

## COMMUNITY PROSECUTION, COMPARATIVE PROSECUTION

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Criminal prosecutors, like other public servants in a representative democracy, must continually work out what it means to “represent” the public.<sup>1</sup> One prosecutor might view the job as one for an expert, bringing technical skills and judgment to questions of public safety. Another prosecutor might aim for a more responsive relationship, listening for public priorities in criminal law enforcement. The exact shape of the prosecutor’s representative role looks different over time and from place to place.<sup>2</sup>

Some recent efforts to strengthen the connection between prosecutors and the public use the rubric of “community prosecution.” These initiatives draw on general concepts developed in the now-mature “community policing” movement.<sup>3</sup> While they take many forms in different prosecutors’ offices in the United

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1. For a discussion of this issue in the legislative context, see generally Glen Staszewski, *Reason-Giving and Accountability*, 93 MINN. L. REV. 1253 (2009).

2. See generally Gerard Rainville & M. Elaine Nugent, *Community Prosecution Tenets and Practices: The Relative Mix of “Community” and “Prosecution,”* 26 AM. J. CRIM. JUST. 149 (2002) (surveying prosecutors to determine variations in the amount of time prosecutors devoted to community outreach and to traditional law enforcement).

3. See Catherine M. Coles & George L. Kelling, *Prevention Through Community Prosecution*, 136 PUB. INT. 69, 77–78 (1999) (explaining that community prosecution draws on community views about priorities for criminal law enforcement to enhance the local sense of public safety); Susan P. Weinstein, *Community Prosecution*, FBI L. ENFORCEMENT BULL., Apr. 1998, at 19; ROBERT V. WOLF & JOHN L. WORRALL, LESSONS FROM THE FIELD: TEN COMMUNITY PROSECUTION LEADERSHIP PROFILES (2004), available at [http://www.courtinnovation.org/sites/default/files/cp\\_lessons\\_from\\_the\\_field.pdf](http://www.courtinnovation.org/sites/default/files/cp_lessons_from_the_field.pdf) (describing common elements of community prosecution and community policing).

States, all community prosecution programs aim to decentralize and democratize the work of criminal prosecutors.<sup>4</sup>

The community prosecution programs at work in a jurisdiction reveal the underlying relationship between the prosecutor and the public.<sup>5</sup> Community prosecution programs offer visible clues about something subtler and deeper: how the actors in a jurisdiction view the power of citizens to guide the work of the prosecutor.

Just as specific programs can tell us something about general relationships, the general relationship between the prosecutor and the public can shed light on the specific programs likely to work there. If one understands the prosecutor-public relationship in a jurisdiction, it could help to predict future developments in community prosecution programs there. Given what we know about the accountability and responsiveness of prosecutors in different jurisdictions, where is community prosecution likely to grow, and what form is it likely to take?

If different representative roles are indeed associated with different forms of community prosecution, we could learn much from comparative law. Prosecutors in different parts of the world operate within very different representative roles.<sup>6</sup> Are these fundamental differences in the connection between the prosecutor and the public reflected in fundamentally different approaches to community prosecution?

In this Essay, I hope to illustrate the promise of comparative analysis in understanding the connection between prosecutors and the public. In particular, this Essay will explore how community prosecution might fit into the world of decentralized elected prosecutors in the United States and how that differs from the world of centralized, nonelected prosecutors in the Netherlands.

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4. See M. ELAINE NUGENT ET AL., *THE CHANGING NATURE OF PROSECUTION: COMMUNITY PROSECUTION VS. TRADITIONAL PROSECUTION APPROACHES* (2004), available at [http://www.ndaa.org/pdf/changing\\_nature\\_of\\_prosecution.pdf](http://www.ndaa.org/pdf/changing_nature_of_prosecution.pdf) (listing key elements of community prosecution as partnerships with community groups and varied enforcement methods, based on nationwide survey of 879 prosecutors' offices); Barbara Boland, *What Is Community Prosecution?*, NAT'L INST. JUST. J., Aug. 1996, at 35, 35, available at <https://www.ncjrs.gov/pdffiles/nijjcomm.pdf> (describing an early effort at community prosecution in Multnomah County, Oregon).

5. See generally Brian Forst, *Prosecutors Discover the Community*, 84 JUDICATURE 135 (2000) (concluding that current forms of community prosecution do not reflect a meaningful improvement in making prosecutors accountable to citizens).

