

Prosecution and Plea Bargaining under Hindsight Bias

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The plea bargaining mechanism in criminal procedure serves as a favorable screening device, separating between the guilty and the innocent. Previous literature ignored the impact of asymmetric information on prosecutor performance inside the adversarial court, which degrades his bargaining position. This paper presents a sequential prosecution game with endogenous courts, and shows that the successful conviction in court crucially depends on prosecutor's beliefs and incentives. If the prosecutor is sufficiently convinced of the defendant's guilt ex-ante, he can commit to trial, and the favorable semiseparating equilibrium is obtained. Applying the first formal model of a hindsight biased prosecutor, we find that the negative impact of uncertainty on prosecutor performance is partly mitigated by hindsight bias, and the self-selection of guilty defendants can even improve. Several caveats, like excessive charges, the nature of the case or the quality of investigations by the police force are discussed.