

Mandatory Prosecution in the Changing Time: A Systematic Literature Review

Author

Le, Lan Chi, Mai, Son Thanh, Hoang, Yen Hai, Nguyen, Duc Quang, Pham, Nga Thanh, Luong, Hai

Published

2025

Journal Title

Criminal Justice Ethics

Version

Version of Record (VoR)

DOI

[10.1080/0731129X.2025.2476303](https://doi.org/10.1080/0731129X.2025.2476303)

Rights statement

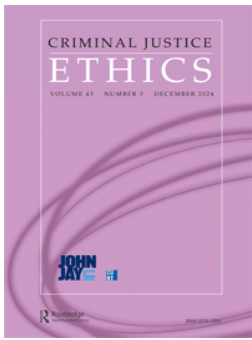
© 2025 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group on behalf of John Jay College of Criminal Justice of The City University of New York. This is an Open Access article distributed under the terms of the Creative Commons Attribution-NonCommercial-NoDerivatives License (<http://creativecommons.org/licenses/by-nc-nd/4.0/>), which permits non-commercial re-use, distribution, and reproduction in any medium, provided the original work is properly cited, and is not altered, transformed, or built upon in any way.

Downloaded from

<https://hdl.handle.net/10072/435713>

Griffith Research Online

<https://research-repository.griffith.edu.au>



Mandatory Prosecution in the Changing Time: A Systematic Literature Review

Lan Chi Le, Son Thanh Mai, Yen Hai Hoang, Duc Quang Nguyen, Thanh Nga Pham & Hai Thanh Luong

To cite this article: Lan Chi Le, Son Thanh Mai, Yen Hai Hoang, Duc Quang Nguyen, Thanh Nga Pham & Hai Thanh Luong (14 Mar 2025): Mandatory Prosecution in the Changing Time: A Systematic Literature Review, *Criminal Justice Ethics*, DOI: [10.1080/0731129X.2025.2476303](https://doi.org/10.1080/0731129X.2025.2476303)

To link to this article: <https://doi.org/10.1080/0731129X.2025.2476303>



© 2025 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group on behalf of John Jay College of Criminal Justice of The City University of New York



Published online: 14 Mar 2025.



Submit your article to this journal [↗](#)



Article views: 356



View related articles [↗](#)



View Crossmark data [↗](#)

ARTICLE



Mandatory Prosecution in the Changing Time: A Systematic Literature Review

LAN CHI LE , SON THANH MAI,
YEN HAI HOANG, DUC QUANG NGUYEN,
THANH NGA PHAM, & HAI THANH LUONG 

The principle of mandatory prosecution (MP) is respected, extensively applied, and has a long-standing tradition in continental European countries, and it is highly valued in socialist nations. However, in recent decades, there has been a notable shift in its implementation within these countries, with numerous studies reflecting this change

Lan Chi Le, Head of the Faculty of Criminal Justice, University of Law, Vietnam National University, Hanoi, Vietnam

Son Thanh Mai, Lecturer, Faculty of Criminal Justice, Vietnam National University, Hanoi, Vietnam

Yen Hai Hoang, Deputy Head of Criminal Law Department, Hanoi Procuratorate University, Hanoi, Vietnam

Duc Quang Nguyen, Lecturer, Faculty of Constitutional Law and Administrative Law, University of Law, Vietnam National University, Hanoi, Vietnam

Thanh Nga Pham, Senior Officer, Department of Inspectorate, The Supreme People's Court of Vietnam, Hanoi, Vietnam

Hai Thanh Luong, Lecturer, School of Criminology and Criminal Justice, Griffith University, Queensland, Australia. Corresponding author Email: h.luong@griffith.edu.au

by presenting diverse perspectives on the necessity to alter, modify, or preserve this principle. One of the primary aims of this paper is to examine the scope of research on responses to MP and the main reasons for maintaining or renewing MP highlighted in related publications. This paper employed a systematic literature review (SLR) to search the Scopus and Web of Science (WoS) databases, compiling a total of 28 papers spanning 50 years. These articles cover a wide range of countries and diverse jurisdictions currently applying either MP or discretionary prosecution (DP) principles. Furthermore, the literature review includes various arguments and discussions on how countries should respond to MP. Findings indicate that MP persists due to its enduring values, such as legality and equality, alongside its

significant role in safeguarding the criminal justice system against arbitrariness and abuse of power. Our paper also reveals that the tendency to renew or replace MP is influenced not only by conflicting opinions but also by political factors and the consideration of victims' discretion in certain offenses, particularly in cases of domestic violence. Additionally, three options for reconciling MP and DP principles are proposed to aid readers in understanding the transition process between these two fundamental principles. Ultimately, the paper advocates for further research on MP in current or former socialist countries, where applicable.

