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The Vanishing Trial: A Dynamic Model

Abstract:

In recent years, Trial Waivers were introduced into many legal systems around the world. Once trial waivers (TW) were introduced, most—if not all—of these legal systems have witnessed a steep increase in the usage of TW, to the extent that trials are virtually disappearing. In a simple model we show how introducing TW into a legal system inevitably triggers a dynamic process whose ultimate result is that all defendants choose the trial waiver. The power given to prosecutors to decide whether or not to offer such trial waivers further implies that their introduction increases total sanctioning hence reduces the welfare of defendants.