6. See generally Thomas Weigand, *Prosecution: Comparative Aspects*, in ENCYCLOPEDIA OF CRIME AND JUSTICE 1232 (Joshua Dressler ed., 2d ed. 2001).

## I. DECENTRALIZED ELECTED PROSECUTORS IN THE UNITED STATES

Criminal prosecution in the United States happens in a great variety of settings. There are offices large and small, urban and rural. Some have larger per capita budgets than others, and all offices use their limited resources to select their own distinctive mix of felonies and misdemeanors for adjudication. Some restrict their attention to the criminal courtroom, while others engage with law enforcement agencies and other local actors, taking a broader leadership role in public safety questions.<sup>7</sup>

While these differences among American prosecutors are enormous, there are several features that most state court prosecutors share. State prosecutors work in decentralized organizations, and they typically answer to the public through elections. These two structural features are especially compatible with the decentralizing and democratizing objectives of community prosecution programs.

First, prosecutors' offices in the state courts of the United States are decentralized. There are 2330 felony prosecutor offices in the country, each a self-contained bureaucracy of its own.<sup>8</sup> There are hundreds more offices once one accounts for the prosecutors in many states that handle misdemeanor prosecutions in offices separate from the felony prosecutors.<sup>9</sup> Even within a single state, there can be an overwhelming number of separate offices: Texas, Virginia, Missouri, Kansas, and Illinois each operate more than one hundred separate felony prosecutor offices.<sup>10</sup>

Second, prosecutors in the United States answer to the public through elections. Almost all states elect their chief prosecutors at the local level.<sup>11</sup> The few exceptions to this rule provide for the appointment of chief prosecutors at the local level by an elected official at the state level (typically the state attorney general).<sup>12</sup>

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7. See STEVEN W. PERRY, PROSECUTORS IN STATE COURTS, 2005, at 4, 9 (2006), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/psc05.pdf>.

8. STEVEN W. PERRY & DUREN BANKS, PROSECUTORS IN STATE COURTS, 2007 - STATISTICAL TABLES 1 (2011), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/psc07st.pdf>.

9. For an example of a city attorney responsible for prosecuting misdemeanors in a court of limited jurisdiction, see *The City of Phoenix Prosecutor's Office*, CITY OF PHOENIX, <http://phoenix.gov/LAW/pros.html> (last visited Apr. 8, 2012) (describing City of Phoenix Prosecutor's Office).

10. See PERRY, *supra* note 7, at 2.

11. See *id.*; Ronald F. Wright, *How Prosecutor Elections Fail Us*, 6 OHIO ST. J. CRIM. L. 581, 589 (2009).

12. The exceptions are Alaska, Connecticut, Delaware, New Jersey, and Rhode Island. See PERRY, *supra* note 7, at 2; Ronald F. Wright, *Public Defender Elections and Popular Control over Criminal Justice*, 75 MO. L. REV. 803, 805 (2010).

Even in the federal system, the United States Attorney for each district is a presidential appointee.<sup>13</sup>

This combination of features—prosecutors who represent fragmented districts and who are linked to those districts through elections—makes it highly likely that prosecutors in different districts will hear distinctive messages from the local voters. The chief prosecutors who represent districts with populations of more than one million residents (there are forty-three such felony prosecutors around the country) surely hear a different set of priorities from voters than the chief prosecutors who represent districts with fewer than one hundred thousand residents (there are 1389 such felony prosecutors).<sup>14</sup>

Chief prosecutors in smaller districts could rely on informal methods to learn the wishes of local voters and to translate those wishes into budgets, programs, and enforcement priorities. They also might depend on local media coverage and election campaigns to inform the public about their choices in organizing the office. On the other hand, prosecutors in larger districts with more complex media structures and local interest groups might turn to community prosecution to obtain more comprehensive information about community concerns.

## II. CENTRALIZED EXPERT PROSECUTORS IN THE NETHERLANDS

Other representative democracies around the world also make their prosecutors accountable to the public. The methods for creating that accountability, however, tend to differ in most democratic societies from the ones commonly used in the United States.<sup>15</sup> I will examine the Netherlands as one example of a nation that relies on a centralized prosecutorial bureaucracy, holding the prosecutors accountable through their expertise as measured through bureaucratic controls, rather than through the ballot box.

Prosecutors in the Netherlands are not elected to their positions.<sup>16</sup> Instead, they are appointed by the Crown.<sup>17</sup> Granted, the Minister of Justice is politically accountable for the Public Prosecution Service (“PPS”), and the Parliament can question the

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13. See 28 U.S.C. § 541(a) (2006).