Keywords: Mandatory prosecution, principle of legality, discretionary prosecution, ethics, political factor

I. Introduction

*"Laws are spider webs through which the big flies pass, and the little ones get caught" –
Honoré de Balzac*

Perhaps humanity's fear of the "spider web" of laws, as Honoré de Balzac sarcastically termed it, is a common anxiety when the legal system becomes arbitrary and fails to uphold justice and maintain social order. In response to this fear, many countries around the world have established a clear criminal justice system, particularly applying the principle of mandatory prosecution, which ensures that anyone who commits a crime will face criminal charges.

This does not imply, however, that countries adopting alternative approaches do not transform their legal systems into spiderwebs, as Honoré de Balzac warned. The growing trend of nations embracing discretionary prosecution over mandatory prosecution necessitates a reassessment of how mandatory prosecution principles are applied. Generally, mandatory prosecution (MP) is a dominant principle in countries adhering to the Civil Law (CIL) system, which originated from continental Europe, where the ethos of "The law must be the same for everyone, whether it protects or

punishes. All citizens are equal in the eyes of the law" is highlighted.¹ MP involves prosecuting all crimes not only to foster "peace and stability" within society but is also regarded as the "point of convergence for all the fundamental principles of the Constitution."²

The fundamental concept of the MP principle is illustrated by a well-known provision of Italy's esteemed 1948 Constitution: "The public prosecutor has the duty to initiate criminal proceedings" (Article 112). The essence of the MP principle is often conveyed by emphasizing the stark contrasts with another prominent principle, the principle of discretionary prosecution. For instance, MP represents a principle in which "the public prosecutor had very little discretionary authority to discontinue a case due to its trivial nature or a lack of public interest in prosecution."³ In legal norms, the MP principle necessitates strict adherence to what the law prescribes (legality).⁴ Consequently, the MP principle is frequently linked to another principle known as the "principle of legality." While Nakao and Tsumagari state that "in European judiciaries, a case is almost automatically filed and brought to court as

the criminal laws stipulate, and a prosecutor's discretion is severely limited,"⁵ Neri contends that "the principle of the mandatory nature of criminal proceedings requires that nothing be removed from the judicial review of legality."⁶

Furthermore, integration and synchronization are crucial in developing and implementing the MP within the context of criminal procedure. The MP's requirement aims to clarify the truth of a case and achieve justice, a principle strongly emphasized in Europe, where "inquisitorial systems strive for strict enforcement of the law and view the state and the defendant not as adversaries but as collaborators in the court's pursuit of truth."⁷ Simultaneously, the MP principle is linked to the need for objectivity, as all crimes are prosecuted, thereby minimizing the risk of arbitrariness and abuse of prosecutorial power. This principle reduces the likelihood of being influenced by "political motives and considerations of expediency" when prosecutors decide whether to proceed⁸ with prosecution. Ethically, the MP principle underscores the state's duty to protect the community and safeguard all victims from crime, as all offenses are subject to prosecution and punishment. This principle presents an advantage over discretionary prosecution because "discretionary prosecution may face the moral-hazard problem in evidence production more acutely than MP."⁹

Reflecting on history, the principle of MP has been dominant in countries within the CIL system. Nations such as Italy, Germany, Austria, Azerbaijan, Argentina, Peru, and Spain uphold the principles of MP.¹⁰ During the colonial era, this principle crossed oceans to reach colonial territories and persisted

in those regions. In the twentieth century, as socialist legal systems emerged, this principle continued to expand, gaining recognition in countries that were either former or current socialist states. Notably, nations like the former Soviet Union, Yugoslavia, Poland, the Czech Republic, China, and Vietnam embraced this principle while building their legal systems on the foundation of continental European law. This principle encapsulates various legal and ethical values found in continental European countries. As it spread to socialist countries, it also integrated the political values pursued by socialist regimes.

