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A Conceptual Framework for Voluntary Confessions and the Privilege Against Self-Incrimination

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Abstract
The privilege against self-incrimination entails that anyone accused of a criminal offence has the right to remain silent. However, waiving the privilege is possible, but such waiver must be voluntary and in accordance with the will of the accused. This article examines the impact of sentence reductions based on confessions on the voluntariness of confessions. I argue that the concept of voluntariness must be interpreted from the perspective of the values and objectives underlying the privilege against self-incrimination. Depending on the perspective chosen (i.e. objectives and values), sentence reductions can be problematic from the standpoint of the privilege against self-incrimination and the voluntariness requirement it entails. However, it should be also noted that moderate incentives can simultaneously promote the realization of these values and objectives, such as material truth. Categorical negative attitude towards all sentence reductions can be detrimental to the values that the privilege and the voluntariness requirement seek to protect.

Keywords Confessions · Voluntariness · Privilege against self-incrimination · Plea bargain · Due process · Moral autonomy

1 Introduction

Nordic criminal justice systems have increasingly been influenced by other legal systems. One of the most prominent examples is plea bargaining, which originates from the Anglo-American system. Although plea bargaining was long considered unsuitable for Nordic criminal law and faced persistent resistance, it has gradually been implemented in an expanding number of countries in recent years, primarily due to economic reasons. For example, Finland introduced plea bargaining in 2015,

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and in Sweden, the debate on its adoption is currently ongoing. Some form of plea bargaining already exists in Norway, Estonia, and Denmark as well.[1]

Such legal transplants are often associated with both benefits and drawbacks. For example, plea bargaining has been considered problematic due to concerns related to the privilege against self-incrimination.[2] The privilege against self-incrimination entails that anyone accused of a criminal offence has the right to remain silent and not to contribute to incriminating himself. The right not to incriminate oneself presupposes that the prosecution in a criminal case seek to prove their case against the accused without recourse to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. However, the privilege does not protect against the making of an incriminating statement per se but against the obtaining of evidence by coercion or oppression. It is the existence of compulsion that gives rise to concerns as to whether the privilege against self-incrimination has been respected. Waiving the privilege against self-incrimination is therefore possible, but such waiver must be voluntary and in accordance with the will of the accused. In summary, the right not to incriminate oneself is primarily concerned with respecting the will of an accused person to remain silent or confess—the will of the accused is protected from coercion.[3]

In essence, the principle is quite clear, but its exact content and application are more difficult to grasp. For example, plea bargaining and its relation to the concept of voluntary confession have been construed in myriads of ways, which (among other things) tends to obscure the scope of the privilege against self-incrimination.[4] In effect, plea bargaining means that the accused waives the right to remain silent and confesses to the crime in exchange for benefits such as a reduced sentence.[5] Since the privilege against self-incrimination protects the accused's will to remain silent, plea bargaining has been deemed problematic as it seeks to influence the accused to waive this right. Since the sentences for confessing and non-confessing defendants differ, the question arises whether the choice between confessing and

[1] L. Ervo, 'Plea Bargaining Changing Nordic Criminal Procedure: Sweden and Finland as Examples', in L. Ervo, P. Letto-Vanamo. and A. Nylund (eds) *Rethinking Nordic Courts* (Springer 2021) 255–269, pp. 255–257; P. Günsberg (a pre-print version of a paper), 'The Practice of Plea Bargaining Particularly in the Nordic Context', in J. Banach-Gutierrez and C. Harding (eds) *EU Criminal Law and Policy: Values, Principles and Methods* (Routledge 2017) 1–11, pp. 1–3.

[2] Günsberg, *supra* note 1, pp. 1–5.

[3] European Court of Human Rights, 'Guide on Article 6 of the Convention—Right to a fair trial (criminal limb). Updated on 31 August 2022', available at https://ks.echr.coe.int/web/echr-ks/article-6-criminal (visited 23 May 2023), pp. 41–42; A. Ashworth, 'Self-Incrimination in European Human Rights Law—A Pregnant Pragmatism?', 30 *Cardozo Law Review* (2008) 751–774, pp. 752–759.

[4] H.L. Ho, 'Confessions in the Criminal Process', 84 *Modern Law Review* (2021) 30–60, pp. 31–36; M. Green, 'The Privilege's Last Stand: The Privilege Against Self-Incrimination and the Right to Rebel Against the State', 65 *Brooklyn Law Review* (1999) 627–716, pp. 628–636, 640, 651–652; Ashworth, *supra* note 3, pp. 752–759, 767–769.

[5] It is important to note the existence of different plea bargaining models, such as charge bargaining, fact bargaining, and sentence bargaining. However, these models all involve a common element: the suspect is offered a form of mitigation in criminal liability in exchange for a guilty plea. While this article primarily focuses on sentence reduction, the central issue remains consistent across the mentioned models—the suspect is persuaded to engage in plea bargaining by offering something in return.

remaining silent is truly voluntary if the accused would not confess without a reduction in sentence. Has the confession been obtained through methods of coercion or oppression in defiance of the will of the accused? However, at the same time the accused nevertheless chooses to waive the right to remain silent in order to gain a reduction in sentence. To fulfil this desire, the accused wants and chooses to confess. In this case, is the choice to confess not in accordance with the will of the accused?[6]

The debate is further complicated by the fact that particularly in the context of legal transplants, different principles and concepts can be understood in a variety of ways. For instance, the privilege against self-incrimination and its requirement of the voluntariness of confessions may not necessarily have the same meaning in Anglo-American and Nordic discussions, as the principle and its components are constructed and approached from different perspectives and starting points—that is, values and objectives. In other words, the opposing interpretations are thus partly explained by the fact that the issue is approached from different perspectives, highlighting different underlying justifications for the privilege against self-incrimination and the voluntariness of confessions required. Therefore, contextual factors must be taken into account in any evaluation. Concepts and their evaluation must be grounded in broader systemic connections and the underlying values and objectives that define the criminal justice system. Accordingly, the scope of the privilege against self-incrimination and the voluntariness of confessions required—and the suitability of legal transplants more generally—must be evaluated in the light of the underlying values and objectives that shape the context.[7]

In this article, I examine the impact of sentence reductions based on confessions on the voluntariness of confessions, particularly with regard to the privilege against self-incrimination. Considering that the voluntariness of confession is crucial in assessing whether the privilege against self-incrimination has been violated, and given that the privilege contributes to establishing the minimum standard for a fair criminal process, the concept of voluntary confession in the legal context must consider the requirements of the privilege against self-incrimination. Although this issue has long been of interest to legal scholars, there is still no consensus on the scope of the privilege against self-incrimination and the concept of voluntary

