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in the Humanities & Social Sciences

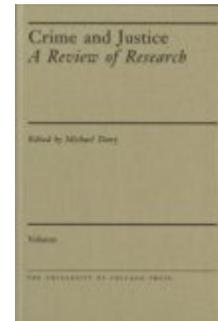


Michael H. Tonry, ed. *Prosecutors and Politics: A Comparative Perspective*. Crime and Justice, Volume 41. Chicago: University of Chicago Press, 2012. 400 pp. \$90.00 (cloth), ISBN 978-0-226-00967-4; \$35.00 (paper), ISBN 978-0-226-00970-4.

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Published on H-Law (February, 2014)

Commissioned by Craig Scott



Volume 41 of *Crime and Justice: A Review of Research*, edited by Michael Tonry, focuses on prosecutors in an international scope. As Tonry explains in the introduction, the goal of the text is to “build an empirical literature within the United States and cross-nationally” (p. ix). The research compiled in this text covers a nice variety of countries and states within the United States. The reader is exposed to prosecutors in Japan, Poland, the Netherlands, and Sweden on the international level, with which the book begins. The remaining articles cover prosecutors in the United States from Washington, North Carolina, and Arizona.

A common theme in the articles regardless of location is the broad discretion exercised by prosecutors. Almost universally in this volume, prosecutors are portrayed as having nearly unfettered discretion in decision making. Internationally, Japanese prosecutors are shown have vast discretion in deciding whether and with what to charge the defendant. Swedish prosecutors also enjoy autonomy from their superiors in making case decisions. The only country where prosecutorial discretion is somewhat limited is Poland. Prosecutors in Poland who conclude a crime has occurred are theoretically required to prosecute. While ostensibly this principle treats everyone equally the outcome has been over-prosecuting for minor offenses.

American prosecutors also have broad discretionary powers. In Washington, prosecutors are highly autonomous with a de facto monopoly on filing charges. North Carolina prosecutors are very responsive to their local community in prosecuting cases and the state attorney general lacks any supervisory power over local

prosecutors and their decisions. Arizona prosecutors enjoy the same type of discretionary liberty though they tend to downplay how much power they actually exert. All in all, there seems to be an almost universal principle of prosecutor discretion around the globe.

While the discretion of prosecutors tends to be similar across cultures and borders, their role in investigating offenses varies. In Japan, Poland, and Sweden the prosecutors play a very active role in the investigation of offenses. In both Poland and Sweden the prosecutor is in charge of investigating offenses. Swedish prosecutors are technically obligated to investigate all offenses, but the reality is that prosecutors have the power to end an investigation if they so choose (p. 153). This broad power over investigation overseas is countered by the U.S. example, especially in North Carolina, where the police lead the investigation and have the authority to file charges with or without the prosecutor’s agreement.

But perhaps the biggest gap appears between the goals of U.S. prosecutors and their international cohorts. Local issues and concerns dominate for the U.S.-based prosecutors while national issues predominate for the international prosecutors. Prosecutors in Washington State are shown to be very influential at the local level and help shape the criminal justice policy in their jurisdiction. This power creates tension between state laws and local preference. Prosecutors see themselves as primarily responsible to their constituents who voted them into office, thus sacrificing statewide uniformity if necessary (p. 200). This holds true in North Carolina as well, where each office sets its own priorities, pursues its own hiring, and develops its own culture, with the ultimate

goal of answering to its voters. In Arizona, where a majority of the funding for the prosecutors comes from the local level, the prosecutors are even less interested in national or statewide issues. Arizona prosecutors respond to their voters' concerns in order to assure reelection.

Local issues are attended to far more in the United States than overseas. As an individualistic country, this probably suits the American public fine. Having their personal or local concerns addressed before any issue of national concern would coincide with federalism—the states are supposed to be independent entities where experimentation can flourish. Prosecutors who focus on local issues show their support for this idea. For example, in Arizona, while the national news was concerned with the tough immigration laws, local prosecutors showed little interest in that issue because it did not affect their constituents, for the most part.