14. See PERRY & BANKS, *supra* note 8, at 1 tbl.1.

15. See Ronald F. Wright & Marc L. Miller, *The Worldwide Accountability Deficit for Prosecutors*, 67 WASH. & LEE L. REV. 1587, 1587, 1590 (2010).

16. See Catrien Bijleveld et al., *Ethnic Minorities and Confidence in the Dutch Criminal-Justice System*, in LEGITIMACY AND CRIMINAL JUSTICE: INTERNATIONAL PERSPECTIVES 277, 286 (Tom R. Tyler ed., 2007).

17. See TONY PAUL MARGUERY, UNITY AND DIVERSITY OF THE PUBLIC PROSECUTION SERVICES IN EUROPE: A STUDY OF THE CZECH, DUTCH, FRENCH AND POLISH SYSTEMS 112 (2008), available at [http://dissertations.ub.rug.nl/FILES/faculties/jur/2008/t.p.marguery/14\\_thesis.pdf](http://dissertations.ub.rug.nl/FILES/faculties/jur/2008/t.p.marguery/14_thesis.pdf); Hans de Doelder, *The Public Prosecution Service in the Netherlands*, 8 EUR. J. CRIME CRIM. L. & CRIM. JUST. 187, 194 (2000).

Minister about PPS actions.<sup>18</sup> The Minister technically has the power to order prosecution or declination in a particular case. In practice, however, the Minister virtually never issues such orders.<sup>19</sup>

Ministerial control of a prosecutorial decision in a particular case would be nearly unthinkable because it conflicts with the tradition of treating prosecutors as quasi-judicial officers. Prosecutors are recruited and trained in the same manner as judges.<sup>20</sup> Prosecutors who must take a judicial posture toward crime (a tradition that the Netherlands shares with other systems in the civil law world)<sup>21</sup> are expected to weigh the interests of all the interested parties, including the public, the victim, and even the offender. Referring to a prosecutor as a “crime fighter” amounts to a criticism, a suggestion that the prosecutor has departed from a neutral role to become a zealot or an advocate only for the victim of a crime.<sup>22</sup> Thus, the Dutch prosecutor’s duty is not to remain true to the priorities and values of the voting public, but to produce outcomes consistent with the choices of other prosecutors.

In many parts of the world, rhetoric about the prosecutor being a “judicial” officer goes hand-in-hand with a very restricted vision of the job: the prosecutor evaluates evidence and then carries out a ministerial duty to file charges whenever the evidence is sufficient.<sup>23</sup> By contrast, the Dutch prosecutor exercises discretionary power similar to counterparts in the United States, managing the volume in the criminal courts through dismissals or declinations. Under the so-called “principle of opportunity” or “expediency,” prosecution happens only when the public interest is served by doing so.<sup>24</sup>

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18. See MARGUERY, *supra* note 17, at 113; *Country Report: The Netherlands*, EUROJUSTICE, 374, <http://www.euro-justice.com/files/file.php?id=23> (last visited Mar. 3, 2012) [hereinafter *Country Report: The Netherlands*].

19. See MARGUERY, *supra* note 17, at 114; *Country Report: The Netherlands*, *supra* note 18, at 374–75.

20. See Martine Blom & Paul Smit, *The Prosecution Service Function Within the Dutch Criminal Justice System*, in *COPING WITH OVERLOADED CRIMINAL JUSTICE SYSTEMS: THE RISE OF PROSECUTORIAL POWER ACROSS EUROPE* 240 (Jörg-Martin Jehle & Marianne Wade eds., 2006); C.H. Brants-Langeraar, *Consensual Criminal Procedures: Plea and Confession Bargaining and Abbreviated Procedures to Simplify Criminal Procedure*, 11.1 ELECTRONIC J. COMP. L. 1, 2 (2007), available at <http://www.ejcl.org/111/art111-6.pdf>.

21. See Erik Luna & Marianne Wade, *Prosecutors as Judges*, 67 WASH. & LEE L. REV. 1413, 1481–84 (2010).

22. See Doelder, *supra* note 17, at 196.

23. See Joachim Herrmann, *The Rule of Compulsory Prosecution and the Scope of Prosecutorial Discretion in Germany*, 41 U. CHI. L. REV. 468, 469 (1974); Robert Vouin, *The Role of the Prosecutor in French Criminal Trials*, 18 AM. J. COMP. L. 483, 485–86 (1970).