[6] It is noteworthy that plea bargaining does not necessarily necessitate a confession. In other words, guilty plea and confession do not precisely refer to the same concept. For instance, a suspect may acknowledge the sequence of events while simultaneously denying guilt. Additionally, plea bargaining may involve an agreement to enter a plea of nolo contendere, in which the defendant expresses the desire not to contest the charge but does not admit guilt. However, in my view, this does not fundamentally change the central issue of the article since the suspect is persuaded to admit unfavourable aspects through plea bargaining. See e.g., B. Garret, 'Why Plea Bargains Are Not Confessions', 57 *William & Mary Law Review* (2016) 1415–1444; L. Bachmaier, 'The European Court of Human Rights on Negotiated Justice and Coercion', 26 *European Journal of Crime, Criminal Law and Criminal Justice* (2018) 236–259, pp. 239–241; R. Helm, 'Constrained Waiver of Trial Rights? Incentives to Plead Guilty and the Right to a Fair Trial', 46 *Journal of Law and Society* (2019) 423–447, pp. 428–434; R. Lippke, *The Ethics of Plea Bargaining* (Oxford University Press 2011), pp. 10–13, 16–18, 21–23, 29–30, 177–178; C. Brunk, 'The Problem of Voluntariness and Coercion in the Negotiated Plea', 13 *Law & Society Review* (1979) 527–553, pp. 528–530.

[7] Ho, *supra* note 4, pp. 31–36; Ashworth, *supra* note 3, pp. 752–759, 767–769; Brunk, *supra* note 6, pp. 528–532; Helm, *supra* note 6, pp. 426, 430–434.

confession. As there are several possible concepts, levels, and degrees of voluntariness based on the aforementioned problems, opinions on the voluntariness of a confession required by the privilege against self-incrimination still differ drastically today. Even the starting points of the principle can be understood in many different ways, as well as what the principle is ultimately intended to protect. It is a mixture of different values and goals and a weighing of different interests, so the requirements contained in the principle and the interpretations made of it depend on the observer's adopted background values and perspective. In my view, this is also reflected, for example, in recent case law of the European Court of Human Rights (ECtHR), which can have a significant impact on the efficiency and legitimacy of national criminal justice systems.[8]

In the following analysis, I will examine the concept of voluntariness and how sentence reductions based on confessions should be seen to affect the voluntariness of a confession—particularly in the Nordic context. I argue that the concept of voluntariness must be interpreted from the perspective of the values and objectives underlying the privilege against self-incrimination. This kind of interpretation sets certain criteria for the voluntariness of a confession, which can help us to clarify our understanding of the impact of sentence reductions on the voluntariness of a confession and the realisation of the privilege against self-incrimination. The research question and approach of the article are based on (and seek to answer) the following background problem: does a sentence reduction imply a punishment for invoking the privilege against self-incrimination when, as a result of the reduction, remaining silent leads to a more severe sentence than confessing? In other words, can the loss of a sentence reduction be considered a punishment for silence, when adhering to the privilege against self-incrimination leads to a more severe sentence compared to when the accused waives that right? This issue is closely related to questions regarding voluntariness and freedom of choice in confessions, which is why the definitions of the concepts of reward, punishment, voluntariness, and freedom of choice, and the structuring of their relationships, are essential for the article's research task. I will begin my examination with the concept of voluntary confession and the issues related to the relationship between rewards and punishments.

2 Voluntariness and Freedom of Choice

2.1 The Effect of Confession on the Sentence—Reward (Offer) or Punishment (Threat)?

In summary, the privilege against self-incrimination presupposes that confession is voluntary, i.e., based on the will of the accused. Sentence reductions based on confessions have occasionally been considered to exert pressure on the accused to confess, thereby constraining their freedom and right to choose to remain silent. This is

[8] Helm, *supra* note 6, pp. 426, 430–434; Bachmaier, *supra* note 6, pp. 239–242, 250–255; Ashworth, *supra* note 3, pp. 752–759, 767–769.

often linked to the undeniable fact that the sentences for confessing and non-confessing defendants are different. If one does not confess to their crime, they receive a more severe sentence. Thus, plea bargaining systems, for example, can be perceived as coercive towards accused to confess, thereby constricting their freedom and right to remain silent.[9]

In examining the impact of sentence reductions on the voluntariness of a confession, it is crucial to clarify the concepts of freedom of choice and voluntariness and their interrelation. The relationship between voluntary choice and freedom of choice (i.e., the ability to choose something in the first place) is not a straightforward one. The notion of freedom of choice itself can be understood in various ways. For instance, an agent may possess a 'literal' freedom of choice that can be distinguished from a 'practical' freedom of choice. Consider a robbery scenario in which the robber offers the victim the choice between 'money or life'. The victim has a literal freedom of choice regarding whether to give the robber their money or their life, and their choice can affect the outcome. This constitutes at least some degree of freedom of choice because the robber could take the money without asking, in which case the victim would not even have a literal freedom of choice. However, a 'money or life' type situation does not allow for a completely voluntary choice in the sense that the victim would not genuinely wish to give away their money. If the robber asked the victim for their money without threatening to kill them, the victim would not likely choose to give the money. Thus, in the 'money or life' situation, there is a lack of practical freedom of choice, even though the victim has a literal freedom of choice. Since the victim values their life more than the money and makes their choice accordingly, giving the money is a result of literal free choice but is still involuntary from a practical standpoint. Consequently, the victim's choice (situation) encompasses elements that refer to both voluntariness and involuntariness simultaneously.[10]

The example makes it evident that the robber's proposal 'money or life' makes giving the money practically involuntary from the victim's perspective. This applies, by default, also to plea bargaining, in which the prosecutor's (robber's) proposal could be 'confess or I demand a more severe punishment'. It is noteworthy at this point, however, that many plea bargaining systems are based on an offer of reward rather than a threat of punishment. This distinguishes them from the example of a robber and has an impact on whether the prosecutor's (robber's) proposal can be considered to restrict the victim's freedom and voluntariness of choice.

This issue can be illustrated by first examining how a robber restricts the victim's freedom of choice by issuing a threat. If the victim were afforded the power to veto the choice between relinquishing money or risking their life, they would retain both. However, since the victim is not given this veto power, they cannot retain both

[9] Bachmaier, *supra* note 6, pp. 239–241; Helm, *supra* note 6, pp. 428–434; Lippke, *supra* note 6, pp. 10–13, 16–18, 21–23, 29–30, 177–178.

