradition in Ethics." *Stanford Encyclopedia of Philosophy*, April 30, 2025. https://plato.stanford.edu/entries/natural-law-ethics/.

III Emotional Closure

One of the biggest benefits for solving cold cases is the closure for the friends and families of the victims. While this emotional closure is valuable it also has unintended consequences for the legal system. Legal positivists consider the fact that many cases remain unresolved for decades, and by the time any form of closure is achieved, the offender or the victims' loved ones have already often passed away. For example, on March 29, 1979 a sweet 19-year-old girl named Kathy Halle left her home to pick up her sister at the mall. What was supposed to be an ordinary day at the mall turned out to be the last day of her life. She was abducted from the parking lot of her apartment, brutally murdered, and her body dumped in Fox River. Law enforcement, which only had access to the outdated tools of the 70s, failed to identify who was responsible for this gruesome murder. Kathy Halle's family and friends had no answers. Her killer had gotten away. For 45 long years it remained that way. That is, until August 2024, when advancements in modern DNA labs finally allowed investigators to use public genealogy databases to link the DNA found on Kathy's clothing to a man named Bruce Lindahl. Lindahl is a serial killer who was suspected of also killing and raping dozens of other women.[8] Yet he was only ever prosecuted for unrelated charges due to a lack of evidence. By the time the discovery was made, justice had come too late. Lindahl had already died from an accidental knife injury years earlier and never spent a day in prison for her murder. From a legal positivist perspective, justice derives its value not from moral sentiment but from adherence to codified law and the practical benefits it offers society. If no living individual remains to receive restitution or closure, the social utility of delayed justice is diminished. As H.L.A. Hart, a legal positivist philosopher, said "rules are the foundation of a system, and their efficacy depends on the cooperation of officials in applying them."[9] In this light, allocating substantial resources to cold cases imposes an inefficiency on the system by diverting personnel and funding from current investigations where justice can yield greater tangible societal benefits. Such efforts, though emotionally compelling, risk undermining the functional integrity and efficiency of the entire legal system and its application of rules for all cases. In adherence to natural law, even the possibility of closure for the friends and families and justice for the victim transcends the risk of over-exhausting legal and law enforcement resources. Direct-to-consumer DNA testing services have opened the door to so many possibilities that will help the victim's family heal and

[8] Stevens, Natalie. "North Aurora Police Solve 45-Year-Old Cold Case Murder of Kathy Halle." Village of North Aurora, October 23, 2024. https://northaurora.org/2024/10/23/north-aurora-police-solve-45-year-old-cold-case-murder-of-kathy-halle/.

[9] Hart, H. L. A., and Leslie Green. *The concept of law*

find peace. One of such possibilities is using genealogical technology to not only identify perpetrators but also to restore the identities of long-unidentified victims. For example, a 17-year-old girl who had run away from home in 1977 was found dead. For 43 years no one could identify her so she became known as "Precious Jane Doe". Finally in 2020, a team of 16 genealogists used a hair sample from Jane Doe and compared it to the genetic profiles from direct-to-consumer databases. By reconstructing segments of her family tree, they eventually discovered a close match when her older half-brother happened to submit his profile to one of these ancestry websites. Investigators soon confirmed that "Precious Jane Doe" was actually Elizabeth Roberts. After 43 years of uncertainty, Elizabeth's brother and friends finally received the answers they had been seeking, which is an act of closure that, under natural law, fulfills a moral duty to honor human dignity and truth. The duty to provide closure comes from the idea that "law is nothing else than an ordinance of reason for the common good, made by him who has care of the community".[10] This natural law framework views justice not merely as maintaining order but as an enduring moral imperative to care for the community. This moral imperative is one that exists independent of time, cost, or consequence. Even when no living person stands to benefit directly, the pursuit of justice while solving cold cases restores moral balance and affirms society's collective commitment to the value of every human life.

IV Privacy and Consent Concerns

As the use of direct-to-consumer DNA testing has expanded within law enforcement, so too have concerns regarding consumer privacy and informed consent. Individuals who submit their DNA to these companies do so with the expectation that their genetic information will not be accessed or analyzed by third parties. Rather, they reasonably trust that their data will remain secure and used solely for the purposes they consented to, such as ancestry tracing or health insights. While public genealogy databases have proven immensely valuable for solving cold cases, their use by law enforcement raises significant questions under the Fourth Amendment. *Katz v. United States* holds that an unreasonable search and seizure occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable.[11] *United States v. Jones* further defines an unreasonable search as an event when the government obtains information by physically intruding on a constitutionally pro-

[10] "B. the Structure of Natural Law." St Thomas Aquinas. Accessed November 5, 2025. https://faculty.fiu.edu/~henleyk/St.htm#: :text=Law%20is%20nothing%20else%20than,be%20known%20by%20him%20naturally.

[11] *Katz v. United States*, 389 U.S. 347 (1967).

tected area.[12] These two court cases lay the foundation that the Fourth Amendment protects individuals from violations of personal privacy, especially without probable cause. The central point of contention, therefore, is whether accessing publicly available genetic databases to identify DNA meets the subjective expectation of privacy and whether it constitutes a reasonable search supported by probable cause and consent.

IV.1 Privacy & Probable Cause

Legal positivists might argue that, in most cold cases, such searches do not satisfy the constitutional standard for reasonableness, as they stretch the boundaries of lawful investigation. DNA samples are inherently invasive and by law, individuals are not subjected to random testing. In *Schmerber v. California*, the Supreme Court held that the compulsory withdrawal of blood constitutes a search under the Fourth Amendment, permissible only when supported by probable cause and conducted under extreme circumstances.[13] Accordingly, law enforcement must demonstrate probable cause to believe that a specific individual has committed a crime before obtaining biological samples. When applied to public genealogy databases, this principle becomes problematic in the legal positivist view because law enforcement cannot possibly have probable cause against every single one of the millions of individuals whose genetic information resides in these databases, making the search unlawful. Thus, granting law enforcement unrestricted access to such databases risks violating both constitutional protections and fundamental principles of the right to privacy. California has a Genetic Information Privacy Act (GIPA) that prevents genetic testing services from disclosing consumers' personally identifiable information to third parties without the consumer's express consent.[14] From a positivist standpoint, such legislation reflects the proper role of law which is to establish clear, codified boundaries that protect individual rights and regulate state power. Legal positivists would therefore support statutes like GIPA, as they are rooted in democracy, enacted authority, and reinforced procedural legitimacy. Upholding these laws preserves the predictability and order that legal positivism views as essential to maintaining the integrity of the legal system. From a natural law perspective, the moral obligation to seek truth and administer justice for victims and their families outweighs competing individual claims to privacy. Natural law, grounded in the belief that certain rights and moral principles

[12] *United States v. Jones*, 565 U.S. 400 (2012).

[13] *Schmerber v. California*, 384 U.S. 757 (1966).

[14] H.R.2155 - 116th congress (2019-2020): Genetic information privacy act of 2019 | congress.gov | library of Congress. Accessed November 7, 2025. https://www.congress.gov/bill/116th-congress/house-bill/2155.

are inherent and universally binding, emphasizes the pursuit of justice as a higher moral good derived from reason and human dignity. Within this framework, the use of genealogy databases by law enforcement is justified because it is morally imperative to restore order and protect the innocent. In *Smith v. Maryland*, the Supreme Court held that companies could disclose information voluntarily conveyed to them without violating an individual's reasonable expectation of privacy under the Fourth Amendment.[15] The court reasoned that because the defendant knowingly exposed the numbers he dialed to the telephone company, he had assumed the risk that the company would share that information with law enforcement. Since the data was already being recorded by the company in the ordinary course of business, its disclosure did not constitute an unreasonable search within the meaning of the Fourth Amendment. The same can be applied to users for direct-to-consumer DNA testing services. These users assume the risk that their information could be shared with law enforcement simply by signing up. While critics argue that such practices infringe upon privacy rights, natural law theorists would contend that privacy and probable cause, though valuable, is not absolute when it conflicts with the pursuit of justice.

IV.2 Informed Consent

Additionally, there is the issue of informed consent. Many genealogy services, such as GEDmatch, include terms of service expressly permitting law enforcement to access their data for criminal investigations, while others require users to opt in. However, most terms of service contain complex, jargon-heavy terms that are confusing and obscure. This serves as a challenge for consumers to understand the true extent to which their personal data may be shared, leading many consumers to overlook potential privacy risks. From the legal positivist perspective, this lack of transparency raises serious ethical concerns, as it effectively transforms a public act of personal curiosity into an involuntary contribution to criminal investigations. Using public DNA databases without explicit, informed consent undermines individual autonomy and violates the foundational principle that participation in law enforcement processes must be voluntary and fully understood. In response to these ethical and constitutional concerns, the Department of Justice issued an interim policy requiring investigators to first exhaust less invasive investigative tools like CODIS before turning to public databases and mandating that they identify themselves, thereby addressing prior instances of law enforcement uploading DNA profiles under false

[15] *Smith v. Maryland*, 442 U.S. 735 (1979).

identities.[16] While this is a good effort to mitigate some of these privacy concerns, legal positivists would maintain that the policy still falls short of constitutional legitimacy. From a positivist standpoint, because the interim policy operates as administrative guidance rather than a legislatively enacted standard, it cannot override the constitutional requirement of probable cause. Consequently, even with these internal safeguards, the use of public genealogy databases in cold case investigations is a dangerous slippery slope under positivist reasoning, as it continues to blur the line between lawful enforcement and overreach. By voluntarily submitting DNA to genealogy platforms, individuals exercise free will, a core tenet of natural law, and implicitly consent to the potential use of their data for morally justified purposes, such as solving violent crimes or identifying missing persons in cold cases. In fact, a recent survey found that 79% of consumers support police searches of genealogy databases, particularly in cases involving murder, crimes against children, and missing persons.[17] This widespread public support reflects society's collective moral conscience, signaling that the pursuit of justice through such means serves the common good. Therefore, under natural law reasoning, if the act of sharing DNA ultimately leads to truth, accountability, closure for victims' families, and is morally acceptable from the majority of users, it is justified. In this sense, the ethical legitimacy of forensic genealogy is greater than the legal technicalities of privacy.

V Procedural Limitations

V.1 Statute of Limitations

Another important factor to consider is the statute of limitations. The statute of limitations sets a time limit for initiating legal proceedings. In *Toussie v. United States*, the Supreme Court elaborates that the purpose of the statute of limitations is to protect individuals from having to defend themselves when the basic facts of the case may have been obscured by the passage of time. It is to ensure that each individual gets a fair and speedy trial while maintaining the integrity of the case. The statute of limitations also encourages prosecutors and law enforcement to act diligently and promptly in pursuing investigations while evidence remains reliable. Legal positivists respect the integrity of the statute of limitations, noting the importance of upholding

[16] "Advances in DNA analysis: Fourth Amendment implications." *Congressional Research Service*. Accessed November 5, 2025. https://www.congress.gov/crs-product/LSB11339.

[17] Guerrini, Christi J., Jill O. Robinson, Devan Petersen, and Amy L. McGuire. "Should Police Have Access to Genetic Genealogy Databases? Capturing the Golden State Killer and Other Criminals Using a Controversial New Forensic Technique." *PLOS Biology*. Accessed November 6, 2025. https://journals.plos.org/plosbiology/article?id=10.1371%2Fjournal.pbio.2006906.

the rule of law and fairness. Legal positivists believe that laws derive their legitimacy from being enacted through proper authority and applied consistently, regardless of moral or emotional considerations. Therefore, even in cases involving serious moral wrongs, positivists argue that the law must respect established limits to prevent arbitrary or retrospective punishment. The integrity of the legal system depends on predictability and restraint, which are principles that safeguard citizens from the potential abuse of state power. To positivists, extending or disregarding statutory time limits simply because of moral outrage would erode public trust in the justice system and violate the separation between law as it is written and law as what society might wish it to be. In contrast, from a natural law standpoint, justice cannot have a time limit. Under natural law, the duty to punish wrongdoing and restore justice remains valid regardless whether 1 year or 100 years have passed. Morality does not simply expire. Law enforcement using direct-to-consumer DNA testing led to over 500 cases being solved.[18] That is 500 family members and friends who finally have closure. That is 500 victims who finally got justice. 500 murderers, rapists, and criminals finally have to answer to the people they harmed. Every single one of these cases is important. If the tools are available, it is law enforcement's moral duty to use them and finally close the chapters on these dark stories. Natural law maintains that the enduring emotional harm experienced by victims' families and the societal need for upholding morality justify reopening cold cases despite the statute of limitations. This reasoning underlies why most states impose no statute of limitations on murder or capital offenses, because these crimes so severely violate the natural moral code that justice demands accountability at any point in time.

V.2 Evidence Deterioration

A major challenge in prosecuting cold cases is the inevitable deterioration of physical evidence and the gradual fading of human memory over time. DNA stored in evidence can break down into smaller fragments over time which can compromise its usability especially if it is exposed to environmental factors such as sunlight, heat, and humidity.[19] Therefore, biological materials from cold cases dating back 50 years, such as DNA, fingerprints, and trace evidence, degrade with age, often making them inconclusive or inadmissible in court. So the conclusions drawn from analysis must not be easily accepted or trusted in a court of law. Additionally, witnesses may move

[18] Glynn, Claire L. "Bridging Disciplines to Form a New One: The Emergence of Forensic Genetic Genealogy." *Genes*, August 1, 2022. https://pmc.ncbi.nlm.nih.gov/articles/PMC9407302/.

[19] "STR Data Analysis and Interpretation for Forensic Analysts: Degradation." National Institute of Justice. Accessed November 7, 2025. https://nij.ojp.gov/nij-hosted-online-training-courses/str-data-analysis-and-interpretation-forensic-analysts/data-troub leshooting/degradation.

away, forget key details, or die, leaving prosecutors with fragmented narratives and uncertain facts. From a legal positivist standpoint, these evidentiary limitations threaten the procedural integrity of the justice system. In most cold cases, the standard of proof "beyond a reasonable doubt" is exceedingly difficult to meet, especially with compromised evidence and witness testimony. Ultimately, with such a high burden to meet, few cases advance to trial, yet the investigative process consumes significant legal and financial resources that would be better allocated to current cases. Since positivism emphasizes adherence to established legal standards, bringing cases to trial decades later with weakened or compromised evidence can lead to wrongful convictions, erode public confidence in the rule of law, and exhaust already limited resources. From a natural law perspective, even when evidence deteriorates, the ethical duty to seek justice for victims and their families persists. Reopening cold cases, even with imperfect evidence, serves a higher purpose because it reaffirms society's commitment to truth and moral accountability. It brings justice for every victim and their loved ones, as well as consequences for their perpetrators. Solving cold cases despite evidence deterioration is also ethical because solving cold cases may deter crime overall, as it sends the message that no crime goes unpunished. Criminals cannot get away with crime because some of the evidence might be circumstantial. Moreover, a strong case can still be built even decades later with the help of modern technology. Advances in forensic science and technology have significantly strengthened the reliability of evidence in cold case investigations. Modern DNA sequencing, genetic genealogy, and digital recordkeeping can transform once-fragmented evidence into compelling proof, allowing investigators to meet legal standards of certainty decades later. Technological advancements function as tools of moral restoration, diminishing the temporal barriers that once hindered justice.

