

## **Book Review**

### **Prosecutors and Prosecution. Lisa Frohmann (eds), The International Library of Essays in Law and Society, Ashgate Publishing Ltd, 2008. Hardback (xxiii + 632 pp)**

The task which Lisa Frohmann has attempted to achieve within her chosen essay collection, is in itself an example of how complex and difficult it is to exercise one's discretion whether legal or not in society today. As an internationally respected expert in the area of domestic violence and sexual assault cases against women in the USA, the author has done well to identify those essays that best explain the real life complex decisions facing US prosecutors everyday. The editor's reasons for her choice of essays is helpfully summarised in the introduction section to this collection. The significant ability of US prosecutors to choose how cases are to be conducted through plea bargaining processes can be seen in the current and widening role of the CPS in the UK. As the UK and USA have traditionally learned from each other, readers should therefore not consider the US prosecutors role as explored in this work as a remote foreign social construct meriting focal analysis by US academics only. Instead, for the international reader, who is interested in socio-legal research and for international law practitioners within the Criminal Justice field this collection should greatly help their understanding of prosecutorial discretion in action and will no doubt open up the proverbial 'can of worms'. This is a common yet understandable and necessary side effect of this disciplinary tradition.

The author in her introduction justifies her selections logically by following the direction of research trends and common links identified by other researchers over time. The reader is left to assess themselves the meaning of the selections made, what the pertinent questions and findings are and where prosecutor discretion is and should be going in the future in the USA. Prosecutorial powers in the USA have been critically analysed from numerous perspectives spurred on by the evolution of research questions and findings which have led to ever wider avenues of enquiry. Research analysing the decision making processes of prosecutors themselves lead to wider law policy and reforms, prosecutor subjective morality and objective ethical standards. This then leads to the international dimension of the role of prosecutors at the International Criminal Court and how they have addressed bringing those responsible for state level genocide and violence to justice.

Part I looks at research addressing prosecutor decision making practices in relation to case screening and charging. Prosecutor power extends in the US from how a case first interacts with the Criminal Justice system to the eventual case sentencing outcomes. To further illicit the interests of the reader, the presented research findings on race, gender, socio-economic background, sexuality and cultural prosecutor biases heat up the discussion significantly. This is complemented with critical debate over how prosecutors impact both the offenders and victims of crime and affect wider legal standards and ethical reform attempts. From Chapters 1 to 4, the selected authors provide contrasting views on Prosecutor decision making

structures. In this way, the reader is given a representative overview of the decision making factors involved in the case screening and charging process.

Part II looks at research addressing prosecutor decision making practices in relation to plea bargaining. The fact that the outcome of the majority of criminal cases in the US are dependent on the plea bargaining processes controlled by prosecutors which is contrasted with other jurisdictions gives this section a representative international comparative perspective. This is important due to the controversial themes which plea bargaining processes invoke. These themes range from court room efficiency, offender treatment fairness to debated constitutional improprieties in relation to the Fifth and Sixth Amendments. The reader is then introduced to the international comparative law debate regarding whether adversarial systems like that of the USA are better equipped to cope with prosecutorial dominance than the inquisitorial systems of many civil law jurisdictions.

In Chapter 5, Albert W. Aschuler reviews the arguments for and against the dominant use of plea bargaining by US prosecutors in resolving criminal cases. The contradictions and limitations he highlights logically lead to the counter critical analysis of the defence attorneys' perspective in plea bargaining provided by Debra S. Emmelman in Chapter 6. By contrast, in Chapter 7, Douglas W. Maynard has been selected for his unique perspective on the socio-linguistic constructs within plea bargaining processes. Yue Ma in Chapter 8 then brings the debate back to the wider constitutional and administrative arena. The different inquisitorial legal systems of France, Germany and Italy and the powers of prosecutors within them are compared and contrasted with the USA. It is interesting to note the wider trends identified by Yue Ma. She notes that by limiting the sentencing discretion of US judges, the ability to make free decision choices regarding case outcomes have been refocused on the US prosecutors. What this may reveal about the wider nature and perhaps necessity of free choice in criminal case resolutions is likely to be of great interest to both academic and non academic readers alike.