[10] M. Alvarez, 'The Concept of Voluntariness', 7 *Jurisprudence* (2016) 665–671, pp. 667–671; J. Pallikkathayil, 'The Possibility of Choice: Three Accounts of the Problem with Coercion', 11 *Philosopher's Imprint* (2011) 1–20, pp. 1–6; B. Colburn, 'The Concept of Voluntariness', 16 *Journal of Political Philosophy* (2008) 101–111, pp. 101–102.

options, and therefore, their freedom of choice has been weakened by the robber's threat. Consequently, the victim cannot continue their life as they would have without the threat.[11]

This kind of threat must be distinguished from an offer. Both are seen as proposals that enable literal freedom of choice, but unlike threats, offers are generally considered to increase freedom of choice rather than restrict it. An offer can be obtained from the robbery example by modifying it so that the agent is a bank clerk to whom the robber suggests, 'give me the money, and you'll get half the loot'. This kind of offer can be considered to increase the 'victim's' options instead of restricting them. With the proposal, the victim has the opportunity to get half the loot, which they may not have without the robber. The essential difference from the threat discussed above is illustrated through the right of veto. The threat loses its power with the right of veto, and the veto gives the agent the opportunity to continue their life normally. The same does not apply to an offer, as rejecting an offer has exactly the same effect as if the proposal had been given a right of veto. By rejecting the offer, the bank clerk does not give away the money or lose anything, so their life continues as it would have without the offer. The offer does not restrict the agent but rather increases their options. Unlike a threat, it does not weaken the victim's position but can even improve their position and thus be desirable (or at least neutral).[12]

In accordance with this line of reasoning, coercion and the restriction of freedom of choice are deemed to be associated solely with threats. By this rationale, an offer cannot be coercive or restrictive of freedom of choice. Unlike threats, an offer does not deprive its target of the opportunity to continue their life in precisely the same manner as if the offer had never been made. Furthermore, an offer presents the target with a novel option that was previously unobtainable.

The notion that offers cannot be coercive or limit freedom of choice has been used to defend plea bargaining systems. To illustrate, suppose that crime X carries a sentence of three years' imprisonment without the option of plea bargaining. If the plea bargaining system is based on the premise that remaining silent will result in a harsher sentence of four years, it constitutes a restrictive threat to freedom of choice. The accused's right to remain silent is restricted compared to a situation in which plea bargaining did not exist. As a result, the plea bargaining system would leave the accused in a worse position than the regular process: they would either face a more severe sentence or involuntarily confess to avoid it. They cannot remain silent and receive a three-year sentence. The only way for the accused to avoid the sentence threatened by plea bargaining is to involuntarily confess to the crime. In my view, such arrangements can be viewed as contradicting the privilege against self-incrimination since the accused's freedom to remain silent is limited compared to the

[11] Pallikkathayil, *supra* note 10, pp. 9–12; M. Philips, 'The Question of Voluntariness in the Plea Bargaining Controversy: A Philosophical Clarification', 16 *Law & Society Review* (1981) 207–224, pp. 220–222; D. Zimmerman, 'Coercive Wage Offers', 10 *Philosophy & Public Affairs* (1981) 121–145, pp. 124–125.

[12] Pallikkathayil, *supra* note 10, pp. 1–6, 9–12; Philips, *supra* note 11, pp. 220–222; M. Gorr, 'The Morality of Plea Bargaining', 26 *Social Theory and Practice* (2000) 129–151, pp. 132–134; Brunk, *supra* note 6, pp. 528–538, 544–546.

normal process (although they still have a literal freedom of choice). For instance, the ECtHR has ruled in its case law that if the accused's will is influenced by a punishment, penalty, or another direct legal sanction, it is usually seen as oppression that violates the privilege against self-incrimination.[13]

Drawing upon a similar example, the impact of an offer on the freedom of choice of the accused can be elucidated. Suppose the accused is faced with a three-year prison sentence, but plea bargaining offers the possibility of confessing to the crime and receiving a two-year prison sentence in exchange. In comparison to a non-plea bargaining scenario, the accused in a plea bargaining scenario has an equal opportunity to remain silent and receive a three-year sentence, which is unrestricted. Additionally, the accused now has the option to select a new two-year sentence, which was not previously available without plea bargaining. In this sense, the accused's decision-making scenario and available options have been augmented rather than restricted, and their position has not been weakened in comparison to a non-plea bargaining scenario. Should the accused choose not to accept the plea bargain, they are free to reject it and continue their activities in the same manner as if the offer had not been extended. Thus, the offer does not curtail the accused's freedom of choice compared to the standard process.[14]

Plea bargaining in the form of an offer confers even more power to the accused to influence the handling of their case and the sentence ultimately imposed on them. The accused, without plea bargaining, would not have the option to 'choose' between a full trial and a lighter plea bargain trial, or between a lighter and a harsher sentence. Offer-based plea bargaining thus expands the accused's freedom of choice compared to a situation where no offer is presented. Pursuant to this idea, the US Supreme Court has explicitly stated that an offer in the form of a plea bargain is not coercive or restrictive, even when the rejection of the offer is not a viable option for the accused due to a significant reduction in the potential sentence. The fact that, for example, the threat of the death penalty leaves the accused with no viable alternative to confession does not mean that the accused is incapable of choosing voluntarily and according to their will.[15]

When comparing offers and threats, it becomes clear that plea bargaining can only be based on an offer if (and when) the limitations on the agent's freedom of choice are to be refrained from, in accordance with the privilege against self-incrimination. However, as previously noted, offers themselves do not seem to be entirely unproblematic from the perspective of the privilege against self-incrimination and

[13] Brunk, *supra* note 6, pp. 528–538, 544–546; A. Wertheimer, *Coercion* (Princeton University Press 1987), pp. 126, 203–204, 222–224; Philips, *supra* note 11, pp. 220–222; *Funke v. France*, ECtHR (1993) Series A, No. 256-A; *Quinn v. Ireland*, ECtHR 21 December 2000; *Marttinen v. Finland*, ECtHR 21 April 2009; Bachmaier, *supra* note 6, pp. 254–255.

[14] Bachmaier, *supra* note 6, pp. 254–255; M. Langer, 'Rethinking Plea Bargaining: The Practice and Reform of Prosecutorial Adjudication in American Criminal Procedure', 33 *American Journal of Criminal Law* (2006) 223–299, pp. 229–235; Brunk, *supra* note 6, pp. 528–538, 544–546, 548–549.

[15] See e.g., *Brady v. United States*, 397 U.S. 742, 755 (1970); *Bordenkircher v. Hayes*, 434 U.S. 357 (1978); Bachmaier, *supra* note 6, pp. 251–255; Langer, *supra* note 14, pp. 229–235; Lippke, *supra* note 6, pp. 10–13, 16–18, 21–23, 29–30, 177–178.

the concept of voluntariness it requires. Thus, plea bargaining based on an offer seems to have a somewhat paradoxical effect. It improves the accused's freedom of choice by offering a new option without depriving the accused of the possibility to choose as they would without the offer, yet it is considered to pressure the accused to confess, making the confession involuntary. At the same time, the accused might even be expected to want to be offered such an option. Unlike threats, people often want offers that improve their position compared to not receiving an offer.[16] If the task of the privilege against self-incrimination is to protect the agent's possibility to choose voluntarily, does this not occur in plea bargaining based on an offer if it offers the agent a new choice that they desire, which improves their options without limiting their existing options?