V.3 Validity & Admission

Technology like direct-to-consumer DNA testing, although advanced, is not perfect. In fact, some individuals report submitting their information to multiple companies only to receive conflicting results.[20] This implies that not all direct-to-consumer websites are equally accurate and reliable. So how does law enforcement know which companies to trust and which ones to avoid? Verifying the accuracy of every single direct-to-consumer company is a costly pursuit and not practical for law enforcement to take on. Another study found that 40% of variants from direct-to-consumer

[20] "Implications of Direct-to-Consumer Genetic Testing." ASCLS, May 29, 2019. https://ascls.org/implications-of-direct-to-consumer-genetic-testing/#:~:text=The%20most%20troubling%20aspect%20of,endurance%20bike%20rides%20or%20runs.

raw data were false positives.[21] That means there is a 40% chance that law enforcement could accuse the wrong person of crimes they did not commit. Therefore, the reliability and accuracy of DNA matches obtained from genealogy websites warrant careful scrutiny. Courts often rely on established standards of admissibility to determine whether such evidence should be presented at trial. The Frye test provides that scientific evidence is admissible only if the methodology is "generally accepted" within the relevant scientific community.[22] If the evidence is generally accepted, then its credibility cannot be called into question. When consensus is lacking or only a minority supports the technique, courts may instead apply the Federal Rules of Evidence, particularly Rule 403, which allows the exclusion of relevant evidence if its probative value is substantially outweighed by the risk of unfair prejudice, confusion, or waste of time.[23] In this sense, a DNA match may be used for its shock value and create a false sense of certainty (despite the inaccuracies of DNA testing services), which can lead to unfair prejudice. This calls into question whether the techniques and methods of direct-to-consumer DNA testing are generally accepted and whether admitting this evidence leads to unfair prejudice. From a legal positivist perspective, the admissibility of DNA evidence from public genealogy databases raises serious concerns about the lawfulness of using such unconventional methods of obtaining evidence. Legal positivists view established laws and procedures as the most important compared to newer, less established methodologies. Thus, if DNA evidence fails to meet standards of reliability under Frye or Rule 403, it should be excluded regardless of its potential moral benefit. Positivists emphasize that justice must operate within the boundaries of the written law, even if that means some offenders escape conviction, because bending procedural safeguards for emotional reasons undermines the rule of law and individual rights. In their view, reliance on imperfect or misapplied technology risks wrongful convictions, violating the legal principle of innocent until proven guilty. In contrast, natural law theorists maintain that the moral imperative to achieve justice and uncover truth justifies the use of technological tools, even if they are not flawless. As long as DNA evidence is used responsibly and corroborated with additional proof, its imperfections do not outweigh its moral

[21] S, Tandy Connor, Krempley K, and Guiltinan J. "False-Positive Results Released by Direct-to-Consumer Genetic Tests Highlight the Importance of Clinical Confirmation Testing for Appropriate Patient Care." *Genetics in medicine : official journal of the American College of Medical Genetics*. Accessed November 6, 2025. https://pubmed.ncbi.nlm.nih.gov/29565420/.

[22] Mays, G. Larry, Noreen Purcell, and L. Thomas Winfree. "Review Essay: DNA (Deoxyribonucleic Acid) Evidence, Criminal Law, and Felony Prosecutions: Issues and Prospects." *The Justice System Journal* 16, no. 1 (1992): 111–22. http://www.jstor.org/stable/27976802.

[23] "Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons." Legal Information Institute. Accessed November 6, 2025. https://www.law.cornell.edu/rules/fre/rule_403.

utility in serving justice. The key point is that DNA alone does not secure a conviction, but rather it serves as a starting point for uncovering the truth. Like in the case of the Golden State Killer, the DNA is what helped narrow down the search, but it was further evidence, such as witness testimony, surveillance, and DeAngelo's own confession, that confirmed it. Under natural law reasoning, moral truth can emerge from science and reason. This truth and obligation to hold perpetrators accountable takes precedence over procedural rigidity.

VI Conclusion

The rise of direct-to-consumer DNA testing has transformed not only the way crimes are solved but also the very boundaries of justice itself. Technological innovations have led to unprecedented threats and opportunities for today's law enforcement. This is an era where a drop of saliva could reveal generations of identity. As technology continues to evolve, the legal system stands at a crossroads between morality, innovation, and procedural restraint. The growing integration of science into law forces society to reconsider the delicate balance between what can be done and what should be done. From a legal positivist perspective, technology is a tool that must operate within the confines of established law. Legal positivists emphasize procedural safeguards such as the Fourth Amendment, due process rights, and statutes of limitations that exist not only to protect criminals but to protect the integrity of justice itself. Once those boundaries are crossed, even in pursuit of moral good, the rule of law risks devolving into subjective enforcement guided by emotion rather than principle. Direct-to-consumer DNA testing services may offer an efficient means to solve old cases, but legal positivists warn that efficiency cannot replace constitutionality. If exceptions are continually made for emotionally compelling cases, the consistency that maintains legal order begins to erode. The law must remain impersonal to remain fair and uniform for all individuals. However, natural law theorists would argue that the essence of justice cannot be constrained by the artificial limits of time or procedural technicalities. The law derives legitimacy only as long as it serves the moral good of humanity. To deny victims and their families closure merely because decades have passed is to elevate procedure over conscience. Within this moral framework, the discovery of justice, even if delayed, reinstates balance within the moral fabric of society. Each solved case, each story restored, represents an act of moral reconciliation between the living and the dead. Justice, in this sense, is not a transaction measured by immediacy but a timeless pursuit of truth. Still, both perspectives converge on one undeniable truth that justice in the modern era demands ethical evolution. Laws

must adapt to technological realities, but not at the expense of the principles that make them just. Policymakers must establish clearer regulations for data consent, transparency, and law enforcement access to genetic information. Courts must develop new standards of admissibility that account for both scientific innovation and constitutional rights. The challenge for the next generation of lawmakers is to create a framework that honors both the moral imperatives of natural law and the procedural rigor of legal positivism, which is a system where technology advances justice without undermining its legitimacy. In the end, perhaps justice is not about timing but about purpose. Better late than never does not imply perfection, but perseverance. Cold cases remind society that even after decades of silence, truth still has a voice and that voice can heal as much as it condemns. Whether guided by the procedural precision of legal positivism or the moral conviction of natural law, the pursuit of 18 justice must strive to balance fairness with compassion, legality with humanity. Each solved case, however delayed, stands as a testament to the resilience of truth and the enduring human need for closure. Justice, after all, is not measured solely by verdicts rendered or sentences served. It is measured by the restoration of dignity, the validation of suffering, and the reaffirmation of society's shared moral conscience. While law provides the structure, morality provides the meaning. The task for future generations is not to choose between them but to weave them together in order to ensure that justice remains both lawful, good, and timeless. In this sense, justice is indeed better late than never.

Bibliography

23andMe. “The Science behind 23andMe – Our Science & Testing Process.” Accessed November 4, 2025. https://www.23andme.com/genetic-science/.

“Advances in DNA Analysis: Fourth Amendment Implications.” *Congressional Research Service*. Accessed November 5, 2025. https://www.congress.gov/crs-product/LSB11339.

Bix, Brian. “John Austin.” *Stanford Encyclopedia of Philosophy*. January 14, 2022. https://plato.stanford.edu/entries/austin-john/.

“CODIS Archive.” *Federal Bureau of Investigation*. Accessed November 5, 2025. https://le.fbi.gov/science-and-lab/biometrics-and-fingerprints/codis-2.

Connor, Tandy S., K. Krempley, and J. Guiltinan. “False-Positive Results Released by Direct-to-Consumer Genetic Tests Highlight the Importance of Clinical Confirmation Testing for Appropriate Patient Care.” *Genetics in Medicine*. Accessed November 6, 2025. https://pubmed.ncbi.nlm.nih.gov/29565420/.

“Genetic Information Privacy Act of 2019.” H.R. 2155, 116th Cong. Accessed November 7, 2025. https://www.congress.gov/bill/116th-congress/house-bill/2155.

Genomics Institute. “Solved: For 43 Years, She Was ‘Precious’ Jane Doe.” Accessed November 4, 2025. https://genomics.ucsc.edu/news/2020/06/solved-for-43-years-she-was-precious-jane-doe/.

Green, Michael J. “Austin’s Command Theory.” Accessed November 6, 2025. https://carneades.pomona.edu/2018-Law/02.Austin.html.

Guerrini, Christi J., Jill O. Robinson, Devan Petersen, and Amy L. McGuire. “Should Police Have Access to Genetic Genealogy Databases? Capturing the Golden State Killer and Other Criminals Using a Controversial New Forensic Technique.” *PLOS Biology*. Accessed November 6, 2025. https://journals.plos.org/plosbiology/article?id=10.1371/journal.pbio.2006906.

Guerrini, Christi J., et al. “Public Attitudes on Law-Enforcement Use of Direct-to-Consumer Genetic Data.” *PLOS Biology* (2025).

Hart, H. L. A., and Leslie Green. *The Concept of Law*. 3rd ed. Oxford: Oxford University Press, 2015.

“Implications of Direct-to-Consumer Genetic Testing.” *ASCLS*. May 29, 2019. https://ascls.org/implications-of-direct-to-consumer-genetic-testing/.

Katz v. United States, 389 U.S. 347 (1967).

Murphy, Mark. “The Natural Law Tradition in Ethics.” *Stanford Encyclopedia of Philosophy*. April 30, 2025. https://plato.stanford.edu/entries/natural-law-ethics/.

"Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons." *Legal Information Institute*. Accessed November 6, 2025. https://www.law.cornell.edu/rules/fre/rule_403.
Schmerber v. California, 384 U.S. 757 (1966).
Smith v. Maryland, 442 U.S. 735 (1979).
Stevens, Natalie. "North Aurora Police Solve 45-Year-Old Cold Case Murder of Kathy Halle." *Village of North Aurora*. October 23, 2024. https://northaurora.org/2024/10/23/north-aurora-police-solve-45-year-old-cold-case-murder-of-kathy-halle/.
Tuazon, Oliver M., Ray A. Wickenheiser, Ricky Ansell, Christi J. Guerrini, Gerrit-Jan Zwenne, and Bart Custers. "Law Enforcement Use of Genetic Genealogy Databases in Criminal Investigations: Nomenclature, Definition and Scope." *Forensic Science International: Synergy*. February 8, 2024. https://pmc.ncbi.nlm.nih.gov/articles/PMC10876674/.
United States v. Jones, 565 U.S. 400 (2012).

Pleading for Justice: How Systemic Pressures in Plea Bargaining Undermine Constitutional Protections

Ria Pai ’27

Fall 2025

Abstract

The American criminal justice system relies heavily on plea bargaining, with over 90% of convictions resulting from negotiated agreements rather than jury trials. While intended to promote judicial efficiency and reduce caseload burdens, this system has produced a troubling pattern of false guilty pleas and wrongful convictions. This study argues that the systemic pressures embedded within plea bargaining—rooted in prosecutorial power and reinforced by economic and legal inequities—erode defendants' constitutional protections and perpetuate structural injustice. Drawing from the constitutional principles of due process and the right to effective counsel, as well as empirical research on wrongful convictions and exonerations, this project analyzes how plea-induced admissions of guilt reflect broader failures of fairness and accountability in the legal system. It also evaluates targeted reforms, such as enhanced judicial oversight and limits on sentencing differentials, that could mitigate these harms without undermining efficiency. By integrating legal analysis with social science perspectives, this research seeks to illuminate how plea bargaining, in its current form, compromises the pursuit of justice and to outline pathways toward a more equitable and constitutionally sound criminal process.

I Introduction

Over the past fifty years, plea bargaining has slowly become the foundation of the American criminal justice system. Today, more than ninety percent of all criminal convictions in the United States are obtained through plea agreements rather than trials by jury.[1] While it was initially introduced as a means of accelerating proceedings and reducing the burden placed upon the court system, plea bargaining has developed into a system upheld by prosecutorial power and systemic flaws. For many defendants, the ability to plead guilty no longer represents a choice of free will but rather one made under systemic coercion, a culmination of unequal access to legal resources, fear of disproportionately harsh post-trial outcomes, and organized incentives that prioritize efficiency over justice. Although plea bargaining has undoubtedly reduced caseload pressure, it has also dissolved fundamental constitutional protections and created new routes to wrongful convictions.

The human cost of this shift toward efficiency is shown through wrongful conviction data. According to the Innocence Project, roughly one in ten DNA exonerees in the

[1] Jenia I. Turner, "Transparency in Plea Bargaining," *Notre Dame Law Review* 96, no. 3 (2021): 973–1022, https://ndlawreview.org/wp-content/uploads/2021/01/NDL302-Turner_crop.pdf.

United States originally pled guilty to crimes they did not commit, often to avoid the risk of a harsher sentence if convicted at trial.[2] The unequal power dynamics between prosecutors and defendants, amplified by mandatory minimum sentencing and limited defense resources, transform courtroom procedures from a path towards justice to one of simple negotiation. This reality raises a pressing question: what does justice truly mean in a system where truth and guilt are functions of efficiency over evidence?

In this system, prosecutors, often evaluated by conviction rates, hold great discretion in both charge selection and sentencing recommendations. Defendants, especially those from marginalized backgrounds or of lower socioeconomic status, face this imbalance from positions of vulnerability. Many plead guilty simply to avoid the "trial penalty," the well-documented phenomenon in which those who proceed to trial face sentences that can be several times longer than those who accept plea deals.[3] The Supreme Court, in cases such as *Brady v. United States* (1970) and *Missouri v. Frye* (2012), has upheld plea bargaining as constitutionally permissible so long as pleas are entered "voluntarily" and with the "effective assistance of counsel."[4] Yet in practice, these standards fail to capture the socioeconomic and psychological factors that shape defendants' decisions. What the law defines as voluntary choice often disregards coerced submission facilitated by structural inequity.

This study argues that the systemic pressures underlying plea bargaining, exacerbated by prosecutorial power and reinforced by economic and legal inequities, erode defendants' constitutional protections and perpetuate injustice. By analyzing how coercive plea deals undermine the rights of due process and effective counsel, this study asserts that the current plea-bargaining framework not only misrepresents the concept of "voluntariness" but also further cements inequality within the criminal justice system. Through a combination of legal analysis and empirical social-science research, this study aims to illuminate the mechanisms through which plea-induced guilty pleas contribute to wrongful convictions and to evaluate potential reforms that could restore justice, transparency, and constitutional integrity in the system.

Overall, this research extends beyond isolated miscarriages of justice to question the

[2] Glinda S. Cooper, Vanessa Meterko, and Prahelika Gadtaula, "Innocents Who Plead Guilty: An Analysis of Patterns in DNA Exoneration Cases," *Federal Sentencing Reporter* 31, nos. 4–5 (April–June 2019): 234–238, https://www.innocenceproject.org/wp-content/uploads/2019/09/FSR3104-5_04_Final-Publication-Innocents-Who-Plead-Guilty-April-June-2019-1.pdf.

[3] National Association of Criminal Defense Lawyers, *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It* (Washington, DC: National Association of Criminal Defense Lawyers, July 2018), https://www.nacdl.org/Document/TrialPenaltySixthAmendmentRighttoTrialNearExtinct.

[4] Albert W. Alschuler, "Lafler and Frye: Two Small Band-Aids for a Festering Wound," *Duquesne Law Review* 51, no. 3 (2013), https://dsc.duq.edu/dlr/vol51/iss3/10.

soundness of a legal system that equates efficiency with equity and accepts mass plea bargaining as an inevitable trade-off. By situating plea bargaining within broader contexts of power, access, and constitutional rights, it highlights the urgent need to reconcile judicial convenience with the foundational principles of fairness and justice. The following sections will first examine the doctrinal and historical foundations of plea bargaining and the constitutional framework that underscores it. Next, they will examine the systemic prosecutorial, economic, and structural pressures that render those legal safeguards ineffective in practice. Finally, this study will explore targeted reforms, including enhanced judicial oversight, mandatory evidence disclosure prior to plea agreements, and limits on sentencing disparities, as directions toward a more constitutionally sound legal process.

II Background and Context

Plea bargaining has a paradoxical history within that of American constitutional law. Although it has become the dominant mechanism for resolving criminal cases, the Constitution itself makes no reference to plea agreements, negotiated sentences, or prosecutorial bargaining. Instead, the practice developed through a combination of necessity, convenience, and judicial practicality. Its modern acceptance emerged not from explicit constitutional implementation but from the Court's gradual acknowledgment of its necessity.

Historically, plea bargaining was viewed with suspicion. Nineteenth-century courts often considered guilty pleas problematic, fearing that they undermined the adversarial process that defined Anglo-American justice. However, as the American criminal caseload grew, particularly during Prohibition and the mid-twentieth century, the judiciary began to tolerate negotiated pleas as a pragmatic response to an overwhelming docket.[5] By the 1960s, rising crime rates, a more complex criminal code, and limited judicial resources made the occurrence of formal trials more infrequent. Plea bargaining became the informal safety net for an overburdened system, one that prioritized efficiency, predictability, and closure.

