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The American Prosecutor: A Search for Identity

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THE AMERICAN PROSECUTOR: A SEARCH FOR IDENTITY. By Joan E. Jacoby. Lexington, Mass.: Lexington Books. 1980. Pp. xxiii, 303. \$28.95.

The prosecutor occupies a powerful position in the American criminal justice system. He is the reviewing officer for all arrests made by the police, the person responsible for interpreting the law and making charging decisions, and the principal representative of the state before the courts. As a locally elected politician he can make independent policy judgments that affect the lives of the people in his community. Yet the managerial role of the prosecutor has been virtually ignored by the legal literature.¹ Little substantive knowledge of his managerial activities exists, and there is no conceptual framework for judging these activities. Joan E. Jacoby's *The American Prosecutor* attempts to provide such a framework and to clarify the choices available to the public in fulfilling the prosecutorial function. Although the book does not go very far beyond presenting the questions, it does at least suggest a method of inquiry for future studies of the prosecutor.

The first section of the book traces various historical influences on the development of the American prosecutor: the influences of foreign cultures, governmental structures, and criminal justice systems, primarily the English, French, Spanish, and Dutch. Although the prosecutor was initially an unimportant figure in the United States, the rise of autonomous local governments and the needs created by other social problems combined to give the American prosecutor more discretionary power than his foreign counterparts. At the level of cultural geography, Jacoby identifies the community's population and demographic characteristics as the primary factors influencing differences in the types of prosecutorial systems established. Jacoby also observes that a jurisdiction's choice between using a public defender organization or an assigned-counsel system also affects the operations and efficiency of the prosecutor. Finally, Jacoby shows how various approaches to problems of intake, review, case preparation, and disposition can affect prosecution. She then examines the effect of these variables on three case studies of actual prosecutors' offices.

1. Although the discretionary authority of the prosecutor has been the subject of several works, *see, e.g.*, K. DAVIS, *DISCRETIONARY JUSTICE* (1969); J. DOUGLASS, *DISCRETIONARY AUTHORITY OF THE PROSECUTOR* (1977); F. MILLER, *PROSECUTION: THE DECISION TO CHARGE A SUSPECT WITH A CRIME* (1970), the managerial role of the prosecutor in the criminal justice system has received little scholarly attention.

Jacoby does not attempt to indicate any one best operational method for the prosecutor. Rather, she stresses the need for systemic responses tailored to the diverse external factors affecting each prosecutor. However, Jacoby believes that whatever the external environment, the prosecutor must operate with a specific and consistent policy. She abstracts four paradigmatic models of prosecutive policy. First, the model of legal sufficiency requires that any case that is legally sufficient must be charged and prosecuted. Second, the model of system efficiency aims for the speedy and early disposition of cases by any means possible. Third, the model of defendant rehabilitation stresses alternative treatment for defendants and relies on the resources of the community as well as the criminal justice system to move eligible defendants out of the judicial and correctional systems. Finally, the model of trial sufficiency dictates that a case be accepted only if the prosecutor is willing to have it judged on its merits and expects a conviction. Each of these four policies generates specific outcome patterns and fosters the use of certain strategies which Jacoby illustrates through extensive use of statistical tables. Although these policies are observable in their pure form in a few jurisdictions, most prosecutors pursue varying combinations of them at different times.

By isolating the various policy goals that may motivate the operation of the prosecutor's office, Jacoby provides a framework in which to examine the effectiveness of the prosecutor. Such a framework permits comparison of the performances of various offices; the knowledge gained from such comparisons should prove useful in prediction and planning. But Jacoby goes no further than providing the initial framework. She analyzes the interaction between policies and strategies only in the three case studies of prosecutors' offices, yet all three of these offices were operating successfully. Consequently, the book is not a handbook for the prosecutor or public official seeking to improve the function of the office.

The book's parts suffer somewhat from a lack of interrelation. The first section, which traces the historical development of the prosecutor's office, is interesting and informative, but it bears little relation to the remaining analysis of the office as it exists today. The three case studies in the final section might have provided a clearer illustration of the practical implementation of the policy goals described theoretically in the second section had Jacoby used them as interstitial illustrations within the second section itself. Dividing the analysis makes it difficult to contrast the various factors outlined in the second section with the real-life experiences presented in the

third. Instead of providing a single comprehensive portrait, *The American Prosecutor* sketches its subject from three perspectives: the historical, the analytical, and the operational.

Jacoby is a social scientist and not a lawyer. Hence the book emphasizes the historical and social influences on the prosecutor's role. Jacoby uses statistics extensively, but gives slight attention to how the case law has dictated the role of the prosecutor. Despite these minor shortcomings, however, Jacoby has succeeded in constructing a much-needed basic framework for further studies of the prosecutor. If future researches rely on this analytical structure, Jacoby will have succeeded.