However, in these countries, there has been a significant transformation in recent decades regarding the principle of MP, with a trend towards narrowing this principle to embrace elements of discretionary prosecution or even replacing it entirely with discretionary prosecution. This shift is occurring even in the very places where the principle originated within continental European countries.¹¹ For instance, in Italy, the constitutional principle of public prosecution has not been displaced or amended, but it has gradually been altered through the introduction of new rules.¹² Moreover, this transformation is evident in countries that belong to the socialist legal tradition as well, such as Russia, China, and Vietnam.¹³ These countries are undergoing changes that extend beyond the application of the principle of public prosecution.

Our current study employs a systematic literature review (SLR) to investigate how countries are approaching and adopting the principle of MP. This is especially relevant considering that, in the past, MP was seemingly linked to sacred and immutable legal and ethical values, often

seen as a source of pride for nations with substantial criminal laws. The foundational assumption of MP rested on the idea that “penal codes (that is, legislatures) are capable of providing sufficiently precise and detailed criteria for criminal liability, requiring only a bit more judgment at the level of individual cases to ensure that only the criminal is punished and that the punishment serves its intended purposes.”¹⁴ The transformation of the MP principle is an ongoing process, as demonstrated by numerous studies.

A total of 46 research articles have been published in various languages from the dataset available on Scopus and Web of Science, using the keywords “mandatory prosecution,”

“compulsory prosecution,” and “discretionary prosecution,” along with the Boolean operators (AND, OR). By reviewing quantitative projects and empirical studies, the primary aim of this study is to summarize common trends in research on mandatory prosecution (MP) and to identify the reasons for the maintenance, adjustment, or displacement of MP. This paper addresses three major research questions (RQs), including:

RQ1: What is the scope of research on the response to MP?

RQ2: What are the main reasons for maintaining MP?

RQ3: What are the main reasons for renewing MP?

II. Methodology

The research into the meaning of a guiding principle for resolving criminal cases, set against the context of time and the historical backdrop of various countries, requires an appropriate research method for this paper. In response to the research questions, we have chosen to employ a systematic literature review (SLR) as the primary research method for this study. This approach is essential across different fields of study, as it summarizes the evidence needed to support new research papers. It can be asserted that SLR offers a replicable, transparent, and comprehensive way to identify relevant materials.¹⁵

1. Data Collection

To maximize the informative, productive, and objective findings from the previous database, it is recommended that each systematic

literature review (SLR) adhere to at least eight key principles: (1) transparency, (2) clarity, (3) integration, (4) focus, (5) equality, (6) accessibility, (7) coverage, and (8) synthesis. By following these principles, SLRs offer a comprehensive and transparent search conducted across multiple databases and grey literature that can be replicated by other researchers, grounded in clear research questions and a specific search strategy. The review process must include the search terms and strategies, such as database names, platforms, search dates, and limits, clarifying relevant timeframes for information collection.¹⁶ Therefore, consistent with these principles, SLRs should adhere to a clearly defined protocol or plan where the criteria are explicitly stated before the review begins.¹⁷ In this study, to ensure transparent and complete reporting, we employed PRISMA

(Preferred Reporting Items for Systematic Reviews and Meta-Analyses), which is an evidence-based minimum set of materials and publications designed to facilitate researchers' adopting a comprehensive approach to systematic reviews across various fields.¹⁸

As with other systematic review studies in criminal justice that utilize various online databases at different times, this study employed Scopus and Web of Science (WoS) to gather data pertinent to our topic. Scopus is the largest abstract and citation database of peer-reviewed literature, including scientific journals, books, and conference proceedings. We utilized three keywords: "mandatory prosecution," "compulsory prosecution," and "discretionary prosecution," and employed (OR) between these keywords to search for relevant publications. The query results yielded 30 documents from the Scopus database. This includes records per year by source, documents by author, documents by affiliation, documents by country or territory, documents by type, documents by subject area, and documents by funding sponsor.