2.2 The Coerciveness of Offers that Enhance Freedom of Choice

In my view, the solution to this problem lies in examining the goals of the privilege against self-incrimination and the values it seeks to protect, as well as in defining the voluntariness necessary to achieve those goals. The values sought to be protected by the requirement of voluntariness are not always upheld even in offer-based plea bargains. In other words, the concept and content of voluntariness are context-dependent and can take on different forms depending on the context and the values being protected. Thus, the fact that a sentence reduction is presented in the form of an offer-based plea bargain does not necessarily mean that the bargain cannot be coercive and that accepting it could not be (practically) involuntary, especially from the perspective of the privilege against self-incrimination.[17]

In light of the questions raised by the preceding analysis, it is necessary to explain how accepting an offer that increases an agent's options and which the agent hopes to receive can be considered involuntary. Distinguishing between levels of voluntariness and willingness is essential in order to give voluntariness a content that best serves the important values and goals of the privilege against self-incrimination. There is, in my view, no reason to prohibit offers that can be seen to meet the sufficient criteria of voluntariness and willingness. As will be explored in Sect. 3, the protection of these values may even support the existence of moderate incentives. Therefore, the next step is to consider how a sentence reduction offered in the form of a plea bargain may impact the voluntariness of a confession.

Distinguishing between different levels of voluntariness and willingness is key to understanding an offer that simultaneously increases and restricts an agent's freedom. The agent may genuinely want to receive the offer and 'voluntarily' choose to act accordingly, even though accepting the offer may be repugnant and involuntary for the agent. This somewhat paradoxical characterisation can be illustrated by an example. Let us consider a parent whose child is terminally ill. The child's life can

[16] Brunk, *supra* note 6, pp. 537, 548–549; Bachmaier, *supra* note 6, pp. 254–255; Langer, *supra* note 14, pp. 233–235.

[17] J. Feinberg, *The Moral Limits of the Criminal Law*, Vol. 3 (Oxford University Press 1989), pp. 254, 261–262; Ho, *supra* note 4, pp. 31–36; Bachmaier, *supra* note 6, pp. 239–342, 250–254.

only be saved by an expensive surgery that the parent cannot afford. If a millionaire, who is innocent with respect to the child's illness, offers to pay for the surgery only if the parent agrees to marry them, does the parent's choice meet the criteria of voluntariness? The millionaire's proposal does not limit the parent's concrete alternatives (freedom of choice), because it is not a threat but an offer. The parent still has the option of rejecting the offer and continuing the situation as it was before the millionaire's proposal. The offer also increases the parent's freedom of choice by offering them an option to save the child's life that was previously unattainable.[18]

In my opinion, there are compelling reasons to argue that accepting the offer is practically contrary to the parent's will. If the parent desires to save their child's life at any cost, and if the surgery is the only means of doing so, the parent has little practical choice but to agree to become the millionaire's spouse. Thus, the millionaire has manipulated the parent's decision-making environment in such a way that the proposal takes the form of 'become my spouse or your child dies' from the parent's perspective. If the parent had no interest in the millionaire without their child's life being in danger, the millionaire's offer would coerce the parent into becoming their spouse involuntarily since becoming a spouse is not inherently consistent with the parent's preferences. At the same time, the parent can be content with the millionaire's offer, as without it, their child would die. The proposal expands the parent's freedom of choice and modifies the parent's decision-making situation in the direction they desire, and they willingly (yet also reluctantly and under pressure) become the millionaire's spouse to save their child's life.[19]

The example effectively illustrates that an offer that literally expands the agent's freedom and options may, under certain circumstances (such as the paramount importance of saving the child's life), coerce the agent to opt for a course of action that is undesirable for them (namely, marrying an unpleasant person). It is an offer that both expands the freedom of choice and coerces the agent into making an involuntary choice. By enhancing the freedom of choice, the offeror can influence the agent's options to the extent that declining the offer becomes an unviable alternative. In this manner, the offeror can compel the agent to choose something that they find unappealing.[20]

It is important to note that the involuntariness of accepting such offers consists of two elements: the unpleasantness of the options themselves and the mutual difference between the options. The significance of identifying and distinguishing these elements can be illustrated by a scenario where an agent in stable and meaningful employment is offered a much better job. The offer may be so irresistible that the agent feels 'pressured' to accept it, as they have no practical choice due to the significant difference in attractiveness between the old and new jobs. However, unlike

[18] Feinberg, *supra* note 17, pp. 229–233, 237–242; Brunk, *supra* note 6, pp. 528–538, 544–546; Pallikkathayil, *supra* note 10, pp. 1–6.

[19] Feinberg, *supra* note 17, pp. 229–233; Colburn, *supra* note 10, pp. 101–103; Alvarez, *supra* note 10, pp. 667–671.

[20] Colburn, *supra* note 10, pp. 101–103; Alvarez, *supra* note 10, pp. 667–671; Brunk, *supra* note 6, pp. 531–538, 550–551.

the aforementioned millionaire example, it seems wrong to argue that the job offer coerces the agent into choosing against their will. Rather, the job offeror 'pressures' the agent into choosing an option that is more desirable to them and one that the agent could choose regardless of the meaningfulness of their current employment. In contrast, the millionaire coerces the agent into choosing a repugnant option of becoming their spouse, which the parent would not choose if their child's life was not at stake.[21]

The essential aspect, along with the mutual difference between the available options, is whether the options themselves are repellent or attractive. It is difficult to see the agent's choice as involuntary if they would choose the same regardless of the other option. A proposal based on positive options is not usually described as coercive, but instead, for example, as attractive, enticing, or appealing. If the agent perceives the chosen option as attractive instead of repellent and could, therefore, consider choosing the option without the offer, the offer does not 'break the agent's will' and coerce them to choose against their will. In this case, the agent's choice is voluntary in the sense that the choice can be made under pressure, but not necessarily because of that pressure.[22] Accordingly, the millionaire example changes fundamentally if the millionaire is the ideal spouse in the parent's opinion. In this case, the millionaire's offer is still irresistible and, in this sense, leaves no choice, but becoming a spouse is not inherently against one's will. The offer does not coerce the parent to do something (become a spouse) that they could not consider doing without a significant element of compelling danger to their child's life. In other words, they do not choose against their will and solely because of the pressure created by the offer.[23]

In addition to the repulsiveness of the available options, the second element of a coercive offer is the difference between the options. If an employee is offered a job very similar to their current one, the decision may not be straightforward or easy. If the employee is dissatisfied with their current job and the offered opportunity can be described as a dream job, the decision is easier, and the employee has 'no choice' but to accept the offer. The freedom of choice based on the difference between the options differs from the previously described voluntariness based on the repulsiveness and attractiveness of the options in that voluntary choice is not necessarily related to the positivity or negativity of the options. An individual who is weighing two undesirable job options may be in just as challenging a decision-making situation as someone who is choosing between two favourable job options. The difference between the situations is, as noted above, that in the former situation, the agent chooses an option they do not intrinsically prefer and thus 'against their will'. However, this does not imply that the choice between a relatively meaningful job and a

[21] Feinberg, *supra* note 17, pp. 233–242; Colburn, *supra* note 10, at 101–103; Brunk, *supra* note 6, pp. 531–538; Pallikkathayil, *supra* note 10, pp. 1–6, 9–12.