The Supreme Court's first major endorsement of plea bargaining came with *Brady v. United States* (1970). The Court upheld the constitutionality of plea deals so long as guilty pleas were entered "voluntarily, knowingly, and intelligently." This decision formalized the notion that plea bargaining was compatible with due process, provided the defendant understood the consequences of the plea. Yet, the Court's definition

[5] Albert W. Alschuler, "Lafler and Frye: Two Small Band-Aids for a Festering Wound," *Duquesne Law Review* 51, no. 3 (2013), https://dsc.duq.edu/dlr/vol51/iss3/10.

of voluntariness was narrow, focusing on the absence of overt coercion rather than the broader systemic pressures that influence a defendant's choice. In *North Carolina v. Alford* (1970), decided the same year, the Court went even further by allowing defendants to plead guilty while simultaneously asserting their innocence, so long as the plea was deemed rational and voluntary. The so-called "Alford plea" exemplified the Court's outcome-oriented approach in which efficiency and finality outweighed truth. Together, *Brady* and *Alford* established the notion that justice could depend on negotiated admission rather than a trial-determined truth.

Over the following decade, the Court continued to legitimize prosecutorial leverage in plea negotiations. In *Santobello v. New York* (1971), the Court ruled that the prosecution must honor promises made during plea discussions, characterizing plea bargaining as an "essential component of the administration of justice." While this decision recognized the importance of fairness within negotiation, it also reinforced the state's ability to structure and control those bargains. *Bordenkircher v. Hayes* (1978) pushed this logic even further. Here, the Court held that prosecutors could threaten defendants with more severe charges if they refused to plead guilty, reasoning that such tactics were an acceptable part of the "give-and-take" of negotiation. The ruling effectively permitted coercion as a legitimate feature of criminal proceedings, so long as it occurred within the established framework of plea discussions.

By the 1980s, the combination of *Bordenkircher*'s precedent, the rise of mandatory minimum sentences, and the implementation of federal sentencing guidelines skyrocketed prosecutorial power. As federal dockets piled up, a defendant's path shifted: pleading guilty became a rational strategy. Rather than maintaining innocence, many defendants sought to minimize punishment. Over time, the "trial penalty" became an entrenched feature of the system. The result is a procedural paradox: the constitutional right to trial, while still formally intact, has become functionally obsolete.

The early twenty-first century brought further reinforcement of plea bargaining's constitutional status. In *Missouri v. Frye* and *Lafler v. Cooper* (2012), the Supreme Court extended the Sixth Amendment right to effective counsel to the plea-bargaining stage. These cases acknowledged that the plea process is a critical phase of criminal adjudication, yet their impact was limited. Recognizing ineffective counsel as grounds for appeal did little to change conditions such as underfunded public defense offices, overwhelming caseloads, and information asymmetry that render effective representation nearly impossible. In *United States v. Ruiz* (2002), the Court ruled that prosecutors are not required to disclose impeachment evidence before a plea agreement is entered. This decision effectively weakened access to the very information that might otherwise ensure guilty pleas are both voluntary and informed.

Taken together, these rulings illustrate how plea bargaining, once viewed as a mere

pragmatic exception, has become the default mechanism of criminal adjudication. Its constitutional legitimacy rests on three central pillars: the due process protections of the Fifth and Fourteenth Amendments, the Sixth Amendment right to effective counsel, and the right to a public trial. However, in practice, each of these pillars is undermined by the structural realities of the current system. Due process becomes a procedural formality. The right to counsel is undermined by chronic underfunding and overburdened attorneys. The right to a public trial, while still theoretically guaranteed, has largely disappeared from the daily functioning of the American legal system.

Understanding these doctrinal shifts reveal the widening gap between law on paper and in practice. What began as a tool of administrative efficiency has become a mechanism of systemic coercion, legitimized by precedent and apathy. The constitutional framework that was meant to protect defendants now enables a process that pressures them into waiving their rights. In this sense, plea bargaining represents not only a procedural transformation but also a philosophical one: a shift from justice as truth-seeking to transactional. Recognizing this shift is crucial to understanding how systemic inequities transform a legally permissible practice into a structural machine of injustice.

III The Systemic Pressures of Plea Bargaining

III.1 Prosecutorial Power and Coercion

In the modern American criminal justice system, prosecutors possess a disproportionate degree of influence. They decide what charges to bring, when to offer a deal, what evidence to disclose, and what sentence to recommend. While this discretion is not necessarily unconstitutional, it has become deeply problematic when exercised within a structure that rewards conviction rates and swift resolutions over accuracy. As Stephanos Bibas suggests, "prosecutors are monopolists who have the market power to price-discriminate in a way that sellers in a competitive market cannot."[6] When more than ninety percent of convictions are products of plea deals, the prosecution's charging decision often determines the outcome before the defense can meaningfully respond.

The Supreme Court's decision in *Bordenkircher v. Hayes* (1978) remains the clearest explanation of prosecutorial dominance. In this case, the Court permitted a prosecu-

[6]Stephanos Bibas, "Plea Bargaining Outside the Shadow of Trial," *Harvard Law Review* 117 (2004): 2463–2547, `https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1923&context=faculty_scholarship`.

tor to threaten a habitual-offender enhancement carrying a life sentence if the defendant refused to plead guilty to a lesser charge. The majority justified this threat as a necessary feature of negotiation. Justice Powell, in dissent, warned that a "situation where the prosecutor or judge, or both, deliberately employ their charging and sentencing powers to induce a particular…plea… is patently unconstitutional," but the majority's view prevailed. The ruling effectively constitutionalized coercion.

This prosecutorial leverage is magnified by the trial penalty. Such disparities are not abstract; they drive behavior. Even innocent defendants may perceive pleading guilty as the rational choice when the alternative is an unpredictable jury verdict and potentially harsher punishment. Plea bargaining thus becomes less of a voluntary transaction than a risk-minimizing decision made under duress.

Countless examples further explain this phenomena. In *United States v. Davila* (2013), a magistrate judge urged a defendant "to accept responsibility for his criminal conduct[,] to plead guilty[,] and go to sentencing with the best arguments . . . still available [without] wasting the Court's time."[7] Although the Supreme Court later vacated the lower court's decision, it failed to prohibit such judicial persuasion categorically. Likewise, in *United States v. Goodwin* (1982), the Court reaffirmed that prosecutors may file additional charges after a defendant asserts the right to trial, provided there is no "vindictive motive." These decisions blur the line between negotiation and intimidation. When the state can threaten greater punishment simply for requesting a trial, the "voluntariness" defined in *Brady v. United States* becomes obsolete.

Beyond case law, prosecutorial culture reinforces coercion. For instance, offices across the country use plea rates as metrics of efficiency, and elected prosecutors often campaign on conviction statistics. These standards of success incentivize bargains over justice. As Bibas observes, "The machinery of criminal justice, and its need for speed, has taken on a life of its own far removed from what many people expect or want."[8] The result is a system where coercion is not the exception but the operational norm.

III.2 Economic and Legal Inequities

The second pillar of systemic pressure arises from economic inequality and unequal access to counsel. The constitutional promise of the Sixth Amendment, the right to effective assistance of counsel, is contingent on resources. Yet public-defense systems are chronically underfunded. A report by the Sentencing Project found that "four out of five defendants rely on publicly financed attorneys," many of whom juggle hun-

[7] *United States v. Davila*, 569 U.S. 597 (2013), https://www.law.cornell.edu/supct/pdf/12-167.pdf.

[8] Stephanos Bibas, *The Machinery of Criminal Justice* (Oxford: Oxford University Press, 2012), https://law.lclark.edu/live/files/11569-bibas-book-intro-written-materialpdf.

dreds of open cases simultaneously.[9] A report by RAND notes that defenders in some urban jurisdictions are expected to handle upward of 300 felony cases per year, far exceeding professional-standards recommendations.[10] Under such pressure, meaningful investigation or negotiation is nearly impossible.

In addition, bail practices deepen the inequity. Defendants who cannot afford bail often spend weeks or months in pretrial detention, even for minor offenses. A Vera Institute of Justice report found that detained defendants are 25 percent more likely to plead guilty than those released pending trial.[11] The reason is clear: a guilty plea offers immediate relief from incarceration, even if it produces a permanent criminal record. Through the process, the plea system transforms deprivation into leverage. Consider the example of Kalief Browder, a New York teenager accused of stealing a backpack in 2010. Unable to afford bail, Browder spent three years in Rikers Island awaiting trial, repeatedly refusing plea offers that would have freed him sooner.[12] The charges were eventually dropped, but the psychological toll was devastating; Browder later took his own life. His case highlights how one's socioeconomic status dictates their capacity to resist coercion. For most defendants, the choice is obvious: plead guilty and go home, or maintain innocence and remain incarcerated.

Furthermore, inequity extends to information access. In *United States v. Ruiz* (2002), the Supreme Court held that prosecutors are not constitutionally obligated to disclose impeachment or exculpatory evidence before a plea. This decision allows defendants to bargain without knowing the strength of the state's case. Bibas explains how "limits on criminal discovery hamper. . . defendants' estimates of their likelihood of success at trial, making them more susceptible to prosecutorial bluffing."[13] Without discovery, defense counsel cannot assess risk accurately, and defendants cannot make truly informed decisions. The legality of such deals hides a substantive lack of fairness.

Overall, economic inequity interacts with prosecutorial power to create a coercive

[9] The Sentencing Project, *One in Five: Racial Disparity in Imprisonment—Causes and Remedies* (Washington, DC: The Sentencing Project, December 2023), https://www.sentencingproject.org/app/uploads/2023/12/One-in-Five-Racial-Disparity-in-Imprisonment-Causes-and-Remedies.pdf.

[10] Nicholas M. Pace et al., *National Public Defense Workload Study* (Santa Monica, CA: RAND Corporation, 2023), https://www.rand.org/content/dam/rand/pubs/research_reports/RRA2500/RRA2559-1/RAND_RRA2559-1.pdf.

[11] Léon Digard and Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention* (New York: Vera Institute of Justice, April 2019), https://vera-institute.files.svdcdn.com/production/downloads/publications/Justice-Denied-Evidence-Brief.pdf.

[12] Jennifer Gonnerman, "Kalief Browder, 1993–2015," *The New Yorker*, June 7, 2015, https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015.

[13] Bibas, "Plea Bargaining Outside the Shadow of Trial," 2496.

feedback loop. Overburdened defense attorneys, limited discovery, and pretrial detention all push defendants toward guilty pleas. The resulting efficiency comes at the cost of legitimacy: a justice system that benefits from trials for the poor while preserving the rights of the privileged cannot credibly claim to uphold equal protection under law.

III.3 Psychological and Structural Pressures

The third layer of coercion operates within the mind. Behavioral research reveals that decision-making under pressure is profoundly distorted by fear, fatigue, and authority. Defendants confronted with the uncertainty of trial often experience what psychologists call "temporal myopia," a focus on immediate relief rather than long-term consequences. Thus, accepting a plea becomes a coping mechanism.

Allison D. Redlich, Alicia Summers, and Steven Hoover found that defendants with mental illness are far more likely to falsely plead guilty than those without such diagnoses.[14] Their study of incarcerated individuals revealed that many viewed the plea as a means to "end the questioning, get out of jail, or go home" rather than as an admission of guilt. Similarly, Saul Kassin's extensive research on interrogation-induced false confessions demonstrates how authority pressure and exhaustion can encourage innocent individuals to admit guilt.[15] The same psychological vulnerabilities—stress, confinement, and isolation—are present in plea negotiations.

The Innocence Project reports that approximately 11 percent of DNA exonerees had originally pled guilty, often after being advised that conviction at trial would result in far harsher sentences.[16] These cases dismantle the assumption that pleas are voluntary expressions of guilt. Instead, they reveal how fear of the unknown, combined with the tangible threat of sentencing, can produce consent.

On top of psychological coercion, structural and racial disparities further exacerbate inequalities. Research by the Sentencing Project shows that Black and Hispanic defendants are offered less favorable plea deals than white defendants facing similar

[14] Allison D. Redlich, Alicia Summers, and Steven Hoover, "Self-Reported False Confessions and False Guilty Pleas Among Offenders with Mental Illness," *Law and Human Behavior* 34, no. 1 (2010): 79–90, https://pubmed.ncbi.nlm.nih.gov/19644739/.

[15] Geoffrey C. Sant, "Psychologist Explains Why People Confess Crimes They Didn't Commit," *Portside*, June 16, 2019, https://portside.org/2019-06-16/psychologist-explains-why-people-confess-crimes-they-didn%E2%80%99t-commit.

[16] Glinda S. Cooper, Vanessa Meterko, and Prahelika Gadtaula, "Innocents Who Plead Guilty: An Analysis of Patterns in DNA Exoneration Cases," *Federal Sentencing Reporter* 31, nos. 4–5 (April–June 2019): 234–238, https://www.innocenceproject.org/wp-content/uploads/2019/09/FSR3104-5_04_Final-Publication-Innocents-Who-Plead-Guilty-April-June-2019-1.pdf.

charges.[17] In drug-related cases, Black defendants receive plea offers with longer recommended sentences and fewer opportunities for diversion programs.[18] Such patterns showcase broader systemic inequities embedded in arresting, charging, and sentencing. When marginalized communities consistently face higher risks and fewer benefits, the entire plea-bargaining system reproduces racial inequity under a guise of procedural neutrality.

Even the practice of the plea colloquy, a brief exchange between judge and defendant designed to ensure voluntariness, fails to protect against coercion. Defendants are asked a standardized set of questions: Do you understand the nature of the charges? Are you entering this plea voluntarily? Has anyone forced you to plead? Most answer yes to the first two and no to the latter, often under pressure to satisfy the court and move forward. Few comprehend the collateral consequences that accompany a guilty plea, including a loss of voting rights, employment barriers, housing restrictions, and immigration penalties. Jenia I. Turner highlights how "the parties have every incentive to keep from the court facts that may disturb the agreement," ensuring that formal procedures disguise significant inequality.[19]

The cumulative effect of these psychological and structural pressures is to render the concept of voluntariness meaningless. The defendant's "choice" to plead guilty emerges not from autonomy but from fear, deprivation, and what seems to be the "rational" decision. This dynamic transforms plea bargaining from a consensual exchange into what Bibas terms "a bureaucratic assembly line of admissions."[20]

III.4 Interdependence of Pressures

Although each of these categories can be analyzed separately, in reality, they are inseparable. Prosecutorial threats are most harmful when directed at defendants who lack resources; economic hardship heightens psychological vulnerability. A poor, mentally ill defendant held in pretrial detention faces all three pressures simultaneously. The system's success depends precisely on this intersection. Each element

[17] Nazgol Ghandnoosh, *One in Five: Racial Disparity in Imprisonment—Causes and Remedies* (Washington, DC: The Sentencing Project, December 2023), https://www.sentencingproject.org/app/uploads/2023/12/One-in-Five-Racial-Disparity-in-Imprisonment-Causes-and-Remedies.pdf.

[18] Vera Institute of Justice, *In the Shadows: A Review of the Research on Plea Bargaining* (New York: Vera Institute of Justice, September 2020), https://www.vera.org/publications/in-the-shadows-plea-bargaining.

[19] Turner, "Transparency in Plea Bargaining," 1014.

[20] Stephanos Bibas, "Restoring Democratic Moral Judgment Within Bureaucratic Criminal Justice," *Northwestern University Law Review* 111, no. 6 (2017): 1692, https://scholarlycommons.law.northwestern.edu/nulr/vol111/iss6/15.

sustains the other: overworked defenders facilitate prosecutorial dominance; coercive offers exploit financial hardship; and psychological distress ultimately ensures compliance.

This interdependence explains why gradual reforms have historically failed. Adjusting one variable, such as increasing defender funding, cannot alone dismantle the coercive system. True voluntariness would require reforming the power imbalance at every stage: limiting prosecutorial leverage, ensuring equality in discovery, and reducing pretrial detention. Without systemic adjustment, plea bargaining will continue to function as a means of guiding the weak toward guilt and the powerful toward resolution.

III.5 The Definition of Coercion

Understanding plea bargaining as coercive does not require assuming immorality on the part of individuals. Rather, coercion emerges from structural design. A process is coercive when the pressures it imposes leave no reasonable alternative to compliance. In this sense, the plea system's efficiency is evidence of its coercion. When over ninety percent of defendants plead guilty, the most plausible explanation is not universal guilt, but structural compulsion.

Legal scholar Stephen C. Thaman argues that the modern plea system "transforms constitutional rights into bargaining chips."[21] Each plea represents a transaction in which defendants trade their rights for predictability under threat of penalty. Viewed through this lens, plea bargaining functions less as adjudication than as administrative priority. The state manages volume, not justice.