Similarly, Clarivate Analytics' Web of Science (WoS) is the world's foremost scientific citation search and analytical information platform. It serves as both a research tool that supports a wide range of scientific tasks across various knowledge domains and as a dataset for large-scale, data-intensive studies. WoS has been utilized in thousands of published academic studies over the past two decades.¹⁹ The author examined six digital scholarly databases within WoS (Clarivate), specifically the Emerging Sources Citation Index (ESCI), Conference Proceedings Citation

Index—Social Science & Humanities (CPCI-SSH), Social Sciences Citation Index (SSCI), Science Citation Index Expanded (SCI-EXPANDED), Arts & Humanities Citation Index (A&HCI), and Conference Proceedings Citation Index (CPCI). We began by defining suitable keywords for our research. The search terms remained consistent across the six WoS digital libraries and included the following: "mandatory prosecution," "compulsory prosecution," and "discretionary prosecution." In the initial step, there were 16 results from these five databases as of this writing.

In summary, there are 46 outcomes from combining the searches of the Scopus and WoS systems. Of the 46 research studies identified, we excluded both duplicate papers and those written in languages other than English. As a result, 17 studies were removed. Among the remaining studies, one was excluded during the final stage due to its content, leaving us with a total of 28 papers. While [Figure 1](#) illustrates the process of data collection and analysis, these articles were further categorized as follows:

- The first group consists of studies examining the principle of MP in typical continental European countries undergoing transformations, such as Italy, Germany, and France.
- The second group includes studies that explore this principle in former socialist countries such as Poland, Croatia, and the Czech Republic.
- Surprisingly, the third group comprises studies that compare the principle of MP with discretionary prosecution in countries where discretionary prosecution is

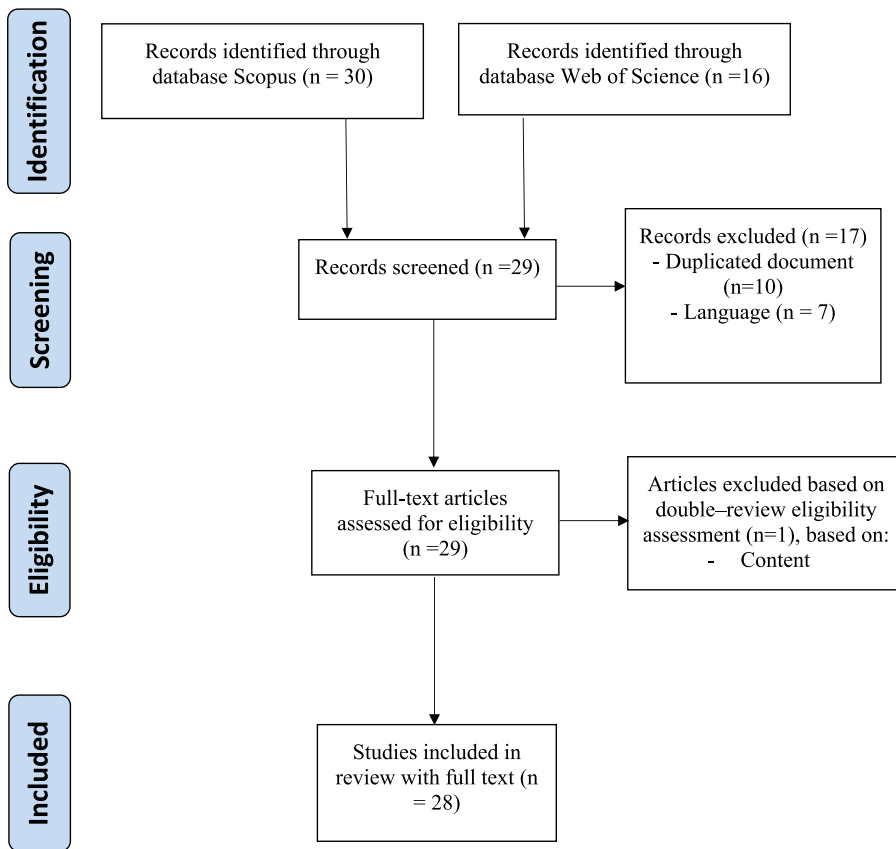


Figure 1. The process of identifying the selected studies.

currently implemented. Notable examples include Japan, South Korea, and the United States.

- The final group encompasses a handful of research articles on how the MP principle is used to handle political crimes, terrorism, and international offenses.

