essential. Perhaps what is most interesting, then, is the imaginary of the court. We think of the court as something that would not need to be advertised. It is absolutely right that these types of reforms must be flexible and adaptable to be successful. This is why these courts are easy to create. Zozula could go further in explaining how that same adaptability leads to conflicts down the road. Stakeholders want these courts, but for different reasons. They will inevitably be disappointed when the courts don't deliver. She outlines how important it is to have legitimacy, and how crime in the community undermines the courts rehabilitative messaging. This theoretical work is some of the most important and most innovative in the book. The ambivalence she identifies is not just about rehabilitation and punitiveness. Rather, there is an underlying question as to whether these courts can or do actually help defendants access much needed social services, or whether these courts simply ensnare more impoverished people in the criminal justice system.

There are a few more areas where the book's ideas and, importantly, the methods, could be more fully developed. While Zozula provides an overview of treatment courts and community courts, the meat of the book is in her examples of court interactions. The dilemma of these stories is that the reader doesn't know whether they are common examples or not, or how they differ from regular criminal courts. One limit, of course, is that she is doing a case study of one community court. Does this kind of "organizational ambivalence" (141) toward the offender translate into the other community courts, and how is it different than treatment courts?

These limitations aside, this is an important book for scholars who study courts as organizations, who are interested in treatment courts, and who are interested in the criminalization of poverty. Community courts offer a distinct site to study how our society uses criminal law to solve problems this law simply cannot solve, and actually contributes to new problems in need of redress.

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Prisoners of Politics: Breaking the Cycle of Mass Incarceration. By Rachel Elise Barkow. Cambridge, MA: Belknap Press of Harvard University Press. 2019. 291 pp. $35.00 hardcover

Reviewed by Malcolm M. Feeley, University of California in Berkeley, CA

The first two-thirds of this important book canvass the horrors in the American criminal process: carelessly defined crimes; bullying

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prosecutors; passive judges; needless pretrial detention; draconian punishments; mass arrests; horrible crowded conditions in jails and prisons; pervasive racism and punative populism. And this, despite the fact that crime rates have plummeted to near all-time lows. This indictment is familiar to most readers of the *Law & Society Review*, who would probably also want to see then tied to some theoretical framework, such as the "culture of control" in late modernity, the consequences of deindustrialization, or a theory that treats the United States is an undeveloped and ineffective state. However, the book's major contribution is found in the last third of the book, where Barkow sets out ideas for reform. Her proposals adopt standard administrative law practices to police prosecutors, expand reliance on experts, and foster a more robust judiciary.

Let's first examine the most distinctive of these ideas, the use of administrative law techniques to police prosecutors. And, let's focus on three of these techniques: requiring articulated policies for charging; imposing a division of labor that prohibits prosecutors from shaping policies outside their core responsibilities (e.g., forensics labs, clemency, and corrections) and that distinguishes the roles of prosecutors as investigators and advocates; and developing continuous back-end audits to oversee prosecutorial efficiency and effectiveness in light of developed policies and budget constraints.

These suggestions are valuable, but are not all that new, and some have been effected here and there over the years. For instance, Kings County (Brooklyn) and Orleans Parish (New Orleans) have been widely and approvingly cited for having detailed written policies for bringing cases, and for establishing early case assessment offices staffed by experienced prosecutors. No doubt these policies have yielded benefits, but these two jurisdictions also rank in the top ten counties nationwide for their exoneration and pretrial detention rates. Similarly, in the 1970s, prosecutors' offices adopted computer management systems which allow centralized oversight of staff and provide the capacity to plan for and manage prosecutorial discretion and budgeting. But these have not led to the feedback and adjustments that Barkow would like. Courthouse cultures are deeply ensconced and not easily changed, and when then change, changes do not always run according to plan. Indeed, one is inclined to say, they never do; they become part of a long history of good ideas turned upside down in a fragmented and protean adversary process, where funding comes from a host of sources and no one is in charge. So, where and how to initiate change?

I am not sure it should begin with the prosecution. But one does not find the terms "adversary process," "attorneys, defense," or "judge, trial courts," or "funding, criminal justice" in the book's index. The author treats the prosecutor as charger,

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adjudicator, and sentencer. This near-exclusive focus on prosecutors in the courthouse workgroup reflects a timidity of vision. A more robust approach to thinking about the criminal process as a regulatory system might approach the task as one of managing a complex system and trying to find ways to transform a chaotic and outmoded adversary process into more efficient, more effective, and fairer regulatory agency. After-all, the general drift in law enforcement and resolution of disputes in the modern administrative state has been to move away from courts toward regulatory agencies.

Furthermore, if we turn to those countries with whom we most like to compare ourselves, we find robust ministries of justice with strong policymaking, oversight, and administrative responsibilities. Among other things, prosecutors and judges are often closely joined in the same institution; ministries propose prosecution, sentencing, and correctional policies and priorities in light of legislative inclinations and costs. When budget shortfalls are projected, ministries assemble agency heads to come up with plans to cope. If an innovative new technology is proposed, agencies and stakeholder groups meet to explore its implications. The United States has no ministry of justice, either at the national level or state level, and no jurisdiction even has a strong "criminal justice coordinating council." As much as criminal justice scholars like to compare American crime policies with the countries of Northern Europe, the United States is an undeveloped, fragmented, and weak state, more in line with South American than Northern European countries. We see this not only in criminal justice, but health care, education, industrial policy, and infrastructure.