Part III looks at research addressing legal reforms and shifts in prosecutorial power. The US Criminal Justice system like many other jurisdictions has been affected by significant political changes from the 1980's onwards. In the USA, these changes saw democratic offender fair treatment in criminal trials and their proper rehabilitation in prison lose credence with the voting public and a new focus on popular punitiveness take hold with an emphasis towards victim help and support. The author addresses this socio-legal evolution in Chapters 9 and 10 by deliberately selecting two complementary research perspectives on mandatory arrest and prosecution policies in relation to domestic violence cases. In Chapter 9, Linda G. Mills focuses on the perspective of domestic violence victims and argues for greater prosecutorial sensitivity towards them. However, in Chapter 10, Donna Coker sees the mandatory prosecution of domestic violence crimes differently. She feels that as a state led policy, mandatory prosecution fails to properly address and understand the differing needs of various groups of vulnerable female victims. Together the different research perspectives chosen by the editor provide a representative and balanced insight into how the rights of women should and can be best respected and protected. The practical examples of prosecutor strategies and training models will be of great interest to feminist reformists and practitioners as well as to victims of domestic violence, sexual assaults and wider acts of gender based discrimination.

Part III is concluded by Chapter 11 which is co-written by Lisa L. Miller and James Eisenstein. The selection of these authors is justified by the helpful way they widen the reform of prosecutorial power debate. They discuss the emerging disparities between state and federal prosecutorial powers. The relationship between prosecutorial decision making choices and sentencing consistency and proportionality is critically examined. International readers, particularly those directly involved within the Criminal Justice system will find comparing the justifications for continuing wide reaching prosecutorial powers in the US particularly interesting and enlightening.

Part IV looks at research addressing prosecutorial power and ethical conduct. Chapters 12 to 15 are a series of five short articles published in the *Chicago Tribune* regarding prosecutorial discretion in evidentially contentious cases. The cases selected by Ken Armstrong and Maurice Possley provide highly readable examples of prosecutorial ethical dilemmas. In identifying prosecutorial misconduct examples, both legal professionals and academic readers can better understand the extent of the potential difficulties in practice. The editor has then logically sought to move the debate on in Chapter 16 by selecting Bennett L. Gershman's research on prosecutorial ethical trends over time. The author creatively uses his own reminiscences of being a prosecutor from 1966 to 1976 to personally explore the evolution of the prosecutor's duty to truth. His moral candour in supporting a 'culture of truth finding' in prosecuting is a model to which international prosecutors can and should aspire to. It is interesting to note that with wide discretionary powers to affect case outcomes, prosecutors are seemingly obligated to be inquisitorial in their approach. As Armstrong, Possley and Gershman agree, wrongful convictions have and will result from the failure of prosecutors to think in the interests of fairness and justice. How this interacts with the wider common law adversarial tradition is for the reader to determine.

Part V looks at research addressing prosecutors at the International Criminal Court and workable alternatives to prosecuting state level genocide and violence. In Chapter 17, John Hagan and Ron Levi critically analyse the work of the prosecutors at the International Criminal Tribunal set up in the former Yugoslavia. For international readers, the authors provide a unique insight into prosecutor led investigations of war criminals, the evidential methods used and examples of the highly pressurised decisions which must be made. Due to the culturally sensitive environment in which international prosecutors must make case progression decisions, the need for consensus support from the local community is of key importance. This has led to informal alternative community based arbitration options being explored. The editor's choice to select Martha Minow's morally gripping research into South Africa's Truth and Reconciliation Commission in 1998 powerfully brings home to the international reader just what is at stake in international prosecution. Throughout Chapter 18, the principle of healing an entire nation through victim focussed support mechanisms is sensitively investigated. Discretionary decisions of prosecutors to grant immunity to those individuals who are honest, truthful and admit their guilt provide a positive example of consensual justice in action. However, it is for the reader to decide whether the positive aspirations of mediatory prosecution identified by the author truly bring about the long term healing that is required within South Africa's society.

In conclusion, as an edited introductory reader into prosecutors and the prosecution process, this collection of essays truly reaches out to a diverse audience. The collection is of considerable value to legal professionals, academics and lay readers alike. The name index will no doubt be well thumbed by international researchers examining prosecutors in the USA and beyond. For the avid reader, there is plenty of scope to expand and further explore their interests within the references and footnotes of the essays selected. As a fellow PhD researcher I heartily recommend this endeavour and the future academic debates which this collection will no doubt inspire.

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