2. Data Analysis

Bibliometrics is a software tool for in-depth analysis of scientific literature using a science mapping approach, which is considered one of the common methods for conducting the SLR. Developed in the R language, this tool is known for its flexibility and seamless integration with other

statistical and graphical packages. When applied to the SLR, bibliometric studies provide a comprehensive overview of the publications that have influenced subsequent articles and others.²⁰

In the technical field, bibliometrics offers various methods for importing bibliographic data from Scopus and WoS. However, merging the bibliographic metadata from these two collections, which have different approaches, poses a complex challenge without open-access software. Meanwhile, the introduction of Biblioshiny has made bibliometrics more user-friendly and accessible, even for those without coding skills or knowledge, including researchers themselves. Therefore,

this study utilizes the Biblioshiny application, a web-based tool included in the bibliometric package, to analyze and create data matrices for co-citation, coupling, scientific collaboration, and other

purposes.²¹ Consequently, all analyses performed using the open-source R package bibliometrics through the Biblioshiny software will be presented in the subsequent section titled "Finding."

III. Findings

The corresponding searches related to the three research questions posed at the beginning of the study will be presented in detail. They are based on data from the two large databases, Scopus and WoS combined Bibliometrix.

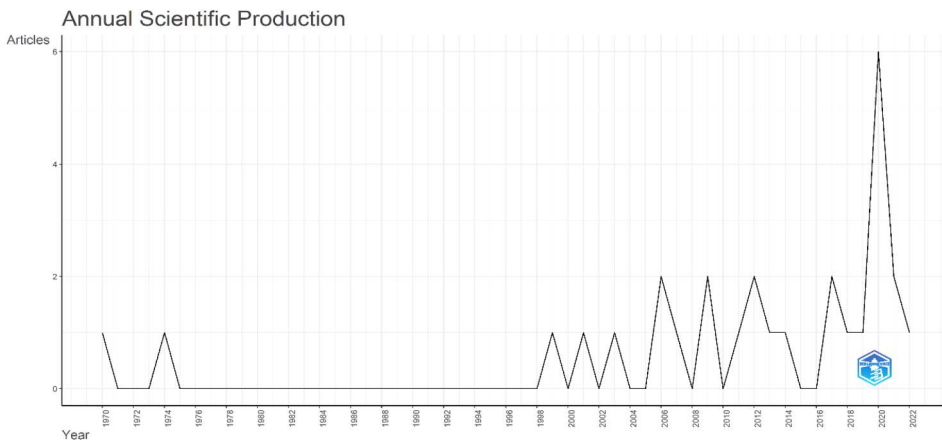
RQ1: What is the scope of research on the response to MP?

This RQ will be addressed by (1) the timeline of publication, (2) the national author's contributions, and (3) the most pertinent authors in research about MP.

1. Time and Year of Publication

This chart illustrates the years in which papers concerning MP worldwide were published from 1970 to 2022. As shown by this chart, there has been a fluctuation in the

number of research papers related to MP published over the years. The first article indicating initial interest in this topic was in 1970 by Shigemitsu Dando, titled "System of Discretionary Prosecution in Japan." However, it took four years, until 1974, for another article focused on the topic to appear, written by Joachim Herrmann, titled "The Rule of Compulsory Prosecution and the Scope of Prosecutorial Discretion in Germany." The subsequent period shows scarce interest in the topic, as no further publications related to MP were recorded from 1975 to 1998. However, the following period, from 2000 to 2022, saw a noticeable increase in interest in MP, with a significant rise in the number of research papers concerning it. In the first half of this period, approximately one article



would appear each year, with the number of articles fluctuating between one and two papers. The year 2020 recorded the highest number of research papers, with six publications. However, this quantity has not been maintained over the past two years, the number rapidly declining to two papers in 2021 and one paper in 2022.