Recognizing this dynamic reframes the constitutional question. The issue is not whether individual pleas meet the *Brady* standard of voluntariness, but whether the system itself truly makes voluntariness impossible. As the next section will argue, the answer lies in the downfall of due process and the ineffectiveness of the Sixth Amendment's promise to effective counsel.

IV Constitutional and Ethical Implications

The Constitution defines justice as equality before the law. However, plea bargaining establishes inequality in itself. The practice systematically undermines the very rights it claims to uphold, transforming constitutional protections into negotiable assets.

[21] Stephen C. Thaman, "Is America a Systematic Violator of Human Rights in the Administration of Criminal Justice?" (St. Louis: Saint Louis University School of Law Faculty Scholarship, 2000), https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1266&context=faculty.

Under the Fifth, Sixth, and Fourteenth Amendments, defendants are guaranteed due process, effective counsel, and equal protection. Yet, these rights are constrained by structural coercion, economic disparity, and procedural convenience.

IV.1 Due Process and the Illusion of Voluntariness

Under the Fifth and Fourteenth Amendments, due process demands that denial of liberty occur only through fair and lawful procedures. In terms of plea bargaining, this means that a guilty plea must be entered "knowingly, voluntarily, and intelligently." The Supreme Court emphasized this standard in *Brady v. United States* (1970), holding that "a plea of guilty entered by one fully aware of the direct consequences... must stand unless induced by threats, misrepresentation, or improper promises." At first glance, *Brady* appears to protect fairness. But by defining coercion narrowly, as only external or overt pressure, the Court ignored the hidden forces that influence plea decisions.

For example, defendants who plead guilty to avoid harsher sentences are not considered coerced under *Brady*, although these decisions often arise from fear rather than freedom. In *Bordenkircher v. Hayes* (1978), the Court reaffirmed this stance, declaring that "to punish a person because he has done what the law plainly allows him to do is a due process violation," but that offering harsher charges to induce a plea is merely part of "any legitimate system which tolerates and encourages the negotiation of pleas." This reasoning embedded coercion in the system under the guise of negotiation. By equating the absence of overt threats with voluntariness, *Bordenkircher* reduced due process to procedural formality.

The problem is exacerbated by the Court's ruling in *United States v. Ruiz* (2002), which held that prosecutors are not constitutionally obligated to disclose impeachment evidence before a defendant enters a plea. Without access to full discovery, defendants cannot make informed decisions about their guilt or innocence. As Stephanos Bibas observes, "the oversimplified... model of plea bargaining must thus be supplemented by a structural-psychological perspective."[22] In this system, defendants must choose their fate without the information necessary for meaningful consent. The result is a process that satisfies legal formality while violating substantive fairness.

Due process was intended to guarantee that the state, with all its resources, would not defeat the individual. Instead, plea bargaining dismantles that standard. The state now defines due process by efficiency, measuring fairness not by transparency but by the speed with which cases are resolved. The judiciary's tolerance of this system

[22] Stephanos Bibas, "Plea Bargaining Outside the Shadow of Trial," *Harvard Law Review* 117 (2004): 2506.

reflects what George Fisher described as "the triumph of administration over adjudication."[23] In practice, due process has been reinterpreted to serve institutional convenience over constitutional integrity.

IV.2 The Sixth Amendment and Lack of Effective Counsel

If due process protects procedure, the Sixth Amendment protects participation. It guarantees defendants the right to effective counsel, a safeguard intended to ensure that every defendant meets the law equally. However, in the context of plea bargaining, that promise has become largely symbolic.

The Supreme Court recognized in *Missouri v. Frye* (2012) and *Lafler v. Cooper* (2012) that plea bargaining represents a "critical stage" of criminal proceedings, requiring competent legal counsel. Yet the Court's solution was narrow. It allowed relief only if defendants could prove that ineffective counsel directly affected their plea. This sets a nearly impossible standard, as most pleas occur off the record, leaving little evidence of attorney-client exchanges. Moreover, even when ineffective assistance is established, negotiations rarely correct the systemic deficiencies of underfunded defense offices, excessive caseloads, and lack of investigative support that make effective counsel unattainable in the first place.

Empirical studies reveal that public defenders in many jurisdictions carry caseloads far beyond ethical limits. The American Bar Association recommends no more than 150 felony cases per attorney per year, yet many defenders handle double or triple that number.[24] Under such conditions, legal advice becomes hasty. Defendants are often advised to accept plea deals after only brief consultations, without a full understanding of the evidence or outcomes.

These systemic conditions transform the Sixth Amendment from a substantive right into a procedural performance. Even the Court's acknowledgment of plea bargaining's importance in *Frye* and *Lafler* fails to address the underlying imbalance. A right to counsel without resources is no right at all. The Sixth Amendment's guarantee, portrayed as a safeguard, now functions primarily as a mechanism to encourage negotiation.

[23] George Fisher, "Plea Bargaining's Triumph," *Yale Law Journal* 109, no. 5 (2000): 857–1086, https://openyls.law.yale.edu/bitstream/20.500.13051/9242/2/36_109YaleLJ857_2000_.pdf.

[24] Oregon Public Defense Commission, *ACCD Caseloads Report*, https://www.oregon.gov/opdc/provider/StandardsBP/ACCDCaseloadsReport.pdf.

IV.3 Equal Protection and Structural Inequity

The Fourteenth Amendment's Equal Protection Clause sets the standard that justice should not depend on wealth, race, or status. Plea bargaining, however, often perpetuates the exact disparities it is meant to guard against. Socioeconomic inequality shapes every stage of the process: from the ability to post bail to the quality of representation and the severity of plea offers.

Empirical research consistently demonstrates that defendants of color, particularly Black and Hispanic men, receive less favorable plea offers than white defendants charged with similar crimes. A study by NPR found that Black defendants were 19 percent more likely to be offered plea deals that included incarceration, even after controlling for charge type and criminal history.[25] Similarly, those from lower-income backgrounds are more likely to plead guilty simply to regain freedom from pretrial detention.[26] These disparities challenge the idea of equal justice under law, replacing it with a system in which outcomes are determined by social position instead of legal merit.

The Supreme Court has largely avoided confronting these inequalities directly. Its equal protection jurisprudence requires proof of discriminatory intent, not just unequal impact. The result is a system where discrimination thrives in systemic patterns. As Darren Lenard Hutchinson argues, "The Court's doctrinal stance makes equal protection doctrine structurally inadequate to address systemic racism associated with criminal justice practices."[27] The promise of equality remains theoretical, while the practice of plea bargaining continues to cement inequality.

IV.4 Ethical Dimensions: Legitimacy and Fairness

The legal shortcomings of plea bargaining have parallel ethical consequences. A justice system that values efficiency over fairness risks losing legitimacy in the eyes of the public. In *A Theory of Justice* (1971), John Rawls argued that justice is not merely about outcomes but about the fairness of the procedures that produce them.[28] Similarly, Tom Tyler's research on procedural justice emphasizes that individuals are more

[25] Gene Demby, "Study Reveals Worse Outcomes for Black and Latino Defendants," *NPR*, July 17, 2014, https://www.npr.org/sections/codeswitch/2014/07/17/332075947/study-reveals-worse-outcomes-for-black-and-latino-defendants.

[26] *"Not in It for Justice": How California's Pretrial Detention and Bail System Unfairly Punishes Poor People*, Human Rights Watch, April 11, 2017, `https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly`.

[27] Darren Lenard Hutchinson, "'With All the Majesty of the Law': Systemic Racism, Punitive Sentiment, and Equal Protection," *California Law Review* 110 (2022): 371–430.

[28] John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

likely to accept legal outcomes, even unfavorable ones, when they believe the process was transparent and respectful.[29]

Plea bargaining violates both principles. Defendants who plead guilty under coercive conditions perceive the process as unfair, regardless of the sentence. This perception erases trust in both the court system and the rule of law itself. When justice is experienced as negotiation, the law's moral authority collapses.

Therefore, the ethical critique mirrors the constitutional one: a system that achieves efficiency by pressuring defendants to forego their rights cannot claim to embody justice. Plea bargaining may satisfy the formal requirements of *Brady*, *Bordenkircher*, and *Lafler*, but it violates the overall goal of the Constitution. By prioritizing resolution over fairness, the system has replaced the presumption of innocence with a priority of expedience.

As shown thus far, the weakening of the Constitution brought on by plea bargaining is not an isolated legal issue but a systemic one. The practice distorts due process, dilutes the right to counsel, and reproduces inequality, all while maintaining the illusion of fairness. To restore legitimacy, reform must move beyond minor procedural shifts and toward major rebalancing. The following section will propose targeted reforms designed to mitigate these constitutional and ethical failures without sacrificing efficiency.

V Pathways for Reform

Reforming plea bargaining does not require dismantling the practice altogether. Given current caseloads and resource constraints, a system without plea agreements is neither possible nor desirable. The challenge, instead, is to realign efficiency with justice, to preserve the realistic benefits of plea bargaining while minimizing its coercive and unfair features. This section outlines three intersecting reforms: enhanced judicial oversight, limits on sentencing differentials, and expanded discovery and defense resources that, together, aim to restore constitutional integrity and procedural equity to the plea-bargaining process.

V.1 Enhanced Judicial Oversight

First, to mitigate the concentration of prosecutorial power, courts must exercise more meaningful oversight over plea negotiations. At present, judicial involvement is of-

[29] Tom R. Tyler, Phillip Atiba Goff, and Robert J. MacCoun, *Procedural Justice, Legitimacy, and Effective Law Enforcement* (New Haven, CT: Yale Law School, 2015), `https://law.yale.edu/sites/default/files/area/center/justice/document/5697d9ee08aea2d74375cb87.pdf`.

ten limited to a brief Rule 11 colloquy in which the judge asks whether the defendant understands the charges, the rights being waived, and the terms of the agreement. In practice, these exchanges tend to be robotic and superficial. They rarely delve into how the plea was reached, what pressures were applied, or whether the defendant has any realistic alternative to accepting the deal.

Enhanced judicial oversight would require judges to go beyond rote questioning and instead engage in a substantive review of both the factual basis and the voluntariness of the plea. Drawing on recommendations from the American Bar Association's Plea Bargain Task Force, judges could be required to:[30]

- Ask defendants, on the record, whether they were informed of the maximum sentence they faced at trial and the specific sentencing exposure under the plea;
- Inquire whether pretrial detention, threats of charge enhancements, or other pressures influenced the decision to plead;
- Require prosecutors to disclose a summary of the key evidence supporting the charges and any known exculpatory information.

This deeper inquiry would signal that voluntariness is taken seriously, not assumed. It would also create a record that could be reviewed on appeal, making it harder for coercive or misleading practices to go undetected.

Critics might argue that greater judicial scrutiny would slow dockets and risk introducing judicial coercion, if judges themselves begin nudging defendants toward or away from pleas. These concerns are real but manageable. Nuanced reforms can require judges to ask structured, open-ended questions designed to assess voluntariness without leading outcomes. Moreover, even small increases in judicial engagement can have an effect on prosecutors, who would know that their offers and tactics may be scrutinized in open court.

In short, enhanced judicial oversight would check prosecutorial power, reinforce due process, and help ensure that guilty pleas are the product of informed consent rather than unexamined pressure.

V.2 Limits on Sentencing Differentials

Second, any serious attempt to reduce coercion must address the trial penalty. As long as prosecutors can safely threaten penalties much harsher than the plea offer,

[30] American Bar Association, Criminal Justice Section, *Plea Bargain Task Force Report* (February 22, 2023), `https://www.americanbar.org/content/dam/aba/administrative/criminal_justice/reports/plea-bargain-tf-report.pdf`.

the idea of voluntariness will remain fragile, especially for risk-averse or vulnerable defendants.

One reform is to impose statutory or guideline caps on sentencing differentials. For example, one solution is to limit the maximum post-trial sentence to a certain percentage above the plea recommendation. Such caps would not eliminate bargaining; prosecutors could still reward acceptance of responsibility and spare victims the stress of trial. But, they would prevent the system from effectively rebuking the right to trial with extreme sentence escalation.

Some jurisdictions and policy bodies have begun experimenting with and recommending such limits. The *Columbia Law Review* has argued that limiting differentials could increase the number of cases going to trial without collapsing the system.[31] Where differential caps have been informally adopted, anecdotal reports suggest that case processing remains functional, but the worst disparities are reduced.

Objections to this reform typically hinge on efficiency and leverage. Prosecutors contend that without strong incentives to plead, more defendants will insist on trial, burdening courts and delaying justice. However, this critique assumes that current plea rates, which are above ninety percent, are truly necessary rather than the product of overreliance on bargaining. A modest increase in trial rates may be desirable. It would bring the system closer to its constitutional form and encourage more rigorous screening of weak cases.

From a constitutional perspective, limiting sentencing differentials would support both due process and equal protection. It would reduce the extent to which fear drives pleas and ensure that the right to trial is not ultimately reserved for those with resources and support to face the risk. While this reform would not eliminate coercion, it would place a standardized boundary on the state's ability to punish defendants for asserting their rights.

V.3 Expanded Discovery and Defense Resources

Third, and perhaps most important, plea bargaining cannot be rendered fair without addressing information inconsistencies and resource imbalance. Defendants often plead guilty without full knowledge of the evidence against them, the strength of possible defenses, or the long-term consequences of conviction. These deficits are byproducts of doctrine and funding choices.

One crucial reform is to require meaningful discovery before any plea can be accepted. This would involve overturning or legislatively confining the effect of *United*

[31] Andrew Manuel Crespo, "The Hidden Law of Plea Bargaining," *Columbia Law Review* 118, no. 5 (2018): 1303–1424.

States v. Ruiz, which held that the prosecution is not constitutionally obligated to disclose impeachment material prior to a plea. While *Ruiz* addressed only impeachment evidence, it has been interpreted more broadly, allowing prosecutors to delay discussion of critical information until after the plea stage. In practice, this means that defendants may plead guilty without ever seeing exculpatory evidence or understanding weaknesses in the state's case.

Adopting open-file discovery, or at least mandating early disclosure of key exculpatory and inculpatory evidence, would allow the defense to advise clients based on a clearer understanding of the case. Some states and local jurisdictions have implemented versions of open-file policies with promising results, including fewer wrongful convictions, fewer discovery disputes, and greater confidence in outcomes. Although concerns about witness intimidation and evidence tampering are sometimes raised, these risks can be managed through protective orders and selective redaction rather than blanket procedure.

Alongside discovery reform, increased funding and structural support for public defense are essential. Without manageable caseloads and adequate resources, discovery regulations will fail. Legislatures could adopt caseload limits tied to ABA standards, create dedicated funding sources for underprivileged defense, and establish independent bodies to monitor compliance. These investments would not only benefit defendants, they would strengthen the legitimacy of convictions by ensuring that guilty pleas reflect informed choice rather than desperate compliance.

Critics point to the financial costs of such reforms. Yet the costs of underfunded defense and the wrongful convictions, unnecessary incarceration, and lack of trust that follow are much greater, even if they do not come directly from the budget. In a system that regularly spends its resources on prosecution and incarceration, the refusal to fund defense adequately reflects lack of priorities. Rebalancing those priorities is key to honoring the Sixth Amendment's right to effective counsel.

V.4 Reframing Justice as a Process

None of these reforms, alone, will eliminate the coercive forces of plea bargaining. Prosecutors will still have significant leverage and defendants will still face difficult, uncertain choices. But taken together, enhanced judicial oversight, limits on sentencing differentials, and expanded discovery and resources can shift the structure of bargaining away from one-sided power and toward honest negotiation.

These proposals share a common goal: to transform plea bargaining from a transactional shortcut to a procedurally sound decision that respects constitutional rights. Judicial review would ensure that pleas are examined before being presumed volun-

tary. Limits on sentencing differentials would reduce the risk of exercising the trial right. Discovery and defense reform would give meaning to the ideals of due process and effective counsel.

Opponents may cite that such reforms will slow the system and create uncomfortable shifts in the system's culture. But the current speed comes at the cost of constitutional decay and public trust. A justice system that moves quickly but unfairly is not, in any meaningful sense, just. Restoring balance requires seeing justice not as a quick to-do list of cases, but as an intentional process in which outcomes are grounded in truth, fairness, and respect for rights.