24. See Doelder, *supra* note 17, at 188; PETER J.P. TAK, *THE DUTCH CRIMINAL JUSTICE SYSTEM* 84 (2008) [hereinafter TAK, *THE DUTCH CRIMINAL JUSTICE SYSTEM*]; Peter J. Tak, *Sentencing and Punishment in the Netherlands*, in *SENTENCING AND SANCTIONS IN WESTERN COUNTRIES* 151, 155 (Michael Tonry & Richard S. Frase eds., 2001).

Prosecutors in the Netherlands not only have the ability to decline prosecution based on their assessment of the public interest, but they can also dispose of criminal cases through a “transaction.” This technique, which resembles a deferred prosecution in the United States, allows the prosecutor to impose a fine, a training program, or community service instead of filing a criminal complaint in court.<sup>25</sup>

In this environment, which calls for the Dutch prosecutor to exercise judgment about filing or disposing of cases based on extralegal considerations of the public interest, what can assure that the prosecutor acts with the appropriate “judicial” regard for the value of consistent decisions? The answer in the Netherlands has been an extreme centralization of the prosecutorial service.

Prosecutors in the Netherlands all work for one national PPS with nineteen offices, one located in each judicial district.<sup>26</sup> The chief public prosecutor in each district answers to the Board of Procurators General, which, together with the Minister of Security and Justice, governs the PPS.<sup>27</sup> The Board sets general policy for all the district offices and, in theory, it can issue binding instructions to individual prosecutors in particular cases.<sup>28</sup>

The PPS became more centralized as it grew over the years. Until the 1960s, the service designated five Procurator Generals who acted within their own territories, independently from one another.<sup>29</sup> The PPS grew from ninety-four prosecutors in 1951 to four hundred fifty in 2000.<sup>30</sup> Heavier central control entered the picture as the bureaucracy became too large for informal methods of coordinating policies. More assertive central control of prosecutors also became necessary during the 1960s as the public perceived unequal treatment of offenders based on social class and other

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25. See Marianne Wade, *The Januses of Justice—How Prosecutors Define the Kind of Justice Done Across Europe*, 16 EUR. J. CRIME CRIM. L. & CRIM. JUST. 433, 439 (2008).

26. See Johannes Fredrikus Nijboer, *The Dynamics and Paradoxes of an Institution: The Public Prosecution Service in the Netherlands*, 48 N. IR. LEGAL Q. 378, 379 (1997).

27. See *id.* at 387–88. The Board consists of five Attorneys General under the presidency of one Chairperson. *Id.*

28. See *id.* at 380, 382; Blom & Smit, *supra* note 20, at 241–42; Alexander de Swart & Max Vermeij, *The Netherlands*, in THE INTERNATIONAL INVESTIGATIONS REVIEW 106 (Nicolas Bourtin ed., 2011).

29. See generally David Downes & René van Swaaningen, *The Road to Dystopia? Changes in the Penal Climate of the Netherlands*, in CRIME AND JUSTICE IN THE NETHERLANDS 31, 34–50 (Michael Tonry & Catrien Bijleveld eds., 2007) (giving an overview of the history and political climate surrounding crime and imprisonment from 1945 to 1985).

30. See L.E. de Groot-Van Leeuwen, *De samenstelling van de rechterlijke macht*, in RECHTERLIJKE MACHT: STUDIES OVER RECHTSPRAAK EN RECHTSHANDHAVING IN NEDERLAND 62 tbl.3.2 (E.R. Muller & C.P.M. Cleiren eds., 2006).

legally irrelevant considerations. Voters would not accept that such unequal outcomes were the necessary price for local prosecutor discretion.<sup>31</sup>

The move toward a more centralized prosecutorial service in the Netherlands took the form of national policy directives in the late 1970s.<sup>32</sup> For instance, the Board publishes national guidelines for the use of transactions, specifying the types of offenses eligible for this disposition and the fine that a prosecutor should impose.<sup>33</sup> Decisions for the charging and disposition of “standard cases”—shoplifting, fraud, burglary, and violent assault that occupy about eighty percent of the total criminal docket—are considered routine under the national guidelines.<sup>34</sup> Standard grounds for dismissal (in addition to lack of sufficient evidence) include “minor harm,” “minor culpability,” or factors related to the perpetrator’s addiction or other health issues.<sup>35</sup>