[22] Zimmerman, *supra* note 11, pp. 124–125; Pallikkathayil, *supra* note 10, pp. 5–6, 9–12; Feinberg, *supra* note 17, pp. 237–242.

[23] Feinberg, *supra* note 17, pp. 233–235, 237–242; Colburn, *supra* note 10, pp. 101–103; Pallikkathayil, *supra* note 10, pp. 1–6, 9–12.

dream job could not be pressured and thus involuntary. The relatively meaningful job can be untenable compared to the dream job, in which case the agent has no choice between the options.[24]

Therefore, an offer can be used to manipulate the relationship between the options available to the decision-maker, so that rejecting the offer becomes an unsustainable option compared to accepting it. If a car dealership makes a poor or even mediocre offer for the decision-maker's car, they are free to choose whether to sell it or not. If the dealership makes an incredibly good offer, selling the car may become a compelling option. Without this difference between the options, it is difficult to see the offer as coercive and excluding voluntariness—since the options are then equal, and the decision-maker can genuinely consider whether to accept or reject the offer. Neither option is unsustainable compared to the other.[25]

The offer can thus 'break the will of the decision-maker' by coercing them to choose against their will when two conditions are met: (1) the difference between the available options is significant, and (2) the options themselves are undesirable. The latter criterion (hereinafter criterion 2) is indicative of the fact that the choice is unpleasant (i.e. the options are undesired) and is made primarily as a result of the pressure generated by the offer. The former criterion (hereinafter criterion 1) reflects the fact that there is no practical choice between the options. If either of these elements is absent, it is not as straightforward to characterise the acceptance of the offer as being against the will of the decision-maker.

2.3 Sentence Reductions in Light of the Various Elements of Voluntariness

In the context of the privilege against self-incrimination, the formation of an offer that enables voluntary choice can be difficult for both criteria. When the sentence reduction for a confession is substantial, rejecting the offer may become an untenable option. For instance, if rejecting the offer would result in a 20-year prison sentence, which could be reduced to a fine by confessing, the difference between the options would leave little practical room for choice and thereby pressurise the accused to confess. Moreover, confessing is inherently more repellent than attractive as an option. Admitting to a crime involves subjecting oneself to punishment, which few people are likely to desire. Even though admitting to the crime and accepting the corresponding punishment results in a more lenient sentence compared to rejecting the offer, it is still an unpleasant and unwanted choice. If individuals were willing to accept criminal responsibility by confessing, then sentence reduction incentives would not be necessary in the first place. Plea bargaining offers are explicitly designed to manipulate the choice situation and options to make the accused more inclined to confess.[26]

[24] Feinberg, *supra* note 17, pp. 233–242; Pallikkathayil, *supra* note 10, pp. 1–6, 9–12.

[25] Feinberg, *supra* note 17, pp. 233–235; Colburn, *supra* note 10, pp. 101–103; Alvarez, *supra* note 10, pp. 667–671.

[26] Wertheimer, *supra* note 13, pp. 222–224; Bachmaier, *supra* note 6, pp. 240–241, 250; Langer, *supra* note 14, pp. 228.

Therefore, the plea bargain offer presented above inevitably meets criterion 2: the options themselves are repellent, and choosing them is 'against the will' of the agent. Both options—confession and rejecting the offer—lead to an unfavourable consequence (punishment) from the accused's point of view. In my view, the choice between confession and rejecting the offer is based not on the attractiveness of the options themselves, but rather on which option the accused is less repelled by. The accused does not genuinely desire the consequence of either option, so they are not inherently appealing. However, since a choice must be made, they are forced to choose the 'lesser evil'—that is, the less repellent option. The choice is then involuntary in terms of undesirableness, since accepting the offer is not pleasant in itself but rather only 'less unpleasant' than rejecting it. This does not render the option presented by the plea bargain inherently desirable.[27]

When criterion 2 describes the options in plea bargaining as undesirable and the choice as involuntary in this sense, I argue that plea bargaining can be seen as both expanding the freedom of choice and coercing the agent into making an involuntary (undesirable) choice. Therefore, meeting criterion 1 is crucial in determining whether a plea bargain offer allows a voluntary choice. To avoid coercing the accused into an involuntary confession, the sentence reduction offered should be reasonable, and the option to reject the offer must be a viable alternative.

Therefore, the difference between sentences for a confession and for rejecting the offer should not be too great. Although a reduction in sentence can initially improve the accused's position and freedom of choice, the pressure exerted by a significant reduction can be just as strong as the pressure from a graver sentence. The more attractive the offer, the more difficult it is to resist, and the more likely it is that the choice is not truly voluntary due to the limited options available.[28]

However, it is interesting to note that in the landmark ECtHR case of *Natsvlishvili and Togonidze v. Georgia*, the acceptance of the plea bargain was deemed as an 'undoubtedly voluntary decision', despite the substantial reduction in sentence. By accepting the bargain, the defendant would have received a fine of approximately 14,700 euros, while rejection would have resulted in a prison sentence ranging from six to twelve years. Although the distance between the options was considerable, the ECtHR concluded that the defendant had sufficient freedom of choice between the alternatives and that the defendant's acceptance of the plea bargain did not result from improper pressure. The ruling has been criticised for, among other things, giving considerable leeway for sentence reductions in plea bargaining systems. For this reason, some scholars have linked the development illustrated by the ruling to the views of the US Supreme Court mentioned in Sect. 2.1. In my view, it is reasonable to question whether such a substantial difference between the options can meet the requirement that the rejection of the offer must be a reasonable and sustainable alternative from the accused's perspective. If rejecting the offer is not a viable option,

[27] Feinberg, *supra* note 17, pp. 237–242; Bachmaier, *supra* note 6, pp. 240–241, 250; Langer, *supra* note 14, pp. 228.