These reforms do not reject plea bargaining, they reclaim it. They envision a system in which guilty pleas are entered with full knowledge, genuine voluntariness, and meaningful judicial oversight. The concluding section of this study will consider the broader implications of such reform, both for the legitimacy of the current criminal justice system and for the future of this system.

VI Conclusion and Implications

Plea bargaining stands as both the backbone and weakness of the American criminal justice system. What began as an administrative adaptation to caseload pressure has evolved into the primary mechanism of conviction, one that secures efficiency by compromising constitutional integrity. Across this paper, the evidence has revealed a consistent truth: the pressures embedded in plea bargaining, including prosecutorial power, economic disparity, and psychological coercion, have transformed a procedural convenience into a structural injustice.

At its core, the practice of plea bargaining misrepresents the meaning of justice envisioned by the Constitution. Under the ideal of due process, defendants are encouraged to waive the very rights that due process works to protect. Under the Sixth Amendment, defendants are promised effective counsel but offered defenders too overburdened to sustain quality defense. Under the Fourteenth Amendment's guarantee of equal protection, they are judged not by the content of the evidence but by their resources, race, and risk tolerance. The result is a system that appears fair on the surface but operates within a framework where justice is awarded according to leverage, not law.

The reforms proposed in this paper are neither radical nor perfect. Enhanced judicial oversight would reintroduce transparency into a process that has grown opaque. Capping sentencing differentials would place moral and constitutional limits on the state's power to punish the exercise of trial rights. Expanding discovery and defense

resources would transform guilty pleas from acts of desperation into informed decisions grounded in evidence. Together, these measures would not abolish plea bargaining but restructure it within the constitutional principles it was meant to serve. Still, reform is only part of the solution. The greater challenge lies in rediscovering what "justice" means in a society that has normalized efficiency as a top priority. As long as the success of the criminal system is measured in conviction rates rather than credibility, fairness will remain secondary to speed. A justice system that resolves over ninety percent of its cases without trial cannot plausibly claim to be adversarial in any true sense. Restoring legitimacy will require more than new rules; it will require a cultural reconsideration of the trade-offs we have come to accept.

This reconsideration has ethical as well as legal dimensions. John Rawls reminds us that a just society is one in which institutions are arranged so that their rules would be chosen under conditions of fairness.[32] Similarly, Tom Tyler's research on procedural justice demonstrates that legitimacy derives from process rather than outcomes—how people are treated, how decisions are made, and whether participants believe their voices were heard.[33] By these standards, the current plea system fails. It produces consent and closure through compliance.

Still, the possibility of reform remains. The same principles that created plea bargaining can redirect it. Courts, legislatures, and prosecutors hold the authority to recalibrate incentives and restore transparency. The question is whether they have the will to do so. To accept the status quo is to uphold a model of justice that values output over truth. To pursue reform is to reaffirm the Constitution's underlying promise—that liberty cannot be negotiated away for convenience.

In the end, the legitimacy of the criminal justice system depends not on how efficiently it processes guilt but on how faithfully it protects the innocent. Plea bargaining does not need to be abolished; it need only be constrained by the principles it was created to serve. Reclaiming principles of voluntariness, equality, and fairness will not only strengthen constitutional law but restore the moral authority of the courts themselves. Efficiency will always have its appeal, but for justice to endure, our priorities must be realigned deliberately.

[32]Ben Davies, "John Rawls and the 'Veil of Ignorance,'" in *Introduction to Ethics: An Open Educational Resource* (Huntington Beach, CA: Golden West College, NGE Far Press, 2019), 92–97.

[33]Tom R. Tyler, "Fostering Legitimacy in Alternative Dispute Resolution (ADR)," Yale Law School, 2011, https://openyls.law.yale.edu/server/api/core/bitstreams/0fb0e5ea-7f2d-48d3-912b-a97bc6a747cd/content.

Bibliography

American Bar Association. *Plea Bargain Task Force Report.* February 22, 2023. https://www.americanbar.org/content/dam/aba/administrative/criminal_justice/reports/plea-bargain-tf-report.pdf.

Alschuler, Albert W. "Lafler and Frye: Two Small Band-Aids for a Festering Wound." *Duquesne Law Review* 51, no. 3 (2013). https://dsc.duq.edu/dlr/vol51/iss3/10.

Berman, Mitchell N. "Of Law and Other Artificial Normative Systems." Faculty Scholarship Paper 1923. Penn Carey Law School, 2019. https://doi.org/10.1093/oso/9780190640408.003.0007.

Bibas, Stephanos. "Plea Bargaining Outside the Shadow of Trial." *Harvard Law Review* 117, no. 8 (2004): 2463–2547.

Bibas, Stephanos. *The Machinery of Criminal Justice.* Oxford: Oxford University Press, 2012. https://law.lclark.edu/live/files/11569-bibas-book-intro-written-materialpdf.

Bibas, Stephanos. "Restoring Democratic Moral Judgment Within Bureaucratic Criminal Justice." *Northwestern University Law Review* 111, no. 6 (2017): 1677–1722. https://scholarlycommons.law.northwestern.edu/nulr/vol111/iss6/15.

Bordenkircher v. Hayes, 434 U.S. 357 (1978). https://supreme.justia.com/cases/federal/us/434/357.

Brady v. United States, 397 U.S. 742 (1970). https://supreme.justia.com/cases/federal/us/397/742.

Cooper, Glinda S., Vanessa Meterko, and Prahelika Gadtaula. "Innocents Who Plead Guilty: An Analysis of Patterns in DNA Exoneration Cases." *Federal Sentencing Reporter* 31, no. 4–5 (April–June 2019): 234–238. https://www.innocenceproject.org/wp-content/uploads/2019/09/FSR3104-5_04_Final-Publication-Innocents-Who-Plead-Guilty-April-June-2019-1.pdf.

Crespo, Andrew Manuel. "The Hidden Law of Plea Bargaining." *Columbia Law Review* 118, no. 5 (2018): 1303–1424.

Dana, David A. "The Contextual Rationality of the Precautionary Principle." Northwestern University School of Law Faculty Working Paper No. 2009-1194 (2009). https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1194&context=facultyworkingpapers.

Davies, Ben. "John Rawls and the 'Veil of Ignorance.'" In *Introduction to Ethics: An Open Educational Resource*, 92–97. Huntington Beach, CA: NGE Far Press, 2019.

Demby, Gene. "Study Reveals Worse Outcomes for Black and Latino Defendants." *NPR*, July 17, 2014. https://www.npr.org/sections/codeswitch/2014/07/17/332075947/study-reveals-worse-outcomes-for-black-and-latino-defendants.

Digard, Léon, and Elizabeth Swavola. *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention.* New York: Vera Institute of Justice, April 2019. https://vera-institute.files.svdcdn.com/production/downloads/publications/Justice-Denied-Evidence-Brief.pdf.

Fisher, George. "Plea Bargaining's Triumph." *Yale Law Journal* 109, no. 5 (March 2000): 857–1086. https://openyls.law.yale.edu/bitstream/20.500.13051/9242/2/36_109YaleLJ857_2000_.pdf.

Ghandnoosh, Nazgol. *One in Five: Racial Disparity in Imprisonment—Causes and Remedies.* Washington, DC: The Sentencing Project, December 2023. https://www.sentencingproject.org/app/uploads/2023/12/One-in-Five-Racial-Disparity-in-Imprisonment-Causes-and-Remedies.pdf.

Gonnerman, Jennifer. "Kalief Browder, 1993–2015." *The New Yorker*, June 7, 2015. https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015.

Human Rights Watch. "'Not in It for Justice': How California's Pretrial Detention and Bail System Unfairly Punishes Poor People." April 11, 2017. https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly.

Hutchinson, Darren Lenard. "'With All the Majesty of the Law': Systemic Racism, Punitive Sentiment, and Equal Protection." *California Law Review* 110 (April 2022): 371–430.

Lafler v. Cooper, 566 U.S. 156 (2012). https://supreme.justia.com/cases/federal/us/566/156.

Miles, Thomas J. "Empirical Economics and the Study of Punishment and Crime." *University of Chicago Legal Forum* 2005, no. 1 (2005): Article 7. https://chicagounbound.uchicago.edu/uclf/vol2005/iss1/7.

Missouri v. Frye, 566 U.S. 134 (2012). https://supreme.justia.com/cases/federal/us/566/134.

National Association of Criminal Defense Lawyers. *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It.* Washington, DC: National Association of Criminal Defense Lawyers, July 2018. https://www.nacdl.org/Document/TrialPenaltySixthAmendmentRighttoTrialNearExtinct.

North Carolina v. Alford, 400 U.S. 25 (1970). https://supreme.justia.com/cases/federal/us/400/25.

Oregon Public Defense Commission. *ACCD Caseloads Report.* n.d. https://www.oregon.gov/opdc/provider/StandardsBP/ACCDCaseloadsReport.pdf.

Pace, Nicholas M., Malia N. Brink, Cynthia G. Lee, and Stephen F. Hanlon. *National Public Defense Workload Study.* Santa Monica, CA: RAND Corporation, 2023. https://www.rand.org/content/dam/rand/pubs/research_reports/RRA2500/RRA255

9-1/RAND_RRA2559-1.pdf.
Rawls, John. *A Theory of Justice*. Cambridge, MA: Harvard University Press, 1971.
Redlich, Allison D., Alicia Summers, and Steven Hoover. "Self-Reported False Confessions and False Guilty Pleas Among Offenders with Mental Illness." *Law and Human Behavior* 34, no. 1 (2010): 79–90. https://pubmed.ncbi.nlm.nih.gov/19644739.
Ruiz v. United States, 536 U.S. 622 (2002). https://supreme.justia.com/cases/federal/us/536/622.
Sant, Geoffrey C. "Psychologist Explains Why People Confess Crimes They Didn't Commit." *Portside*, June 16, 2019. https://portside.org/2019-06-16/psychologist-explains-why-people-confess-crimes-they-didnt-commit.
Santobello v. New York, 404 U.S. 257 (1971). https://supreme.justia.com/cases/federal/us/404/257.
Thaman, Stephen C. "Is America a Systematic Violator of Human Rights in the Administration of Criminal Justice?" Saint Louis University School of Law Faculty Scholarship (2000). https://scholarlycommons.law.slu.edu/cgi/viewcontent.cgi?article=1266&context=faculty.
Turner, Jenia I. "Transparency in Plea Bargaining." *Notre Dame Law Review* 96, no. 3 (2021): 973–1025. https://ndlawreview.org/wp-content/uploads/2021/01/NDL302-Turner_crop.pdf.
Turner, Jenia I. "Plea Bargaining." In Erik Luna (ed.), *Reforming Criminal Justice: Vol. 3. Pretrial and Trial Processes*, 73–100. Academy for Justice, 2017.
Tyler, Tom R. "Fostering Legitimacy in Alternative Dispute Resolution (ADR)." Yale Law School, 2011. https://openyls.law.yale.edu/server/api/core/bitstreams/0fb0e5ea-7f2d-48d3-912b-a97bc6a747cd/content.
Tyler, Tom R., Phillip Atiba Goff, and Robert J. MacCoun. *Procedural Justice, Legitimacy, and Effective Law Enforcement.* New Haven, CT: Yale Law School, 2015. https://law.yale.edu/sites/default/files/area/center/justice/document/5697d9ee08aea2d74375cb87.pdf.
United States v. Davila, 569 U.S. 597 (2013). https://supreme.justia.com/cases/federal/us/569/597.
United States v. Goodwin, 457 U.S. 368 (1982). https://supreme.justia.com/cases/federal/us/457/368.
Vera Institute of Justice. *In the Shadows: A Review of the Research on Plea Bargaining.* September 2020. https://www.vera.org/publications/in-the-shadows-plea-bargaining.

The Plausible Erosion of Contraceptive Rights Following the Ruling of Dobbs v. Jackson

Catalina Frias ‘29

Fall 2025

Abstract

The case *Dobbs v. Jackson Women's Health Org.*, decided in 2022, stated that abortion is not constitutionally protected because it is not deeply rooted in the nation's history and tradition.[1] This caused the overturn of two major cases regarding abortion rights, *Roe v. Wade* and *Planned Parenthood v. Casey*.[2] Now, the question lies: could Dobbs be used to overturn similar cases concerning contraceptive rights?
The precedent set forth by Dobbs poses the risk of overturning several other landmark cases. *Griswold v. Connecticut*, which gives married couples the right to contraception, *Eisenstadt v. Baird*, which expands contraceptive rights to unmarried individuals, and *Carey v. Population Services Int'l*, which grants contraceptive rights to minors, are all vulnerable under the recent ruling of Dobbs.[3] Contraceptives in these cases encompass not only birth control and plan B, but condoms as well. By examining each one of these cases, the arguments set forth in each, and how they relate to the ruling in Dobbs, I will explain how the precedent in Dobbs has the potential to undermine these cases. Therefore, I will illustrate how the recent overturn of abortion rights in Dobbs could have future repercussions on women's autonomy and contraceptive rights for every individual. Dobbs illustrates how precedents can be systematically dismantled, so it's very plausible we may soon see the interwoven constitutional arguments between abortion and contraception.

I Introduction

In June 2022, the landmark cases *Roe v. Wade* and *Planned Parenthood v. Casey* were overturned by the ruling of *Dobbs v. Jackson Women's Health Org.*, officially removing the constitutional protection over the right to abortion.[4] Dobbs applied an originalist approach and relied on the "deeply rooted in this Nation's history and tradition" test drawn from *Washington v. Glucksberg*, 521 U.S. 702 (1997).[5] Thus, this decision raises the question: Does the doctrinal shift in Dobbs—which narrows substantive

[1] *Dobbs v. Jackson Women's Health Org.*, 597 U.S. (2022), https://supreme.justia.com/cases/federal/us/597/19-1392/.

[2] *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

[3] *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Carey v. Population Services Int'l*, 431 U.S. 678 (1977).

[4] *Dobbs v. Jackson Women's Health Org.*, 597 U.S. (2022), https://supreme.justia.com/cases/federal/us/597/19-1392/.

[5] *Washington v. Glucksberg*, 521 U.S. 702 (1997), https://supreme.justia.com/cases/federal/us/521/702/.

due process protections to rights deeply rooted in history—also risk destabilizing the constitutional foundation for contraceptive rights?

In this paper, I will be analyzing the possible repercussions that *Dobbs v. Jackson Women's Health Org.* poses for future contraceptive rights. I will explore the first cases that created these precedents and analyze them under the new ruling. Thus, by examining the landmark cases *Griswold v. Connecticut*, *Eisenstadt v. Baird*, and *Carey v. Population Services Int'l*, I will explore the possible systematic dismantling of contraceptives.

II Landmark Contraception Cases That Face Danger

The issue of contraceptives was first introduced in the case of *Griswold v. Connecticut*, when a gynecologist in the Yale School of Medicine, C. Lee Buxton, opened a birth control clinic with Estelle Griswold, the head of Planned Parenthood Connecticut.[6] They were charged with assisting and aiding women with contraception, which violated Connecticut's contraceptive laws at the time. Their conviction was used to challenge the Fourteenth Amendment and whether married couples were allowed contraception.[7] The Court held a 7–2 majority opinion for Griswold, stating that a right to privacy can be inferred from penumbras—a cumulation of the First, Third, Fourth, and Ninth Amendments—of other explicitly stated constitutional protections.[8] Justice Harlan's view in the concurring opinion argued that the right to privacy, an unenumerated right, could be protected under the Due Process Clause in the Fourteenth Amendment.[9] The Court recognized a "zone of privacy" between a married couple, although this is a concept never explicitly stated in the Constitution. Despite the 7–2 majority, both Justice Stewart and Justice Black argued that the right to privacy could not be inferred in the Constitution, instead claiming it was a matter for legislatures.[10]

Even though the Court sided with Griswold, the ruling of *Dobbs v. Jackson Women's Health Org.* can potentially be used to undermine Griswold's precedents relying on substantive due process.[11] *Dobbs v. Jackson Women's Health Org.* argued that the Due Process Clause was inadmissible in the case of abortion. Although this clause protects rights not listed in the Constitution, any such right still has to be deeply rooted

[6] *Griswold v. Connecticut*, 381 U.S. 479 (1965), https://supreme.justia.com/cases/federal/us/381/479/.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] *Dobbs v. Jackson Women's Health Org.*, 597 U.S. (2022), https://supreme.justia.com/cases/federal/us/597/19-1392/.

in the tradition of the nation and "implicit in the concept of ordered liberty."[12] Therefore, Dobbs argued that the abortion argument could be undermined, since pregnancy termination was not a concept that was rooted in the "tradition" of the Constitution. This precedent now poses possible harm for the fate of *Griswold v. Connecticut*, as it alters the standard for evaluating unenumerated rights, and thereby exposes Griswold-based holdings to new challenges. The zone of privacy stated in Griswold is in danger of being reversed due to its incongruence with the stare decisis about due process in *Dobbs v. Jackson Women's Health Org.*. The potential erosion of *Griswold v. Connecticut* is only the first domino in the wake of *Dobbs v. Jackson Women's Health Org.*, as it is precedent for almost all other cases regarding contraceptives in the following decades.