The national directives are communicated to individual prosecutors through the “BOS/Polaris” online system. The database informs prosecutors about past charging and sentencing outcomes in cases that resemble the current case on a small number of variables.<sup>36</sup> The Board can quickly implement policy changes throughout the country by changing the guidance in this system regarding the weight that a prosecutor should attach to particular aspects of the offense or the offender’s past.<sup>37</sup>

### III. COMMUNITY PROSECUTION IN THE NETHERLANDS AND IN THE UNITED STATES

Although the external and internal constraints on Dutch prosecutors look quite different from the controls on United States prosecutors, the Dutch have nevertheless developed initiatives that

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31. See Nijboer, *supra* note 26, at 384; see also Downes & Swaaningen, *supra* note 29.

32. See Dato W. Steenhuis, *Coherence and Coordination in the Administration of Criminal Justice*, in *CRIMINAL LAW IN ACTION: AN OVERVIEW OF CURRENT ISSUES IN WESTERN SOCIETIES* 229–30 (Jan van Dijk et al. eds., 1988).

33. Doelder, *supra* note 17, at 201.

34. See generally Catrien C. J. H. Bijleveld & Paul R. Smit, *Crime and Punishment in the Netherlands, 1980–1999*, in 33 *CRIME AND PUNISHMENT IN WESTERN COUNTRIES, 1980–1999*, at 161 (2005) (discussing the treatment of various offenses).

35. *Id.* at 165.

36. See *id.* at 207; Aernout Schmidt, *Re-engineering Independence and Control: ICT in the Dutch Judicial System*, in *JUSTICE AND TECHNOLOGY IN EUROPE: HOW ICT IS CHANGING THE JUDICIAL BUSINESS* 147, 155 (Marco Fabri & Francesco Contini eds., 2001).

37. See Bijleveld & Smit, *supra* note 34, at 207; TAK, *THE DUTCH CRIMINAL JUSTICE SYSTEM*, *supra* note 24, at 101.

they label as “community prosecution.”<sup>38</sup> Two examples of community prosecution merit description here: the “tripartite consultations” and the “maisons de justice.”

Although formal legal doctrine declared that a public prosecutor should direct all police investigations, the police in the Netherlands mostly acted without prosecutor coordination until the 1980s. In 1985, the government issued a white paper, “Society and Crime,” laying out a set of policies designed to control crime.<sup>39</sup>

Under this national policy, the PPS was assigned the task of formulating a crime control strategy on both the local and national levels.<sup>40</sup> The white paper emphasized the prevention of crime before it occurs rather than the punishment of crime after the fact. It cast the public prosecutor as a team leader among crime control agencies, rather than a courtroom officer.<sup>41</sup>

One product of this national initiative was “tripartite consultation.”<sup>42</sup> Instead of merely filing and disposing of criminal cases, prosecutors now take the lead in regular discussions with city mayors and chiefs of police to define local police priorities. On the basis of these consultations, police in one city might emphasize human trafficking, while in another city the focus might shift to street violence.<sup>43</sup> The district office of the PPS might commit to treat cases within that category as a top priority, resulting in fewer declinations or heavier use of correctional resources. Questions of police administration, including organizational and budgetary choices, also receive attention in the tripartite consultations.<sup>44</sup>

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38. Cf. Heike Gramckow, *Community Prosecution in the United States and Its Relevance for Europe*, 3 EUR. J. CRIM. POL'Y & RES. 112, 116–18 (1995).

39. See A. Keith Bottomley, *Blue-Prints for Criminal Justice: Reflections on a Policy Plan for the Netherlands*, 25 HOWARD J. CRIM. JUST. 199, 199 (1986); René Van Swaeningen, *Public Safety and the Management of Fear*, 9 THEORETICAL CRIMINOLOGY 289, 297 (2005); *Crime Prevention Information & News*, UNIV. OF THE W. OF ENG., <http://environment.uwe.ac.uk/commsafe/euneth.asp> (last updated May 6, 2004) [hereinafter UNIV. OF THE W. OF ENG.].

40. David Downes, *Visions of Penal Control in the Netherlands*, 36 CRIME & JUST. 93, 104–07 (2007); UNIV. OF THE W. OF ENG., *supra* note 39.