Barkow's account of the value of expertise could have been written 60 years ago, and so too could an account of its effects. In the 1950s and into the 1970s, the Ford Foundation spent hundreds of millions of dollars in today's dollars to develop a cadre of experts in criminal justice administration. Its mission was extended by the work of the President's Crime Commission, staffed by the best and the brightest, and then supported by hundres of millions of federal dollars. Although much money was wasted, a great many talented experts (think American Bar Aassociation, the Vera Institute of Justice, National Institute of Justice, the Police Foundation, and the U.S. Department of Labor), backed by prominent public officials, obtained ample funding to pursue their good ideas. Such reforms included early case assessment bureaus in prosecutors' offices, centralized monitoring and oversight in prosecutors' offices, bail reform, pretrial service agencies, victim services agencies, speedy trial rules, and still more. Similarly, the Law Enforcement Assistance Administration (LEAA) created state and local criminal justice coordinating councils and provided them with funds for

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promising projects. And of course, expertise in corrections emerged and peaked much earlier, in the era of penal welfarism.

Think about it. A new army of experts with innovative ideas was established, but just as the War on Crime was declared and crime rates began to soar. Experts and their ideas were not so much swept away as put to new use. Programs to facilitate pretrial release became instruments to effect preventive detention and oversee drug treatment. Pretrial diversion programs became prosecutor-dominated probation programs for those who otherwise would have had their charges dropped. The signal symbol of expertise was probably sentencing commissions and sentencing guidelines. This idea came to fruition after countless study groups comprised of the best and the brightest held endless discussions. Yet, the guidelines have probably both expanded and hidden racial disparities under the patina of rationality. Perhaps the single most important impact of guidelines, even advisory guidelines, has been to enhance the power of prosecutors. Supporters of the U.S. Sentencing Commission defend it by asserting that the problem lies with post-Guidelines mandatory minimum sentences imposed by Congress. No doubt this is a big part of the story, but the harsh sentences and grid-like rationality of sentencing schemes invited power grabs by prosecutors, and note that the Guidelines are now only advisory. Furthermore, I know of no sentencing commissioners --state or federal--who have resigned in protest over interference by populist legislatures. By now, sentencing guidelines constitute one more entrenched problem in the criminal process. Even if only advisory, they are are now routinely followed in most cases.

The short chapter "Catalyzing Courts" deals almost exclusively with a call for the U.S. Supreme Court to expand doctrine. But, after the late Bill Stuntz's requiem for the dashed hopes of the Warren Court, it seems a bit odd to expect much from the Court. Indeed, in light of Barkow's views, one would have expected an examination of Stuntz's and others' pessimistic views. However, there is a growing group of scholars, Stephanos Bibas prominent among them, that looks to *trial* court judges, and builds on Stuntz's idea of turning back the clock to an earlier and presumably more benign era, in which municipal court judges dispensed rough but fair justice. Another is the *White Paper of Democratic Criminal Justice*, a manifesto coauthored by nineteen criminal law experts that was published in the *Northwestern University Law Review*. One of its authors, John Braithwaite, perhaps the most respected scholar of the regulatory process in the world, has for the past thirty years sought to apply his ideas on "responsive regulation" to the development of "restorative justice" in the criminal process. (I note that neither Stuntz, the *White Paper*, nor Braithwaite are listed in the

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book's index; Bibas is cited in passing, on another point.) Braithwaite's circle of restorative justice is presided over not by a prosecutor, but a convener who manages the process so as to assure all important issues are voiced. Indeed, his model is not all that radically different from juvenile courts, where judges often take an active role in shaping the process. And, interestingly enough, the terrible harshness of the criminal process—relatively speaking—has not extended so deeply into the juvenile justice system. It is unfortunate that this body of work that builds on long-standing insights in to successful regulatory regimes and is so closely related to Barkow's administrative concerns is not even mentioned let alone examined. Consider, also, that some trial judges have been marginally effective reformers of police departments and prisons and jails. One might ask, why can't they apply some of these same skills at trying to change their own courthouses?

I have wandered far and wide in my review of *Prisoners of Politics*. This is because it is an important and provocative book. Barkow identifies an important problem, and in my view aims precisely in the right direction, towards a more regulatory-like criminal process. Like her, I think this is the new future for criminal court reform. However, a more historical perspective, attention to macrodevelopments, more attention to other actors, and a more expansive take on the regulatory process for the criminal process is probably necessary to tackle massive problems she has identified. Where is the field's Max Weber?

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Affective Justice—The International Criminal Court and the Pan-Africanist Pushback. By Kamari Maxine Clarke. Durham and London: Duke University Press, 2019. 384 pp. $29.95 paperback

Reviewed by Caroline Fournet, Department of Criminal Law and Criminology, Faculty of Law, University of Groningen in Groningen, The Netherlands

The relationship between the International Criminal Court (ICC) and African States and/or defendants has not escaped academic scrutiny and a considerable amount of literature has been devoted to this topic, be it in the form of journal articles (Keppler, 2012), blog texts (Akande, 2016) or monographs (Clark, 2018; Jalloh and Bantekas, 2017; Johnson and Karekwaivanane, 2018; Werle,

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