Another case, *Eisenstadt v. Baird*, relied on privacy and substantive due process logic that Griswold helped establish, so a change in its precedent could have negative effects on unmarried individuals and minors.[13] *Eisenstadt*, like *Roe v. Wade*, expanded upon the ideas in Griswold to include individual autonomy and reproductive freedom. This case used the Equal Protection Clause to broaden the issue of contraceptive access solely from married couples to unmarried men and women.[14] Baird was able to cite Griswold as precedent by stating that limiting access to products based solely on marital status is an arbitrary and discriminatory law created by Massachusetts, therefore eliminating the marital-status discrimination.[15] While the Justices also used the First Amendment's protection of speech and education advocacy to support their claim, the fundamental foundation to the case remains to be the precedent in *Griswold v. Connecticut*.

The expansion of contraceptive rights by *Eisenstadt* also impacted minors' rights to contraceptives in the case of *Carey v. Population Services Int'l*.[16] In New York, before 1977, it was illegal to distribute contraceptives to any minor under 16. Carey directly used *Griswold v. Connecticut* to overturn this law and affirm that decisions about contraceptives for minors fall within the same zone of privacy as married and unmarried adults protected by the Due Process Clause of the Fourteenth Amendment.[17] The Court also denied paternalistic jurisdiction, which argued that banning contraceptives could discourage minors or unmarried individuals from having sex, because it was seen as insufficient to justify a complete ban. Since this was an argument al-

[12] *Washington v. Glucksberg*, 521 U.S. 702 (1997).

[13] *Eisenstadt v. Baird*, 405 U.S. 438 (1972), https://supreme.justia.com/cases/federal/us/405/438/.

[14] Ibid.

[15] Ibid.

[16] *Carey v. Population Services Int'l*, 431 U.S. 678 (1977), https://supreme.justia.com/cases/federal/us/431/678/.

[17] Ibid.

ready presented in *Eisenstadt*, *Carey v. Population Services Int'l* was able to expand contraceptive rights specifically to minors.[18]

III Potential Implications

If *Dobbs v. Jackson Women's Health Org.* were to have an effect on the interpretation of right to privacy in the case of *Griswold v. Connecticut*, then both *Carey v. Population Services Int'l* and *Eisenstadt v. Baird* are vulnerable as well. Due to the fact that *Griswold* provides a fundamental basis of the Due Process Clause in both cases, its invalidation can have ramifications to the contraceptive expansions to unmarried individuals and minors as well. Contraceptives include birth control, plan B and condoms, which if limited can increase the rate of STDs in the United States.. Therefore, the ruling of *Dobbs v. Jackson Women's Health Org.* goes beyond women's reproductive rights, and can also have future repercussions on all citizens' sexual health across the United States.

The overturning of *Roe v. Wade* shows us that these precedents are vulnerable, and we may soon begin to see the interwoven constitutional arguments between abortion and contraception. In order to protect contraceptives from the same result as *Roe v. Wade*, there must be legislative safeguards added at the federal level. The *Right to Contraception Act* was introduced in July 2022; however, it has been blocked by the Senate 3 times since 2024.[19] This could become increasingly important, especially after President Trump reversed two prior executive orders signed by former President Biden that expanded and protected access to reproductive healthcare, like contraceptive access.[20] The *Right to Contraception Act* would be sufficient in protecting and actually enforcing laws to people's rights like covering health care, infringements, and establishing rights. This issue may have started with abortion, but precedent can now erode pivotal foundations to contraceptive access, and without safeguards all citizens—regardless of status (married, unmarried, minors)—are vulnerable to having their fundamental rights stripped away.

[18] Ibid.

[19] Text – S.4381 – 118th Congress (2023–2024): Right to Contraception Act, Congress.gov, June 5, 2024, https://www.congress.gov/bill/118th-congress/senate-bill/4381/text.

[20] Revoking Biden-Era Executive Orders Protecting Access to Reproductive Healthcare, Center for Reproductive Rights, January 24, 2025, https://reproductiverights.org/news/revoking-biden-era-executive-orders-protecting-access-to-reproductive-healthcare/.

Bibliography

"Carey v. Population Services International." Oyez. Accessed November 29, 2025. https://www.oyez.org/cases/1976/75-443.
"Dobbs v. Jackson Women's Health Organization." Oyez. Accessed November 29, 2025. https://www.oyez.org/cases/2021/19-1392.
"Eisenstadt v. Baird." Oyez. Accessed November 29, 2025. https://www.oyez.org/cases/1971/70-17.
"Griswold v. Connecticut." Oyez. Accessed November 29, 2025. https://www.oyez.org/cases/1964/496.
"Revoking Biden-Era Executive Orders Protecting Access to Reproductive Healthcare." Center for Reproductive Rights, January 24, 2025. https://reproductiverights.org/news/revoking-biden-era-executive-orders-protectin g-access-to-reproductive-healthcare/.
Congress.gov. "Text - S.4381 - 118th Congress (2023-2024): Right to Contraception Act." June 5, 2024. https://www.congress.gov/bill/118th-congress/senate-bill/4381/text.

The Legal Future of Data Privacy: Bridging Consumer Rights and Business Interests in the AI Era

Genevieve St Jacques ‘27

Fall 2025

Abstract

As Artificial Intelligence, or AI, transforms data collection and usage practices, it is important to balance consumers' rights to data privacy with businesses' rights to collect and utilize data for competitive advantages. Due to the increasing amount of data being collected, data privacy is extremely important. Over the past year, 70% of businesses have increased the amount of data they collected, and high-profile data breaches have occurred, such as the cyber- attack on Change Healthcare in 2024.[1] This paper will analyze consumers' right to be protected from data misuse, with a focus on safeguarding sensitive personal information, such as healthcare records and financial information. It will explore the benefits of data collection for both businesses and consumers, including enhanced user experiences through targeted marketing, increased efficiency in everyday tools, and the use of customer data to improve or innovate products and services. Then, the paper will evaluate proposed solutions for protecting consumer privacy, such as data anonymization. It will also address the limitations of these approaches. Finally, the paper will explore the current fragmented landscape of national, state, and local privacy laws in the United States by analyzing specific legislative efforts, including the California Age-Appropriate Design Code and the Delete Act, and examine how they address privacy concerns in healthcare and online spaces. The paper will conclude with proposed improvements or guidelines for comprehensive federal privacy legislation and consider the challenges associated with enacting such laws.

I Introduction

The right to privacy has long been considered established by *Griswold v. Connecticut* (1965).[2] Even before this, however, future Supreme Court Justice Louis Brandeis published an article in 1890 in the *Harvard Law Review* titled "The Right to Privacy," in which he argued for the "right to be let alone."[3]

In *Griswold*, which concerned the right of married couples to use contraceptives, the Supreme Court found an implied right to privacy in the Constitution's First, Third,

[1] KPMG, *Bridging the Trust Chasm* (2023), https://kpmg.com/us/en/articles/2023/bridging-the-trust-chasm.html; HIPAA Journal, *Change Healthcare Responding to Cyberattack* (2024), https://www.hipaajournal.com/change-healthcare-responding-to-cyberattack/.

[2] Legal Information Institute, "Right to Privacy," *Wex*, Cornell Law School, last reviewed June 2022, `https://www.law.cornell.edu/wex/right_to_privacy`.

[3] Legal Information Institute, "Right to Privacy," *Wex*, Cornell Law School, last reviewed June 2022, `https://www.law.cornell.edu/wex/right_to_privacy`.

Fourth, and Fifth Amendments.[4] This right was later upheld in *Eisenstadt v. Baird*,[5] which allowed unmarried people to purchase contraceptives, and *Lawrence v. Texas*,[6] which allowed same sex partners to participate in sexual conduct.[7] Today, a new area in which the right to privacy is being challenged is not within relationships, but in the collection and use of consumer or personal data. In an age of increasing data collection and usage, consumers must be informed about what data is being collected, how it is being used, and how it is being secured, so that they can give informed consent to its use.

II Data Collection Risks and Challenges

II.1 Risks of Data Collection

The most pressing risk of improper data usage is that it will be leaked via cyberattacks. In fields like healthcare, sensitive personal information like healthcare records and data related to sexuality and gender orientation is often needed to improve patient outcomes. When this information is compromised, the effects can be immense. Recently, a ransomware attack was carried out on Change Healthcare, which affected at least 192 million people.[8] A ransomware attack occurs when malicious software prevents users from accessing computer files and networks until a ransom is paid.[9] The data compromised by the attack on Change Healthcare included medical records and health data, contract information, payment information, insurance records, and Social Security numbers.[10] Sometimes, such as in the case of Change Healthcare, hackers will threaten to release the data contained in these files and on the networks. Another notable cybersecurity attack is the 23andMe data leak in 2023. In this attack, users of the genetic testing site were targeted in a "credential stuffing attack", which occurs when hackers use passwords exposed in previous breaches to access accounts

[4] Legal Information Institute, "Right to Privacy," *Wex*, Cornell Law School, last reviewed June 2022, `https://www.law.cornell.edu/wex/right_to_privacy`.

[5] *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

[6] *Lawrence v. Texas*, 539 U.S. 558 (2003).

[7] Legal Information Institute, "Right to Privacy," *Wex*, Cornell Law School, last reviewed June 2022, `https://www.law.cornell.edu/wex/right_to_privacy`.

[8] HIPAA Journal, *Change Healthcare Responding to Cyberattack* (2024), https://www.hipaajournal.com/change-healthcare-responding-to-cyberattack/.

[9] Federal Bureau of Investigation (FBI), *Ransomware* (2025), https://www.fbi.gov/how-we-can-help-you/scams-and-safety/common-frauds-and-scams/ransomware.

[10] HIPAA Journal, *Change Healthcare Responding to Cyberattack* (2024), https://www.hipaajournal.com/change-healthcare-responding-to-cyberattack/.

for which users used identical or similar passwords.[11] They were able to access about 14,000 accounts and information pertaining to about 6.9 million people.[12] The information stolen included "names, year[s] of birth, geographical information, profile images, race, ethnicity, health reports, and family trees."[13] Additionally, an investigation by Canada's privacy commissioner revealed that 23andMe did not have appropriate authentication and verification measures, including mandatory Multi-Factor Authentication (MFA) and secure password requirements. Lack of mandatory MFA was the same weakness exploited in the Change Healthcare attack. Concerningly, the 23AndMe attack was not reported to Connecticut authorities in the sixty days following the incident, as required by law.[14]

Not only did the 23AndMe attack release personal information, but it also targeted Ashkenazi Jews and people of Chinese heritage. Profiles of at least one million Ashkenazi Jews and several hundred thousand people of Chinese descent were found for sale on the dark web. Especially because the attack took place on the anniversary of Kristallnacht, which occurred in the same month as the October 7th attack by Hamas, some worried that this data would be used to target Jews.[15] Similarly, the Chinese-heritage focused data leak was a concern because of rising anti-Asian rhetoric and violence.[16] Anti-Asian Hate Crimes have increased by 339% between 2020 and 2021.[17] Along with healthcare records and other sensitive personal information, credit card numbers and bank account information are often leaked.

[11] BBC News, *23andMe Says Hackers Accessed Genetic Data of Millions of Users* (2023), https://www.bbc.com/news/articles/c4grggw4n56o.

[12] BBC News, *23andMe Says Hackers Accessed Genetic Data of Millions of Users* (2023), https://www.bbc.com/news/articles/c4grggw4n56o.

[13] BBC News, *23andMe Says Hackers Accessed Genetic Data of Millions of Users* (2023), https://www.bbc.com/news/articles/c4grggw4n56o.

[14] Connecticut Office of the Attorney General, *Attorney General Tong Issues Inquiry Letter to 23andMe Following Data Breach*, press release (2023), https://portal.ct.gov/ag/press-releases/2023-press-releases/attorney-general-tong-issues-inquiry-letter-to-23andme-following-data-breach.

[15] Genetic Literacy Project, *On the Anniversary of Kristallnacht ... A DNA Data Leak of Jewish 23andMe Customers Raises Fears of Modern-Day Jewish Yellow Badges* (2023), https://geneticliteracyproject.org/2023/11/09/on-the-anniversary-of-kristallnacht-as-the-israel-hamas-war-rages-a-dna-data-leak-of-jewish-23andme-customers-raises-fears-of-modern-day-jewish-yellow-badges/.

[16] Connecticut Office of the Attorney General, *Attorney General Tong Issues Inquiry Letter to 23andMe Following Data Breach*, press release (2023), https://portal.ct.gov/ag/press-releases/2023-press-releases/attorney-general-tong-issues-inquiry-letter-to-23andme-following-data-breach.

[17] NBC News, *Anti-Asian Hate Crimes Increased 339 Percent Nationwide Last Year* (2022), https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-increased-339-percent-nationwide-last-year-repo-rcna14282.

II.2 Cybersecurity and Healthcare in Data Protection

Cybersecurity has strong legal protections, especially related to healthcare. One example of legislation related to cybersecurity is the Cybersecurity Information Sharing Act (CISA), which facilitates cyberthreat information-sharing between companies and the federal government to foster collaboration across sectors and better detect and prevent attacks.[18] Within healthcare, the Health Insurance Portability and Accountability Act, or HIPAA, establishes stringent security standards for the healthcare industry, including healthcare organizations, insurance companies, and related parties. HIPAA is specifically focused on protecting sensitive data.[19] It includes the Breach Notification Rule, which requires firms experiencing breaches affecting five hundred or more individuals to notify the Office for Civil Rights (OCR) and affected customers within sixty days. Failure to follow these procedures can result in fines ranging from $100 to $50,000.[20] Similarly, the Gramm-Leach-Bliley Act (GLBA) governs financial institutions and mandates that the institutions explain their information-sharing practices, called the Privacy Rule, and that they implement a comprehensive information security program, including regular risk assessments and adoption of new data protection strategies.[21] Non-compliance can result in fines, reputational damage, and civil lawsuits.[22] However, businesses often fail to maintain proper cybersecurity for a variety of reasons. Cybersecurity systems are expensive, and companies do not always understand the value of their data, believing that outdated systems will continue to provide protection.[23]

II.3 Artificial Intelligence: Algorithm Bias

Another risk of improper data usage is bias. Bias most often occurs with AI algorithms, which often incorrectly associate traits like race and gender with certain positive or negative results. For example, a hiring algorithm for electrical engineers may

[18] NRI Secure, *U.S. Cybersecurity Laws and Compliance* (2025), https://www.nri-secure.com/blog/us-cybersecurity-laws-compliance.

[19] NRI Secure, *U.S. Cybersecurity Laws and Compliance* (2025), https://www.nri-secure.com/blog/us-cybersecurity-laws-compliance.

[20] NRI Secure, *U.S. Cybersecurity Laws and Compliance* (2025), https://www.nri-secure.com/blog/us-cybersecurity-laws-compliance.

[21] NRI Secure, *U.S. Cybersecurity Laws and Compliance* (2025), https://www.nri-secure.com/blog/us-cybersecurity-laws-compliance.

[22] NRI Secure, *U.S. Cybersecurity Laws and Compliance* (2025), https://www.nri-secure.com/blog/us-cybersecurity-laws-compliance.