41. Downes, *supra* note 40; UNIV. OF THE W. OF ENG., *supra* note 39.

42. See Doelder, *supra* note 17, at 192; Kees van der Vijver & Olga Zoomer, *Evaluating Community Policing in the Netherlands*, 12 EUR. J. CRIME CRIM. L. & CRIM. JUST. 251, 253 (2004); *Connections with the Community*, OPENBAAR MINISTERIE, [http://www.om.nl/vast\\_menu\\_blok/english/about\\_the\\_public/connections\\_with\\_the/](http://www.om.nl/vast_menu_blok/english/about_the_public/connections_with_the/) (last visited Mar. 5, 2012).

43. See Blom & Smit, *supra* note 20, at 238–39; *The Relation between the Public Prosecutor and the Police*, EUROJUSTICE, [http://www.euro-justice.com/member\\_states/netherlands/country\\_report/673/](http://www.euro-justice.com/member_states/netherlands/country_report/673/) (last visited Apr. 8, 2012) [hereinafter EUROJUSTICE].

44. See Blom & Smit, *supra* note 20, at 238–39; EUROJUSTICE, *supra* note 43; John Brown, *The Netherlands: Tripartite Consultation*, in INSECURE SOCIETIES: DELINQUENCY IN TROUBLED TIMES 83, 102–03 (Audrey Brown ed., 1990).



A more limited but noteworthy initiative in the Netherlands, begun in the 1990s, is called “community prosecution” or “maisons de justice.” In several large cities, the district office of the PPS operates a satellite location staffed by a prosecutor and support staff. The emphasis of this satellite office is to serve as a visible presence of criminal law enforcement in the neighborhood and to resolve complaints wherever possible without filing criminal charges.<sup>45</sup> This initiative to create “Justice in the Community” also asks the satellite office prosecutors to coordinate the extrajudicial reactions to crime.<sup>46</sup>

Community prosecution initiatives in the United States take a remarkable number of forms. Some, like the Dutch “maisons de justice,” simply place a satellite office in a visible location to respond to low-level crimes and to promote a sense of security among local voters.<sup>47</sup> Others, like the tripartite consultations, put prosecutors in a position to direct some police resources toward a priority issue of public safety. The desired outcome is better coordination of different government agencies and responsiveness to the problems that designated leaders identify as worthwhile.<sup>48</sup>

But community prosecution programs in the United States go beyond efforts to coordinate different agencies or to signal a law enforcement presence to the public. They sometimes involve formal efforts to solicit public opinion through polls and questionnaires.<sup>49</sup> Some programs identify particular offenders (rather than categories of offenses) for extra investigation, priority prosecution, and corrections resources. Offices might place special emphasis on accessibility to support services for victims of crime.<sup>50</sup>

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45. See Doelder, *supra* note 17; Hans Boutellier, *Right to the Community: Neighbourhood Justice in the Netherlands*, 5 EUR. J. CRIM. POL'Y & RES. 43, 43 (1997).

46. See Jan Terpstra & Inge Bakker, *'Justice in the Community' in the Netherlands: Evaluation and Discussion*, 4 CRIMINOLOGY & CRIM. JUST. 375, 380 (2004).

47. See Walter J. Dickey & Peggy A. McGarry, *The Search for Justice and Safety Through Community Engagement: Community Justice and Community Prosecution*, 42 IDAHO L. REV. 313, 315–17 (2006); Cecelia Klingele et al., *Reimagining Criminal Justice*, 2010 WIS. L. REV. 953, 981–82 (2010); WOLF & WORRALL, *supra* note 3, at xi, 30–31.

48. See Kay L. Levine, *The New Prosecution*, 40 WAKE FOREST L. REV. 1125, 1126–28 (2005); WOLF & WORRALL, *supra* note 3, at 12–14.

49. See Levine, *supra* note 48, at 1147–48; WOLF & WORRALL, *supra* note 3, at 18.

50. See DIV. OF BEHAVIORAL & SOC. SCIS. & EDUC., NAT'L RESEARCH COUNCIL, WHAT'S CHANGING IN PROSECUTION? REPORT OF A WORKSHOP 14–17 (Philip Heymann & Carol Petrie eds., 2001); Kelley Bowden Gray, *Community Prosecution: After Two Decades, Still New Frontiers*, 32 J. LEGAL PROF. 199, 200–01 (2008); Elaine Nugent & Gerard A. Rainville, *The State of Community Prosecution: Results of a National Survey*, 13 PROSECUTOR 26, 30–31 (2001).

