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Accounting for Prosecutors

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Abstract

What role should prosecutors play in promoting citizenship within a liberal democracy? And how can a liberal democracy hold its prosecutors accountable for playing that role? Particularly since I'd like to speak in transnational terms, peeling off a distinctive set of potential "prosecutorial" contributions to democracy – as opposed to those made by other criminal justice institutions – is a challenge. Holding others – not just citizens but other institutions – to account is at the core of what prosecutors do. As gatekeepers to the adjudicatory process, prosecutors shape what charges are brought and against whom, and will (if allowed to) become shapers of citizenship. They also can promote police compliance with legal and democratic norms. Because the prosecutorial role in case creation is largest when crimes are not open and notorious, prosecutors can also play an outsized role in the bringing of cases that target instances of illegitimate subordination (including domestic violence) and corruption that are antithetical to a liberal democracy.

After considering ways in which prosecutors might promote democratic values, I explore (quite tentatively) how prosecutors can be held to account. Working from existing practices and structures, I consider how we might promote their potential contributions through legal and institutional design with respect to reason-giving obligations; geographic scale; insulation from direct political influence, and modulation of their message.

JEL Classification: K14, K42

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