[23] NRI Secure, *U.S. Cybersecurity Laws and Compliance* (2025), https://www.nri-secure.com/blog/us-cybersecurity-laws-compliance.

notice that only 10% of electrical engineers are women[24] and associate being a man with success in the field, making it harder for women to get hired and thereby potentially further limiting the percentage of women in this field. If the percentage of women in the field is reduced due to AI, and the AI is trained again on this less diverse data set, it will be even less likely to recommend hiring women. Thus, bias within algorithms can become self-perpetuating, even if its human creators are unbiased. Like with many issues with consumer data, the regulation of the use of these AI algorithms varies between states. Only Illinois, New York City, and Colorado have laws that require employers to provide notice when AI systems are used in hiring decisions and require such systems to undergo independent bias audits.[25] In California, insurance claim denials must be approved by a human. Consumers have been experiencing some success using litigation, and a variety of claims may be brought forward under a myriad of anti-discrimination laws, including the Civil Rights Act of 1964, the Americans with Disabilities Act, the Fair Housing Act, and the Age Discrimination in Employment Act. These complaints usually claim that they experienced "disparate impact."[26] To succeed in a disparate impact claim, a plaintiff "must (1) show a significant disparate impact on a protected class or group, (2) identify the specific practices or selection criteria at issue, and (3) show a causal relationship between the challenged practices or criteria and the disparate impact."[27] Currently, plaintiffs in both *Huskey, et al. v. State Farm Fire & Casualty Co.*,[28] and *Mobley v. Workday, Inc.*,[29] are suing under disparate impact. Clearly, the failure of businesses to prevent and report breaches and the lack of comprehensive statutory law surrounding bias leave consumers vulnerable to risks regarding their data.

III Benefits of Data Collection

The right to data privacy, as with all rights, must be balanced against the opposing interest — that is, the benefits that both businesses and consumers may receive from

[24] IEEE-USA, *IEEE-USA: Strengthening the Stance of Women in Engineering*, April 16, 2024, accessed October 25, 2025, https://ieeeusa.org/ieee-usa-strengthening-the-stance-of-women-in-engineering/.

[25] Quinn Emanuel Urquhart & Sullivan, LLP, *When Machines Discriminate: The Rise of AI Bias Lawsuits*, August 18, 2025, accessed October 25, 2025, https://www.quinnemanuel.com/the-firm/publications/when-machines-discriminate-the-rise-of-ai-bias-lawsuits/.

[26] GB Tech, *The Six Reasons Why Business Owners Don't Care About Cybersecurity*, February 20, 2024, accessed October 25, 2025, `https://www.gbtech.net/the-six-reasons-why-business-owners-dont-care-about-cybersecurity/`.

[27] NRI Secure, *U.S. Cybersecurity Laws and Compliance* (2025), https://www.nri-secure.com/blog/us-cybersecurity-laws-compliance.

[28] *Huskey, et al. v. State Farm Fire & Casualty Co.*.

[29] *Mobley v. Workday, Inc.*.

the collection of data. For businesses, data collection is essential to building a competitive advantage in the market, and both businesses and customers benefit from targeted marketing, increased efficiency in platform use, and the use of customer data to fuel innovation. Targeted marketing, also known as targeted advertising, is an approach that "leverages data and technology to deliver tailored messages to specific user segments" by analyzing a myriad of data, including browsing history, search queries, and demographic information.[30] This information is then used to create detailed profiles of individual users, which are used to serve ads tailored to the target's interests and preferences to increase the effectiveness of marketing campaigns.[31]

III.1 Targeted Marketing Strategies

Targeted marketing has clear advantages for businesses, as they can direct ads only at consumers who have a higher chance of buying their product, reducing the cost of ineffective ads. For businesses with a variety of products, targeted marketing can be used to serve advertisements about the most relevant product to the individual consumer. By collecting consumer data, the company can also serve ads on the most effective medium for the individual, whether that be websites, in videos, or via social media. Being able to expose relevant customers to their brand name over that of a competitor can also help the firm build a competitive advantage. Indeed, targeted marketing has been associated with increased engagement and customer loyalty.[32] Targeted marketing is also useful for consumers, as they may learn about interesting products to which they may not have otherwise been exposed, and may feel, in general, as if ads are less of a time sink. However, targeted marketing does have issues. Some users are concerned about giving companies private information about their beliefs and interests via internet searches, and others worry about the safety of giving companies location information.

Another benefit of personal data collection is that it can streamline everyday tasks. Using new algorithms, companies can collect and analyze a massive amount of data regarding product improvement in a record amount of time. For example, smart search engines utilize consumer data and past-search history to provide the most

[30] Mohamed Aly Bouke et al., "The Intersection of Targeted Advertising and Security: Unraveling the Mystery of Overheard Conversations," *Telematics and Informatics Reports* 11 (September 2023), https://doi.org/10.1016/S2772-5030(23)00052-X.

[31] Mohamed Aly Bouke et al., "The Intersection of Targeted Advertising and Security: Unraveling the Mystery of Overheard Conversations," *Telematics and Informatics Reports* 11 (September 2023), https://doi.org/10.1016/S2772-5030(23)00052-X.

[32] NielsenIQ, *Consumer Data Insights* (2024), https://nielseniq.com/global/en/info/consumer-data/.

relevant links to queries. Similarly, when shopping online, vendors can use demographics, location, and previous purchase history to suggest the most relevant items. Software can read emails and listen in on meetings to provide summaries, and work with a variety of people's availability to schedule meetings. Smart thermostats use location data to set temperatures based on the local weather.[33]

III.2 Product and Service Innovation

In addition to facilitating targeted marketing and streamlining everyday tasks, data collection can help companies improve and innovate products and services. Product improvement is mainly done via studying product usage to uncover subtle patterns in how and why consumers use data. Companies hope to discover potential areas for innovation and improvement.[34] Of course, product improvement and innovation were previously done by voluntarily collecting data from customers via surveys, interviews, customer reviews, and social media posts.[35] These media are still a valuable source of suggestions for improvement and can provide insight into the reasons why a product may be used unexpectedly.[36] However, this strategy suffers from a lack of response and questions about customer reliability, with only those who have strong opinions about the product taking the time to answer surveys and write reviews.
Luckily, ways to safely use data to benefit consumers and businesses without putting privacy at risk exist. Although consent to data usage is a widely accepted principle, disagreements abound over whether consent should be given in an opt-in or opt-out manner. An opt-in requires explicit permission from users before any data is collected or processed.[37] It is most often used when collecting sensitive data like health and financial information.[38] The European Union (EU) has passed an opt-in law, the General Data Protection Regulation (GDPR), which requires that organizations

[33]Amanda Turk, "What Is a Smart Thermostat?," *CNET* (2025), https://www.cnet.com/home/energy-and-utilities/what-is-a-smart-thermostat/.

[34]Cypris AI, *How Data Analytics Can Drive Innovation: A Basic Guide* (2024), https://www.cypris.ai/insights/how-data-analytics-can-drive-innovation-a-basic-guide: :text=Key%20Takeaway.

[35]Cypris AI, *How Data Analytics Can Drive Innovation: A Basic Guide* (2024), https://www.cypris.ai/insights/how-data-analytics-can-drive-innovation-a-basic-guide: :text=Key%20Takeaway.

[36]Cypris AI, *How Data Analytics Can Drive Innovation: A Basic Guide* (2024), https://www.cypris.ai/insights/how-data-analytics-can-drive-innovation-a-basic-guide: :text=Key%20Takeaway.

[37]Morgan Sullivan, "Opt-In vs. Opt-Out: Key Business Impacts for Different Consent Models," *Transcend*, January 3, 2025, https://transcend.io/blog/opt-in-vs-opt-out.

[38]Morgan Sullivan, "Opt-In vs. Opt-Out: Key Business Impacts for Different Consent Models," *Transcend*, January 3, 2025, https://transcend.io/blog/opt-in-vs-opt-out.

most clearly explain the purpose of data collection, allow users to withdraw consent easily, and keep detailed records of consent.[39] It additionally states that pre-ticked boxes and silence do not constitute consent.[40] Fines for non-compliance can reach the greater of €20 million or four percent of annual turnover, depending on which is highest.[41]

On the other hand, opt-out data collection occurs when a user's data is collected by default, but they can choose to discontinue collection later.[42] Although opt-out promotes higher participation, it can result in lower user agency and lessen privacy, eroding consumer trust.[43] Naturally, if employed at all, the opt-out system would be best used for non-sensitive data, like search history. California has enacted one of the more comprehensive opt-out models, the California Consumer Privacy Act (CCPA). The CCPA grants California residents the right to opt out of the sale of their personal information, access their collected data, and request deletion of their data.[44] Businesses must have a clear "Do Not Sell My Personal Information" act on their pages and must honor opt-out requests for at least a year before asking users to opt-in again.[45]

III.3 Automizing Data

For tasks such as targeted marketing, anonymization can be a tool to protect user privacy. There are many methods to anonymize data, including replacing the real names of customers with pseudonyms, synthetically manufacturing information using patterns found in the original datasets, and data swapping, which shuffles data so that the original values do not correspond with their original records.[46] These practices are best used for companies not trying to appeal to an individual user but instead

[39]Morgan Sullivan, "Opt-In vs. Opt-Out: Key Business Impacts for Different Consent Models," *Transcend*, January 3, 2025, https://transcend.io/blog/opt-in-vs-opt-out.

[40]Morgan Sullivan, "Opt-In vs. Opt-Out: Key Business Impacts for Different Consent Models," *Transcend*, January 3, 2025, https://transcend.io/blog/opt-in-vs-opt-out.

[41]Morgan Sullivan, "Opt-In vs. Opt-Out: Key Business Impacts for Different Consent Models," *Transcend*, January 3, 2025, https://transcend.io/blog/opt-in-vs-opt-out.

[42]Morgan Sullivan, "Opt-In vs. Opt-Out: Key Business Impacts for Different Consent Models," *Transcend*, January 3, 2025, https://transcend.io/blog/opt-in-vs-opt-out.

[43]Morgan Sullivan, "Opt-In vs. Opt-Out: Key Business Impacts for Different Consent Models," *Transcend*, January 3, 2025, https://transcend.io/blog/opt-in-vs-opt-out.

[44]Morgan Sullivan, "Opt-In vs. Opt-Out: Key Business Impacts for Different Consent Models," *Transcend*, January 3, 2025, https://transcend.io/blog/opt-in-vs-opt-out.

[45]Morgan Sullivan, "Opt-In vs. Opt-Out: Key Business Impacts for Different Consent Models," *Transcend*, January 3, 2025, https://transcend.io/blog/opt-in-vs-opt-out.

[46]Imperva, *Data Anonymization: What Is It? Pros, Cons & Common Techniques*, https://www.imperva.com/learn/data-security/anonymization/.

looking for overall trends in customer habits.

Unfortunately, anonymized data can sometimes be easily reidentified. One way that data can be reidentified is by cross-referencing the sources.[47] For example, assume a hospital reveals that a white female patient aged 35 is pregnant. Now, presume she lives in a small and predominantly Asian town, with only five white women. From here, even without knowing the patient's name, one could likely identify exactly who is pregnant.

Other issues with data anonymization exist as well, including that the process can be quite expensive because anonymization requires specific tools, skills, and resources, and can be quite complex.[48] Cost and complexity especially affect small businesses working with large datasets. Additionally, depending on the technique used, anonymization can sometimes strip away utility. For example, replacing an age with an age range can decrease the ability for analysts to notice patterns or associations between various factors.

In addition to data anonymization, there are a variety of more straightforward protections, including encrypting data with strong access controls, like MFA, which helps deter hackers. In addition, businesses can minimize data collection, only collecting the pieces of data relevant to their business. For example, a healthcare company does not need to have users' browser history, so it could stop collecting this information to reduce privacy concerns. Businesses can also protect customers and their competitive advantages by requiring employees to undergo cybersecurity training. In fact, 95% of cyberattacks are, intentionally or unintentionally, caused by employees.[49] The most common unintentional data leak occurs via phishing, where a cybercriminal masquerades as a reputable source to lure in a victim and steal information such as usernames, passwords, and bank account information.[50]

It is important to note that data anonymization is a developing field. Cybercriminals will always be inventing new ways to hack into computer systems, so businesses need to stay aware of current developments and adapt to new threats. Additionally, there are not as many statutes against deanonymized data. For example, the GDPR does not apply to anonymized data. Companies operating in the EU can use anonymized

[47] Imperva, *Data Anonymization: What Is It? Pros, Cons & Common Techniques*, https://www.imperva.com/learn/data-security/anonymization/.

[48] Fortra Data Classification, *Data Anonymization Techniques: Protecting Privacy in Data Sets* (2025), https://dataclassification.fortra.com/blog/data-anonymization-techniques-protecting-privacy-data-sets: :text=Data%20Re-identification.

[49] SC World, *95% of Data Breaches Involve Human Error, Report Reveals* (2025), https://www.scworld.com/news/95-of-data-breaches-involve-human-error-report-reveals.

[50] Cloudflare, *What Is a Phishing Attack?* (2025), https://www.cloudflare.com/learning/access-management/phishing-attack/.

data without consent for any purpose and store it for any amount of time.[51]

IV The Current Environment of Data Privacy Law

As demonstrated above, laws that protect consumers from data breaches form a patchwork of protection across the country, meaning that consumer and corporate rights vary from state to state, rather than being protected by federal statute. There was a bipartisan effort to draft a data protection bill, the American Privacy Rights Act of 2024, but this never became law.[52] Since then, there has not been a large effort to pass an omnibus data privacy act, despite the clear need to protect consumer well-being and privacy while ensuring that both consumers and businesses can reap the benefits of data use.

Although state laws provide a modicum of protection for customers in that state, the differing state laws are confusing for both customers and small businesses, meaning that resources that could go toward creating jobs and improving products are instead spent on compliance.[53] This is a particular concern for small businesses, which have limited capital. Lack of data privacy laws has also led to issues for American corporations expanding internationally, since their security frameworks are not nearly up to par with European standards.[54] In addition, 70% of countries have enacted a national privacy law, and if the United States wants to remain a leader in the technology sector, clear guidelines for data privacy are needed.[55] Next, there is widespread support for data privacy laws among the public. Seventy-five percent of Americans feel as though there should be more data regulation.[56] This number includes both Democrats and

[51] Imperva, *Data Anonymization: What Is It? Pros, Cons & Common Techniques*, https://www.imperva.com/learn/data-security/anonymization/.

[52] Anne Godlasky, "Data Privacy Act Has Bipartisan Support. But ...," *National Press Foundation*, November 30, 2022 (updated December 28, 2022), https://nationalpress.org/topic/data-privacy-act-adppa-us-lacks-law-eu-standard/.

[53] TechNet, *Learn More About Privacy* (2025), https://www.technet.org/privacy/learn-more/.

[54] U.S. Senate Committee on Commerce, Science, & Transportation, *Cantwell Lays Out Reasons Why Urgency for U.S. National Privacy Standard Will Continue to Grow*, press release, September 17, 2024, https://www.commerce.senate.gov/2024/9/cantwell-lays-out-reasons-why-urgency-for-us-national-privacy-standard-will-continue-to-grow.

[55] U.S. Senate Committee on Commerce, Science, & Transportation, *Cantwell Lays Out Reasons Why Urgency for U.S. National Privacy Standard Will Continue to Grow*, press release, September 17, 2024, https://www.commerce.senate.gov/2024/9/cantwell-lays-out-reasons-why-urgency-for-us-national-privacy-standard-will-continue-to-grow.

[56] Brooke Auxier et al., "Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information," *Pew Research Center*, November 15, 2019, https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/.

Republicans, although about 11% more Democrats than Republicans favor more regulation.[57]

Finally, increasing the ability to collect and analyze large sets of data using AI makes the establishment of a federal law even more pressing.

Clearly, the establishment of a comprehensive data privacy bill is important to both businesses and the electorate. As always, the federal government should look towards other countries and states' laws for inspiration, including the GDPR. Domestically, the leader in data privacy law is California with the CCPA. The CCPA is a comprehensive bill, and in addition to strengthening the opt-out framework, it provides definitions for data privacy terms and broad individual rights.[58] It also imposes restrictions on the collection, use, disclosure, and processing of personal information. The law is enforced by the California Privacy Protection Agency (CPPA), which is also given the ability to rule on updates to the law and a variety of important cybersecurity areas, including cybersecurity audits, risk assessment, insurance, and automated decision-making technology.[59]

The CPPA also enforces the "Delete Act," which forces data brokers to delete certain data on the request of consumers.[60] By the end of 2025, the CPPA is required to create an accessible deletion mechanism that allows consumers to make a single delete request and have their data expunged.[61] California has also passed the California Age-Appropriate Design Code (CAADC), which is intended to grant special protection to data generated by children. However, a California District Court issued an injunction on First Amendment grounds, which remains in place as of October 2025.[62] Maryland and Connecticut have either enacted similar laws or amended existing laws to protect children.[63]

Similarly, the Federal Trade Commission (FTC) has amended the Children Online Pri-

[57] Brooke Auxier et al., "Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information," *Pew Research Center*, November 15, 2019, https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/.