Just as striking in the United States is the large number of prosecutorial districts that pursue no community prosecution programs at all.<sup>51</sup> Particularly in smaller jurisdictions, such programs do not appear to be necessary to inform the chief prosecutor about the wishes of the public.

#### IV. COMPARATIVE OBSERVATIONS ABOUT COMMUNITY PROSECUTION

We return now to the question of whether different accountability structures for prosecutors tend to produce different forms of community prosecution. Does community prosecution look any different when it grows out of a decentralized electoral environment (as in the United States) than it does in a centralized expert environment (as in the Netherlands)? There are reasons to think so. The centralized bureaucratic structure of the PPS in the Netherlands would, in theory, give prosecutors there a different set of reasons to pursue community prosecution, possibly leading to differences in the programs.

The broad-brush descriptions of community prosecution efforts in the two countries, set forth in the previous section, suggest some systematic differences in practice. The distinctions among community prosecution efforts in the two countries encompass the source for the programs, their rationales, and their coverage.

Consider first the source of the programs. In the Netherlands, the community prosecution efforts start at the highest levels of government and typically not from prosecutors themselves. The Ministry of Justice formulates national crime control policies that result in tripartite consultations and satellite offices. In the United States, on the other hand, prosecutors at the local level choose for themselves the community programs to institute—or choose not to pursue such programs at all.

The rationales for community prosecution programs also vary in the two countries. In the Netherlands, the programs seem designed to localize the work of prosecutors in a system built around uniformity. A focus on local conditions makes it possible to better coordinate the expertise and resources among the prosecutors, the local police, the local government, and the many nonjudicial agencies that play some part in preventing and responding to crime. In the tripartite consultations, the rhetoric emphasizes more efficient use of local expertise, not responsiveness to the local public. The decentralizing aspect of community prosecution receives more emphasis than the democratizing aspect in the Netherlands. Delivery of service with local expertise customized for local problems is the objective.

In the United States, on the other hand, community prosecution serves a remedial function. The democratizing aspect appears to be

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51. See PERRY, *supra* note 7, at 9.

primary: decentralizing the prosecutor's work is a way to listen for public priorities and to signal to the public that the prosecutor is responsive. Because the relationship between prosecutors and the public differs so much among localities, community prosecution may be truly necessary as a remedy in some places (particularly larger jurisdictions), while it amounts to a pointless public relations gimmick in others. Coordination of resources among different government agencies certainly has its place in community prosecution in the United States. From the beginning, however, the programs appeared in response to local groups who believed their public safety priorities were neglected.<sup>52</sup>

Finally, the coverage of community prosecution programs differs in the two countries. Community prosecution is more systematic and widespread in the Netherlands. It addresses a more pervasive gap in the Dutch system, serving as a counterweight to a system that has become strongly centralized within living memory. Because the impetus for the programs comes from outside the ranks of career prosecutors, the programs are more likely to foster relationships with government agencies outside criminal law enforcement circles.

In the United States, where prosecution is already radically decentralized and relatively democratized, community prosecution initiatives spread unevenly. One might expect to see community prosecution efforts in local jurisdictions that are the least homogeneous in socioeconomic terms, with an emphasis on outreach to communities that hold the least stake in the electoral system. Because career prosecutors initiate the programs in the United States, these programs also tend to focus on agencies with a clear preexisting connection to criminal enforcement.

Ultimately, all prosecutors must balance a set of conflicting ideals. One set of aspirations calls for uniformity and equality: public prosecutors should pursue cases "without fear or favor" because "no one is above the law and no one is below its protections."<sup>53</sup> On the other hand, we tell prosecutors that "equal justice depends on individualized justice."<sup>54</sup> They must account for the different circumstances of defendants, victims, and communities. Prosecutors in different jurisdictions aim for a different balance between these ideals, and community prosecution

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52. See Boland, *supra* note 4, at 35–36 (explaining that Portland community prosecution began in response to business community concerns based in the remote sector of the city).

53. *Welcome to the Putnam County District Attorney's Office*, PUTNAM CNTY. N.Y. DISTRICT ATTORNEY'S OFF., <http://www.putnamcountyda.org/> (last visited Mar. 5, 2012).

54. Memorandum from Att'y Gen. Eric H. Holder, Jr. to Federal Prosecutors (May 19, 2010), *available at* <http://www.justice.gov/oip/holder-memo-charging-sentencing.pdf>.

offers one way to tip the balance toward individualized justice when the need arises.