[28] Bachmaier, *supra* note 6, pp. 238–242, 250–259; Helm, *supra* note 6, pp. 428–434; Langer, *supra* note 14, pp. 228.

criterion 1 may be met, and accepting the plea bargain could be considered coercion—the accused may have no other practical choice but to accept the bargain.[29]

Once again, it is worth noting that not all scholars consider it possible for an offer to be coercive and for its acceptance to be involuntary. The concept of voluntary choice is problematic and ambiguous, which is why, according to many, the fulfilment of the criteria I present here cannot simply lead to involuntary choice if the proposal is essentially an offer. The accused is considered to prefer confessing and accepting a reduced sentence over rejecting the offer and receiving a more severe sentence, hence, voluntarily confessing.[30] At the same time, it is quite clear that offers undoubtedly manipulate decision-making and choices. Although offers cannot be considered to restrict freedom and voluntariness of choices in the same way as threats, from the perspective of the recipient of the proposal, the offer can be just as irresistible or 'coercive' as a threat. In my view, this factor directly affects the realisation of the values and objectives that we aim to achieve with the protection of voluntariness of confessions (more on the values and objectives underlying the privilege against self-incrimination in Sect. 3 below). In other words, offers can also limit and undermine the realisation of the values and objectives protected by the requirement of voluntary confession and the privilege against self-incrimination.[31]

Therefore, determining when the difference between alternatives becomes coercive, and whether such coercion can lead to involuntary choice, is a difficult task. Accepting an attractive offer does not necessarily imply coercion or irresistibility.[32] In my opinion, this threshold should be established based on the protection of the underlying values and objectives of the privilege against self-incrimination. As voluntariness encompasses various levels and contents, its 'necessary' meaning should be sought from the values and objectives that underlie the requirement of voluntariness (privilege against self-incrimination). If plea bargaining based on an offer automatically leads to a 'voluntary' confession, such a concept of voluntariness would result in different outcomes compared to the concept where the options offered in plea bargaining must not be too disparate (both options must be viable). Therefore, the criteria and meaning of voluntariness change depending on the values and objectives that the privilege against self-incrimination must fulfil. In other words, the privilege against self-incrimination and the required voluntariness acquire their meaning and content from the values from which (and for which) they are derived. Without recognising these underlying values, it is difficult to explain why protecting the privilege against self-incrimination is important and what such protection entails. The variety of these values and objectives can also serve as an explanatory

[29] *Natsvlishvili and Togonidze v. Georgia*, ECtHR 29 April 2014, 13, 27–33, 92, 97. See also Helm, *supra* note 6, pp. 424–434; Bachmaier, *supra* note 6, pp. 238–242, 254–259.

[30] See above Sect. 2.1. See also Bachmaier, *supra* note 6, pp. 254–255; Brunk, *supra* note 6, pp. 528–539.

[31] Feinberg, *supra* note 17, pp. 254, 261–262; Bachmaier, *supra* note 6, pp. 238–242, 254–259.

[32] Brunk, *supra* note 6, pp. 531–535; Pallikkathayil, *supra* note 10, pp. 9–12; Zimmerman, *supra* note 11, pp. 124–125.

factor for the divergent interpretations in legal literature and the decisions of the ECtHR.[33]

In light of the fact that both sentence reductions and the privilege against self-incrimination aim to achieve specific objectives, it is crucial to adopt a concept of voluntariness that can facilitate the realisation of these objectives. In my view, this underscores the importance of the criteria that I have put forth and the notion that accepting an offer may not necessarily indicate a choice that is sufficiently voluntary. In order to defend my argument, I will now analyse various aspects that relate to the underlying justifications of the privilege against self-incrimination and sentence reductions. It should be emphasised that achieving these underlying objectives also requires the existence of reasonable incentives. If no sentence reductions were available at all, the values and objectives protected by the privilege against self-incrimination would be undermined in this scenario as well.

3 The Underlying Values and Objectives of the Privilege Against Self-Incrimination

3.1 Legal Safeguards and Material Truth

Within the framework of fundamental rights and fair trial (e.g., Article 6 of the European Convention on Human Rights), the voluntariness of confession plays a crucial role in assessing whether the privilege against self-incrimination—encompassing the right to silence and the right not to incriminate oneself—has been violated. In other words, the requirement for the voluntariness of confessions is a component of the privilege.[34] Therefore, when interpreting the concept of voluntariness in a legal context, it is essential to consider the requirements related to the right to a fair trial.

However, the privilege against self-incrimination itself serves multiple objectives and is based on various rationales, encompassing both systemic and individual considerations. Consequently, the requirements and substance of the principle depend on the chosen perspective. The privilege is deemed to relate to, inter alia, the protection of individual autonomy, the demands for legitimate exercise of power, aspects related to material truth, the right to a fair trial, legal (procedural) safeguards, and due process in general. The existence of various underlying rationales highlights the complexity of examining the doctrinal foundations of the privilege. Essentially, the principle has been addressed and supported through diverse lines of argumentation, resulting in differing interpretations. It is crucial to emphasise, however, that my analysis does not aim to structure the doctrinal foundations of the privilege against self-incrimination. Such an evaluation would necessitate a separate article due to

[33] Ashworth, *supra* note 3, pp. 767–768; Helm, *supra* note 6, pp. 424–434; Bachmaier, *supra* note 6, pp. 238–242, 254–259; Ho, *supra* note 4, pp. 31–36; *Natsvlishvili and Togonidze v. Georgia*, 57(74).

[34] See e.g., European Court of Human Rights, *Heaney and McGuinness v. Ireland* (34,720/97), 21 December 2000.

the perceived conceptual challenges in the foundations of the privilege.[35] Instead, my goal is to illustrate the nuanced nature of the principle and emphasise how these distinct rationales can influence its application.

Generally, the privilege against self-incrimination is primarily associated with aspects of legal (procedural) safeguards. Legal safeguards encompass various elements, and the privilege against self-incrimination in itself is linked to several legal protections. The right not to incriminate oneself is primarily associated with the presumption of innocence. Although the privilege against self-incrimination is not directly derived from the presumption of innocence, its realisation requires the presumption of innocence. For instance, if the prosecutor did not bear the burden of proof, the accused's right to remain silent would not practically be realised. The accused has the opportunity to remain silent only when the prosecution in a criminal case must prove their case without using evidence obtained from the accused. The opportunity to remain silent and avoid liability, even in these circumstances, is closely related to, among other things, issues of burden of proof distribution, procedural equality, and, more generally, to the fact that the accused has the means to defend themselves to minimise the possibility of a wrongful conviction.[36]

The significance of the above proposition is most clearly demonstrated when considering innocent accused individuals. Pressuring an accused to contribute to the establishment of their own guilt may, at a general level, be contrary to the spirit of the presumption of innocence if it entails treating them inappropriately as 'guilty'. In the most extreme situation, pressure can even be such that it causes an innocent accused to confess. One of the major drawbacks of plea bargaining is considered to be the risk of false confessions and wrongful convictions of innocent people. The reductions in sentence that can be obtained through plea bargaining can be so significant that rejecting the offer becomes an unpleasant option even for innocent accused. In such a case, they may make a conscious decision that a false confession and a small sentence are a better option compared to remaining silent and risking a severe—albeit unlikely—sentence. Although this is a conscious and, in a way, 'voluntary' choice, the choice situation does not allow for a sufficiently voluntary decision from the perspective of securing material truth and legal safeguards. From this viewpoint, the privilege against self-incrimination can be regarded as partially fulfilling the presumption of innocence by preventing such pressure, in addition to serving the quest for material truth and preventing the possibility of false convictions—while also providing the accused with the means to defend themselves and thus promoting procedural equality.[37]

Considering the importance of the privilege against self-incrimination (and consequently, the requirement for the voluntariness of confessions) in ensuring thorough

[35] See e.g., D. Dolinko, 'Is There a Rationale for the Privilege Against Self-incrimination?', 33 *UCLA Law Review* (1985) 1063–1148, pp. 1063–1068; Ashworth, *supra* note 3, pp. 751–753, 767–768; Green, *supra* note 4, pp. 628–636, 640, 651–652; Ho, *supra* note 4, pp. 36–56; Günsberg, *supra* note 1, pp. 1–4.