[58] DLA Piper, *United States: Data Protection Overview* (2025), https://www.dlapiperdataprotection.com/?c=US.

[59] DLA Piper, *United States: Data Protection Overview* (2025), https://www.dlapiperdataprotection.com/?c=US.

[60] DLA Piper, *United States: Data Protection Overview* (2025), https://www.dlapiperdataprotection.com/?c=US.

[61] DLA Piper, *United States: Data Protection Overview* (2025), https://www.dlapiperdataprotection.com/?c=US.

[62] DLA Piper, *United States: Data Protection Overview* (2025), https://www.dlapiperdataprotection.com/?c=US.

[63] DLA Piper, *United States: Data Protection Overview* (2025), https://www.dlapiperdataprotection.com/?c=US.

vacy Protection Act to require that parents opt-in to the use of children's data and to mandate that parent consent be verified by matching a parent's image on a government-issued ID with a recent image.[64] It also limits the data that can be collected and requires that special care be taken to secure children's data.[65]

States have also taken care to protect healthcare data, beginning with the My Health My Data Act (MHMD) in Washington state in 2023.[66] Nevada and Connecticut followed suit with similar laws in 2023 and 2024, respectively.[67] Under the MHMD Act, either consent or absolute necessity is required for collecting and processing consumer health data, and explicit, written, and signed consent is required for the sale of this data.[68] Further, the Act contains broad definitions and has a wide scope, meaning that its enforcement may involve data not typically considered health data.[69] The law is enforced by the attorney general and by consumers through private lawsuits.[70] Further, the law requires that a joint committee be established to review enforcement actions brought by the attorney general and consumers. The committee will also create a report about the impact and effectiveness of the act's enforcement provisions.[71] Because these acts are so new, data on their efficacy is not widely available. However, from January 2020 to September 2024, there were about 400 CCPA lawsuits filed, with the two most common sectors being finance and healthcare.[72]

Since the GDPR was put into law in 2018, the EU has issued about €5.65 billion in fines.[73] Concerningly, however, a study by PPC Land found that enforcement of the regulation was low, ranging between 6.84% in Slovakia and 0.03% in the Netherlands.[74]

[64] DLA Piper, *FTC Finalizes Changes to COPPA*, January 2025, https://www.dlapiper.com/en-us/insights/publications/2025/01/ftc-finalizes-changes-to-coppa/.

[65] DLA Piper, *FTC Finalizes Changes to COPPA*, January 2025, https://www.dlapiper.com/en-us/insights/publications/2025/01/ftc-finalizes-changes-to-coppa/.

[66] International Association of Privacy Professionals (IAPP), *Washington My Health My Data Act: Overview* (2025), https://iapp.org/resources/article/washington-my-health-my-data-act-overview/.

[67] International Association of Privacy Professionals (IAPP), *Washington My Health My Data Act: Overview* (2025), https://iapp.org/resources/article/washington-my-health-my-data-act-overview/.

[68] International Association of Privacy Professionals (IAPP), *Washington My Health My Data Act: Overview* (2025), https://iapp.org/resources/article/washington-my-health-my-data-act-overview/.

[69] International Association of Privacy Professionals (IAPP), *Washington My Health My Data Act: Overview* (2025), https://iapp.org/resources/article/washington-my-health-my-data-act-overview/.

[70] International Association of Privacy Professionals (IAPP), *Washington My Health My Data Act: Overview* (2025), https://iapp.org/resources/article/washington-my-health-my-data-act-overview/.

[71] International Association of Privacy Professionals (IAPP), *Washington My Health My Data Act: Overview* (2025), https://iapp.org/resources/article/washington-my-health-my-data-act-overview/.

[72] Statista, *CCPA Filings Total Number in the United States* (2024), https://www.statista.com/statistics/1370816/ccpa-filings-total-number/.

[73] CMS, *Record Broken: GDPR Fines Exceed EUR 5 Billion for the First Time – CMS Publishes Sixth Edition of the Enforcement Tracker Report*, May 13, 2025, https://www.cms.law/en/int/news-information/record-broken-gdpr-fines-exceed-eur-5-billion-for-the-first-time.

[74] PPC Land, *GDPR Enforcement Data Shows Low Fine Rates Across European Authorities* (2025),

V Considerations for a Federal Law

As has already been explored, the federal government must promptly enact a comprehensive consumer privacy law. Not only would such a law help balance corporate and consumer rights, but it would alleviate inefficiencies stemming from navigating the patchwork of state laws, saving time and costs for small businesses. Most importantly, this law must include a section focused explicitly on cybersecurity. This section should be proactive, rather than reactive. That is, it should require that firms actively audit and update their cybersecurity systems, educate employees, and have fallback plans in case of attack. However, attacks will still occur, so stringent laws for reporting attacks should be enacted, ideally with businesses notifying the government about the attack within hours or days. This reporting would also allow the government to help the firm inform victims and implement the next steps towards protecting consumer privacy and safety.

These laws should be scaled by the company size and the data being collected. As cybersecurity can be expensive, it may be cost-prohibitive for small companies to have more than a baseline level of security, although all firms should have at least some measures in place. Additionally, small firms usually serve a small number of clients, so they may not be as likely to be victims of attacks, and if they are, the effects are less widespread. The exception to this principle, however, should be small companies working with sensitive data, like healthcare and financial firms.

Secondly, consent needs to be standardized and simplified. To be particularly cautious and prevent consumers from failing to realize that their data is being used, an opt-in approach should be required, especially sensitive information like demographics, location, and healthcare and financial information. Data privacy policies need to be simplified. A late 2023 study by NordVPN found that to read the polices of the 96 websites that the average person views in a month, they would need 47 hours, equivalent to the time it takes to earn $338 if being paid minimum wage.[75] Clearly, a federal law must include limits on the number of words and the reading level of these policies. Next, to protect consumers from unintentional AI-related bias, the law should mandate the use of large, representative data sets and require regular, third-party auditing of AI-based products and systems. Legislatures should be careful around policies requiring minimum data collection, as for uses like innovation and improvement of products, since unexpected factors and patterns could lead to insight about how to

https://ppc.land/gdpr-enforcement-data-shows-low-fine-rates-across-european-authorities/.

[75] Irma Šlekytė, "NordVPN Study Shows: Nine Hours to Read the Privacy Policies of the 20 Most Visited Websites in the US," *NordVPN*, October 23, 2023, https://nordvpn.com/blog/privacy-policy-study-us/.

create a better customer experience.
The new law should have special protections for children, and it may be wise to base this law on the COPPA, requiring that to provide parental permission, parents must verify their identity using a government-issued ID and a current selfie, taken at the moment of verification. Also, this situation would be a good use of the minimum data collection principle, especially regarding data that could put them in danger, like the location, name, gender, and age of the child. Finally, in keeping with the balance of power between the federal and state governments, this Act should be somewhat conservative at first, with the ability to be amended later, and allow states to enact additional privacy laws.

VI Conclusion

In an era defined by the exponential growth of data collection and AI, the need for comprehensive federal data privacy legislation has never been more urgent. The fragmented state-by-state approach to data protection in the United States has resulted in inefficiencies, confusion, and inconsistent safeguards for consumers and businesses. While certain states, such as California and Washington, have taken meaningful steps to protect privacy and secure sensitive information, these efforts remain localized and often incompatible with each other. To maintain the United States' leadership in technology and ensure that innovation does not come at the cost of consumer safety and trust, a uniform federal framework is essential.
A strong federal data privacy law should balance the dual imperatives of protecting individuals' rights and enabling responsible data use by businesses. Such a law must establish clear standards for data collection, consent, cybersecurity, and the use of artificial intelligence. It should require that all firms, regardless of size, maintain baseline cybersecurity standards, including multifactor authentication, encryption, and regular risk assessments. Larger firms, and those handling sensitive personal or financial data, should be held to even higher standards. Importantly, the law should be proactive, requiring regular audits, employee cybersecurity training, and immediate reporting of data breaches, to prevent harm before it occurs and ensure swift responses when it does occur.
The issue of consent must also be standardized. An opt-in model for sensitive data empowers consumers to make informed decisions about how their information is collected and used. To ensure true accessibility, privacy policies should be concise, clear, and written at a reading level that the average consumer can easily understand. Similarly, the law must address the emerging threat of algorithmic bias by mandating

independent audits and the use of diverse datasets to prevent discrimination in AI systems used for hiring, lending, and insurance decisions.

Finally, the legislation should include robust protections for children's data and allow for measured state-level innovation within a cohesive national framework. A comprehensive federal law will not only safeguard individual privacy but also strengthen consumer confidence, foster ethical innovation, and reduce compliance burdens on businesses operating across multiple states. In short, such a law represents not only a moral and social imperative but also a necessary step toward ensuring that the digital economy of the future remains secure, equitable, and competitive.

Bibliography

Auxier, Brooke, Lee Rainie, Monica Anderson, Andrew Perrin, Madhu Kumar, and Erica Turner. "Americans and Privacy: Concerned, Confused, and Feeling Lack of Control Over Their Personal Information." *Pew Research Center*, November 15, 2019. https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/.

BBC News. "23andMe Says Hackers Accessed Genetic Data of Millions of Users." *BBC News*, 2023. https://www.bbc.com/news/articles/c4grggw4n56o.

Bolden-Hardge v. Office of California State Controller, 63 F.4th 1215 (9th Cir. 2023).

Bouke, Mohamed Aly, Azizol Abdullah, Sameer Hamoud Alshatebi, Saleh Ali Zaid, and Hayate El Atigh. "The Intersection of Targeted Advertising and Security: Unraveling the Mystery of Overheard Conversations." *Telematics and Informatics Reports* 11 (September 2023). https://doi.org/10.1016/S2772-5030(23)00052-X.

Cloudflare. "What Is a Phishing Attack?" 2025. https://www.cloudflare.com/learning/access-management/phishing-attack/.

CMS. "Record Broken: GDPR Fines Exceed EUR 5 Billion for the First Time – CMS Publishes Sixth Edition of the Enforcement Tracker Report." May 13, 2025. https://www.cms.law/en/int/news-information/record-broken-gdpr-fines-exceed-eur-5-billion-for-the-first-time.

Connecticut Office of the Attorney General. "Attorney General Tong Issues Inquiry Letter to 23andMe Following Data Breach." Press Release, 2023. https://portal.ct.gov/ag/press-releases/2023-press-releases/attorney-general-tong-issues-inquiry-letter-to-23andme-following-data-breach.

Cypris AI. "How Data Analytics Can Drive Innovation: A Basic Guide." 2024. https://www.cypris.ai/insights/how-data-analytics-can-drive-innovation-a-basic-guide#:~:text=Key%20Takeaway.

DLA Piper. "FTC Finalizes Changes to COPPA." *DLA Piper Insights*, January 2025. https://www.dlapiper.com/en-us/insights/publications/2025/01/ftc-finalizes-changes-to-coppa/.

DLA Piper Data Protection Laws of the World. "United States: Data Protection Overview." 2025. https://www.dlapiperdataprotection.com/?c=US.

IEEE-USA. "IEEE-USA: Strengthening the Stance of Women in Engineering." *IEEE-USA*, April 16, 2024. Accessed October 25, 2025. https://ieeeusa.org/ieee-usa-strengthening-the-stance-of-women-in-engineering/.

Fortra Data Classification. "Data Anonymization Techniques: Protecting Privacy in Data Sets." 2025. https://dataclassification.fortra.com/blog/data-anonymi

zation-techniques-protecting-privacy-data-sets#:~:text=Data%20Re-identification.
GB Tech. "The Six Reasons Why Business Owners Don't Care About Cybersecurity." *GB Tech* (blog), February 20, 2024. Accessed October 25, 2025. https://www.gbtech.net/the-six-reasons-why-business-owners-dont-care-about-cybersecurity/#:~:text=Lack%20of%20Awareness,today%20is%20around%20\protect\T1\textdollar4.45%20million.
Genetic Literacy Project. "On the Anniversary of Kristallnacht ... A DNA Data Leak of Jewish 23andMe Customers Raises Fears of Modern-Day Jewish Yellow Badges." 2023. https://geneticliteracyproject.org/2023/11/09/on-the-anniversary-of-kristallnacht-as-the-israel-hamas-war-rages-a-dna-data-leak-of-jewish-23andme-customers-raises-fears-of-modern-day-jewish-yellow-badges/.
Godlasky, Anne. "Data Privacy Act Has Bipartisan Support. But ..." *National Press Foundation*, November 30, 2022 (updated December 28, 2022). https://nationalpress.org/topic/data-privacy-act-adppa-us-lacks-law-eu-standard/.
HIPAA Journal. "Change Healthcare Responding to Cyberattack." 2024. https://www.hipaajournal.com/change-healthcare-responding-to-cyberattack/.
Huskey v. State Farm Fire & Casualty Co., No. 1:22-cv-07014 (N.D. Ill. Sept. 11, 2023).
Imperva. "Data Anonymization: What Is It? Pros, Cons & Common Techniques." *Imperva Learning Center*. https://www.imperva.com/learn/data-security/anonymization/.
International Association of Privacy Professionals (IAPP). "Washington My Health My Data Act: Overview." 2025. https://iapp.org/resources/article/washington-my-health-my-data-act-overview/.
KPMG. "Bridging the Trust Chasm." 2023. https://kpmg.com/us/en/articles/2023/bridging-the-trust-chasm.html.
Legal Information Institute. "Right to Privacy." *Wex*, Cornell Law School. Last reviewed June 2022. https://www.law.cornell.edu/wex/right_to_privacy.
Mobley v. Workday, Inc., No. 3:23-cv-00770 (N.D. Cal. filed Feb. 21, 2023).
NBC News. "Anti-Asian Hate Crimes Increased 339 Percent Nationwide Last Year." *NBC News*, 2022. https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-increased-339-percent-nationwide-last-year-repo-rcna14282.
NielsenIQ. "Consumer Data Insights." 2024. https://nielseniq.com/global/en/info/consumer-data/.
NRI Secure. "U.S. Cybersecurity Laws and Compliance." 2025. https://www.nri-secure.com/blog/us-cybersecurity-laws-compliance.

PPC Land. “GDPR Enforcement Data Shows Low Fine Rates Across European Authorities.” 2025. https://ppc.land/gdpr-enforcement-data-shows-low-fine-rates-across-european-authorities/.
Quinn Emanuel Urquhart & Sullivan, LLP. “Lead Article: When Machines Discriminate: The Rise of AI Bias Lawsuits.” *Quinn Emanuel – The Firm*, August 18, 2025. Accessed October 25, 2025. https://www.quinnemanuel.com/the-firm/publications/when-machines-discriminate-the-rise-of-ai-bias-lawsuits/.
SC World. “95% of Data Breaches Involve Human Error, Report Reveals.” 2025. https://www.scworld.com/news/95-of-data-breaches-involve-human-error-report-reveals.
Šlekytė, Irma. “NordVPN Study Shows: Nine Hours to Read the Privacy Policies of the 20 Most Visited Websites in the US.” *NordVPN*, October 23, 2023. https://nordvpn.com/blog/privacy-policy-study-us/.
Statista. “CCPA Filings Total Number in the United States.” 2024. https://www.statista.com/statistics/1370816/ccpa-filings-total-number/.
Sullivan, Morgan. “Opt-In vs. Opt-Out: Key Business Impacts for Different Consent Models.” *Transcend*, January 3, 2025. https://transcend.io/blog/opt-in-vs-opt-out.
TechNet. “Learn More About Privacy.” 2025. https://www.technet.org/privacy/learn-more/.
Turk, Amanda. “What Is a Smart Thermostat?” *CNET*, 2025. https://www.cnet.com/home/energy-and-utilities/what-is-a-smart-thermostat/.
U.S. Senate Committee on Commerce, Science, & Transportation. “Cantwell Lays Out Reasons Why Urgency for U.S. National Priva