The international prosecutors appear to be more concerned with national issues. Prosecutors in Poland are appointed for an unspecified period of time and can be removed only for disciplinary reasons. This allows prosecutors the freedom not to cater to voters or election issues. Dutch and Swedish prosecutors experience a similar freedom due to their selection on merit and accountability only to the court. This lack of politicization allows prosecutors to enforce the law without concern for their job. They do not require the approval of the public as prosecutors in the United States might. This sets up a clear dichotomy between the international prosecutors and the U.S.-based prosecutors.

Beyond these main issues of discretion, investigation, and politicization, the articles in this compendium offer some interesting insights on how prosecution occurs around the world. Japanese prosecutors are shown to serve three main functions—as operators, as managers, and as executives. This hierarchical system permits prosecutors the chance to develop different skills as they proceed through the bureaucracy. Polish prosecutors face such pressure by their superiors that they often pursue petty cases just to assure a high conviction rate. This desire for conviction rates is mirrored in Arizona, where prosecutors and defense counsel meet in one large room to discuss plea bargaining and call the event “Sharkfest” (p. 280). The prosecutors during Sharkfest are less likely to reduce charges because they, too, are answerable to their superiors who dictated the original charges. In addition, the literature suggests U.S. prosecutors are concerned with conviction rates at the expense of almost anything else.[1] To see this in Poland makes one wonder

who learned it from whom.

Dutch prosecutors have seen some of their discretion limited by a computerized decision support system known as BOS-Polaris. The Board of Prosecutors General in the Netherlands has issued directives on how charges in standard cases should be handled. “The directives are incorporated in the BOS-Polaris system, which emphasizes a small number of variables, thereby enabling speedy decisions” (p. 128). This system makes decisions in about 80 percent of prosecution cases. Using computers to make decisions seems a thing of the future, but it also discounts individual circumstances.

Given the U.S. prosecutors' emphasis on local concerns, it seems highly unlikely that the something like the BOS-Polaris system would gain much ground in the States. Prosecutors there appear to thrive on their ability to respond to individual cases as they (or their constituents) see fit. While prosecutors overseas tend to be concerned with fairness in charging, which brought around the BOS-Polaris system and Poland's legal principle of charging all offenses, U.S. prosecutors show less interest in fairness. None of the Arizona prosecutors interviewed expressed concern for disparate treatment of defendants (p. 275).

Arizona, North Carolina, and Washington do not necessarily represent the entire United States; nor do Japan, Sweden, Netherlands, and Poland represent the rest of the world. But there does appear to be a recognizable difference between the adversarial nature of U.S. prosecutors and the more inquisitorial nature of their international counterparts. Dutch prosecutors reported not seeing themselves involved in an adversary process at all. These very distinct viewpoints highlight the possible chasm between politicized prosecution and meritocratic selection. Are meritocratic prosecutors better?

With respect to the Polish experience, Krzysztof Krajewski writes that a politicized prosecutor's office still exists (p. 95). This is meant negatively, but in the articles on U.S. prosecutors this idea is twisted to say that prosecutors are responding to the needs of their constituents. Why is one good and one bad? If U.S. prosecutors are simply using a euphemism to hide their political agenda, the voters and the public should be disturbed. This is not a major issue in the volume but the overall interpretation raises concerns about how justice is dispensed. What is good for the goose is supposed to be good for the gander. Does that not apply to U.S. superiority?

As a volume, the collection of articles here provides

great insight into the various roles of prosecutors around the world. The sample size is limited but intriguing. This volume would work well in a college course on comparative criminal justice. As Tonry reminds in the introduction, this volume is designed to fill an empirical gap. It has done so nicely and hopefully will spur more research in this area, including the appropriateness of political prosecutors.

Note

[1]. Eric Rasmusen, Manu Raghav, Mark Ramseyer, "Convictions Versus Conviction Rates: The Prosecutor's Choice," *American Law and Economics Review* 11, no. 1 (2009): 47-78; Susan Bandes, "Loyalty to One's Convictions: The Prosecutor and Tunnel Vision," *Howard Law Journal*, 49 (2005-2006): 475.

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Citation: William Pruitt. Review of Tonry, Michael H., ed., *Prosecutors and Politics: A Comparative Perspective*. H-Law, H-Net Reviews. February, 2014.

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