[36] Green, *supra* note 4, pp. 631, 635–636, 640, 651–652; Ashworth, *supra* note 3, pp. 756–758, 767–768; *Saunders v. the United Kingdom*, 68–69.

[37] Green, *supra* note 4, pp. 631, 635–636, 640, 651–652; Ashworth, *supra* note 3, pp. 758–759, 767–772; Ervo, *supra* note 1, pp. 261–264; Günsberg, *supra* note 1, pp. 3–4.

protection of fundamental rights, such as the presumption of innocence, it seems reasonable to interpret it within the fair trial context in a manner consistent with fundamental rights as a whole—essentially, in a way that fulfils e.g., Article 6 of the European Convention on Human Rights in its entirety. In my view, the objectives of legal safeguards and material truth cannot be achieved by a concept of voluntariness that is fulfilled by simply offering a sentence reduction. For a confession to be reliable with regard to material truth (and justifiable in terms of legal safeguard considerations), the choice situation must allow for the kind of voluntariness that eliminates pressure for false confessions. Although voluntariness in confession does not necessarily mean its accuracy, and a coerced confession is not necessarily false, a significant reduction in sentence at least does not decrease the risk of false confessions. The necessary concept of voluntariness in this context should, in my opinion, require that the large difference between options (criterion 1) be eliminated to preserve the voluntariness of the choice, even if it is based on an offer.[38]

At the same time, it is important to acknowledge that confessions can also play a crucial role in achieving material truth. As the accused often has a more detailed knowledge of the case than any other party involved, a confession can aid in achieving material truth and resolving the case. To this end, providing moderate incentives can encourage the accused to contribute to the investigation, thereby enhancing the pursuit of material truth. Thus, the privilege against self-incrimination has a dual effect on material truth: on the one hand, it promotes material truth by preventing false confessions, but on the other hand, it also hinders the investigation of crimes by, for example, making it difficult to obtain certain evidence. In my opinion, a truly voluntary confession should therefore be rewarded. Sentence reductions should strike a balance between incentivising and non-coerciveness so that both of the aforementioned interests could be simultaneously fulfilled as fully as possible. While this may pose challenges in practice, the pursuit of material truth can benefit from moderate incentives for voluntary confessions. Such reductions, which are contingent upon voluntariness, can promote the achievement of material truth and the realisation of criminal responsibility, without infringing upon the accused's legal safeguards.[39]

3.2 Protection of Individual Autonomy

In addition to ensuring legal safeguards and material truth, the underlying justifications for the privilege against self-incrimination have been considered to relate to the protection of an individual's moral autonomy, as well as to a perceived legitimate exercise of control. This line of thinking is based on the premise that criminal law should respect individuals' moral agency and seek to appeal to their own capacity for judgment, persuading them to understand, accept, and internalise the

[38] Ho, *supra* note 4, pp. 39–40; Feinberg, *supra* note 17, pp. 229–230; Brunk, *supra* note 6, pp. 528–531, 550–551.

[39] Green, *supra* note 4, pp. 640, 650–652; Ashworth, *supra* note 3, pp. 768–772; Ervo, *supra* note 1, pp. 261–264; Günsberg, *supra* note 1, pp. 2–5.

message conveyed by the criminal justice system. Individuals should be treated as rational and morally capable subjects, rather than mere pawns subject to external control. The sanctioning system should therefore seek to convince individuals of the correctness of certain actions and the wrongness of others by appealing to their genuine moral reflection, rather than merely relying on the fear of punishment to control their behaviour. If the message conveyed by criminal law fails to address and persuade individuals in this way, and if punishment is based solely on coercive fear, then punishment fails to respect individuals as rational and moral agents. A criminal law that respects moral agency seeks to induce people to comply with the law because they perceive it as right, not merely because of the fear of punishment. This kind of 'moral creating' effect and indirect general prevention has long been emphasised by Scandinavian legal theory and Nordic criminal justice systems.[40]

The privilege against self-incrimination is understood to embody this notion by preventing coercion to confess and to take responsibility. The voluntariness of confession entails that the accused has a genuine choice in how and on what basis to act. Significant sentence reductions may remove the voluntariness of confession, thereby preventing the weighing of other motives and, thus, hindering the moral message. When the incentive to confess is so great that it obliterates all other options and internal motives, the sentence reductions fails to persuade the accused of the correctness of confession and instead pressures them to confess 'involuntarily', thereby disrespecting the accused's moral agency. From this perspective, the voluntariness of confession required by the privilege against self-incrimination means that the accused has the freedom to confess or not confess according to their own will and internal motives. Sentence reduction should not be so significant that it obliterates the message stressing the correctness of confession entirely under the 'pressure' created by the mitigated punishment. In addition to concrete coercion, extremely attractive offers can also render confession involuntary and therefore run counter to this underlying justification for the privilege against self-incrimination.[41]

While the idea of the privilege against self-incrimination being grounded in the protection of an individual's moral autonomy has been criticised as moralistic and detached from practical application, it is significant for providing concrete guidance on how to influence behaviour from the perspectives of general and specific preventive effects. Control that relies solely on external incentives is less effective than influencing behaviour through the internalisation of norms. Therefore, it is important to consider how punishment, including sentence reductions, communicates and influences behaviour. This underscores the importance of the underlying rationale for the privilege against self-incrimination.[42]

[40] V. Hinkkanen and T. Lappi-Seppälä, 'Sentencing Theory, Policy, and Research in the Nordic Countries', 40 *Crime and Justice* (2011) 349–404, pp. 374–375; T. Lappi-Seppälä, 'Penal Policy in Scandinavia', 36 *Crime and Justice* (2007) 217–295, pp. 233–234; Ho, *supra* note 4, pp. 41–46; Green, *supra* note 4, pp. 628–636, 640, 651–652; R.A. Duff, *Punishment, Communication and Community* (Oxford University Press 2001), pp. 80–88, 117–129.

[41] Ho, *supra* note 4, pp. 41–46; Green, *supra* note 4, pp. 628–636, 640, 651–652.

[42] Hinkkanen and Lappi-Seppälä, *supra* note 40, pp. 374–375; H. Korkka-Knuts, 'Behaviourally Informed Approach to Corporate Criminal Law: Ethicality as Efficiency', 10 *Bergen Journal of Criminal*

For instance, plea bargaining can be viewed as granting the accused power to affect the course of the proceedings and the sentence imposed on them. Consequently, the accused may feel that their perspectives and interests are genuinely considered, and that they have a say in the handling of the case and the final outcome. These aspects are likely to facilitate communication between the accused, the authorities, and society as a whole. The importance of these factors should not be understated as they encourage the accused to accept criminal liability and punishment, which is believed to enhance the legitimacy of the criminal justice system in the eyes of the accused and also to act as a special preventive element. The ability to express one's views and impact the handling of the case is a crucial aspect of moral persuasion that encourages a sense of fairness and justice, and facilitates acceptance of the wrongdoing and its consequences. Moreover, these factors are also likely to influence people's behaviour, such as their decision to confess, in a positive and effective manner. Conversely, external measures of control that are perceived as unfair or coercive, or that bypass persuasion, are not always effective and may even lead to outright resistance.[43]

It should be noted that external incentives provided in the form of sentence reductions are not necessarily in conflict with moral persuasion, and may even support such persuasion. With moderate incentives, it is possible to communicate the desirability and righteousness of confession and support moral persuasion aimed at understanding and accepting the wrongfulness of the crime. For instance, giving power, such as plea bargaining, can promote the message conveyed by the punishment. As long as the reduction is not coercive due to its magnitude and does not overshadow the aforementioned message, reduction can promote the task of moral persuasion by respecting the accused person's moral autonomy and the voluntariness required by moral autonomy. However, if the sentence reduction is so significant that the accused does not have a 'practical choice or viable alternative', the experiences of justice and deserved punishment may not be achieved. The accused may not feel that they have genuine freedom to choose or influence the progress of the matter, and confession may feel like a coercive option, which is problematic from the point of view of the underlying rationale for the privilege against self-incrimination. This promotes neither the acceptance of the message ideally conveyed by punishment (and reductions) nor trust in the criminal justice system for either the accused or the general public.[44]

In plea bargaining systems dominated by pragmatic considerations, it is increasingly clear that plea bargaining should not be viewed solely as manipulation based on external incentives. In other words, accused individuals should not be treated solely as instruments for achieving cost savings in the criminal justice system, but

Footnote 42 (continued)
Law and Criminal Justice (2022) 27–59, pp. 3, 6–12, 23–25, 28–30; R.A. Duff, 'Penance, Punishment and the Limits of Community', 5 *Punishment & Society* (2003) 295–312, pp. 300–303.

[43] T. Hedeen, 'Coercion and Self-Determination in Court-Connected Mediation: All Mediations Are Voluntary, But Some Are More Voluntary than Others', 26 *The Justice System Journal* (2005) 273–291, pp. 275–276; Lappi-Seppälä, *supra* note 40, pp. 233–234.

[44] Duff, *supra* note 42, pp. 296–297, 301–303; Hedeen, *supra* note 43, pp. 275–276; Ho, *supra* note 4, pp. 41–46.

rather as subjects capable of internal motivation and entitled to it, as well as ends in themselves. In addition to the ethical rationale for the privilege against self-incrimination, this approach can have a significant impact on behaviour control and, hence, on realising pragmatic considerations.[45]

4 Conclusion

The privilege against self-incrimination presupposes that the prosecution in a criminal case seek to prove their case against the accused without recourse to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. Thus, confessions must be voluntary and in accordance with the accused's will. However, the privilege against self-incrimination and the voluntariness required for a confession can have different interpretations, leading to varying constructions of sentence reductions based on plea bargaining.

The formation of opposing interpretations is, in part, explained by the fact that the issue is approached from different perspectives, highlighting different underlying justifications for the privilege against self-incrimination and the voluntariness required for a confession. I argue that the voluntariness required for a confession largely depends on the values and objectives that the privilege against self-incrimination seeks to achieve. In other words, the underlying values to which the principle is connected and from which it is derived determine the answer to the question of why and for what purpose we require voluntariness of a confession. The requirement of voluntariness must be formulated accordingly. The privilege against self-incrimination and sentence reductions cannot be separated from the general objectives and justifications of the criminal justice system, and decisions made in this regard can have unpredictable effects on the efficiency and fairness of the criminal justice system. Therefore, it is important to keep these questions in mind when considering the specific content of voluntariness in the criminal justice context.

From the perspective of the objectives and values at issue, it is my opinion that sentence reductions based on offers can also be problematic from the standpoint of the privilege against self-incrimination and the voluntariness requirement it entails. However, it should also be noted that moderate incentives can simultaneously promote the realisation of these values and objectives, such as the material truth. In other words, a categorical negative attitude towards all sentence reductions, including moderate ones, can be detrimental to the values that the privilege against self-incrimination and the voluntariness requirement seek to protect. As sentence reductions can thus have both positive and negative effects on the values protected by the privilege against self-incrimination, which in themselves are composed of several different elements, defining the categorical and precise boundary and definition of the voluntariness required for a confession is a challenging task. In my opinion, this definition should be sought by considering the various, and sometimes opposing, interests included in the privilege against self-incrimination, and by examining the concept of required voluntariness in relation to these interests.

In considering the various values protected by the privilege against self-incrimination, the different levels of voluntariness and willingness should also not be

[45] Korkka-Knuts, *supra* note 42, pp. 3, 6–12, 23–25, 28–30; Ho, *supra* note 4, pp. 41–46.

overlooked. Depending on the value under consideration, the various criteria for voluntariness that I have presented in this article receive different weightings and meanings. In other words, voluntariness should be approached while keeping in mind its different levels depending on what is sought to be protected by the voluntariness requirement at any given time.

Overall, the concepts of the privilege against self-incrimination and the voluntariness of a confession appear to be akin to kaleidoscopes, which can assume a plethora of different forms depending on the perspective from which they are examined. This can be either an advantage or a disadvantage. On the one hand, it is challenging to impart a uniform and precise content and meaning to these concepts. On the other hand, their versatility enables them to serve multiple interests, both for individuals and for the broader society. In other words, although formulating a universally accepted terminology is difficult, the flexibility of the privilege against self-incrimination (and the concept of voluntariness) ultimately serves many concrete goals for both individuals and the general public. Therefore, when dealing with the issue of the voluntariness of confession, we should not settle for facile solutions, but rather strive to approach it as comprehensively as possible, considering different perspectives, levels, and objectives of the concepts in question.