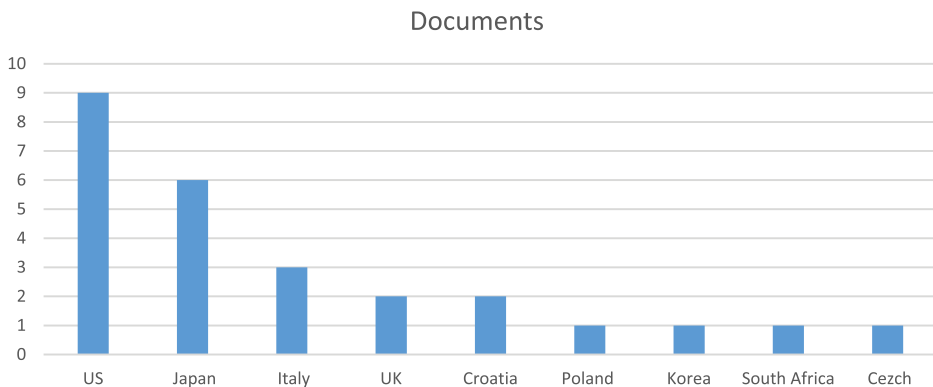
2. National Contributions

The bar chart below shows which countries contributed papers on MP. Although this principle boasts high universality and is related to the criminal justice policies of many nations, the data only records the involvement of nine countries worldwide. With nine publications, the United States leads in terms of the number of publications related to MP. Japan also shows an interest in this issue, ranking second with six publications. Italy is a notable country regarding MP, yet it has only recorded three publications, which are acknowledged in the databases Scopus and WoS. The United Kingdom and Croatia have an equal number of publications, two each, placing them in the fourth position. The remaining countries

include Poland, South Korea, South Africa, and the Czech Republic, each contributing an additional four works. From the data presented, it is surprising that a country like the United States, which advocates prosecutorial discretion, demonstrates such a significant interest in MP. Conversely, countries regarded as the birthplace of communism, such as Russia and China, which have strong ties to this principle, do not have any recorded publications related to MP.

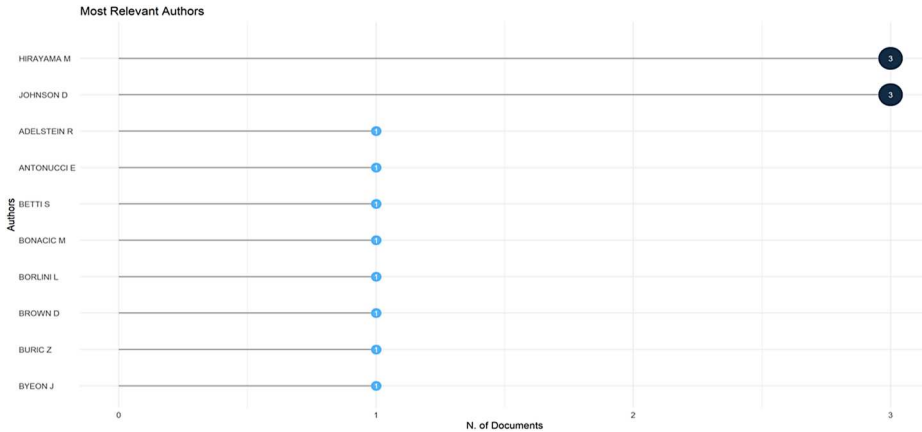
3. Authors

The line chart shows the authors of papers on MP. Generally, there is a specific number of authors interested in this issue. Among them, two prominent authors are David T. Johnson and Mari Hirayama, who have clusters of works related to this topic in Japan. These two authors co-wrote and contributed to three papers titled “Japan’s Reformed Prosecution Review Commission: Changes, Challenges, and Lessons,” “Lay Participation in Japanese Criminal Justice: Prosecution Review Commissions, the Lay-Judge System, and Penal Institution Visiting Committees,” and “Reflections on the TEPCO Trial: Prosecution and



Acquittal after Japan’s Nuclear Melt-down” between 2019 and 2020. The remaining authors each contribute one article related to this topic.

criminal law administration. Discretionary regimes are vulnerable to the risk of being insufficiently lawful, meaning that the law does not ade-



RQ2: What are the main reasons for maintaining MP?

Upon reviewing various works it is evident that the recognition and application of MP primarily stem from the following factors:

4. The Close Relationship between MP and the Principle of Legality

Darryl Brown has highlighted a fact regarding countries that adopt prosecutorial discretion: the relationship between the substance of criminal law and the procedural aspect of prosecutorial discretion presents two distinct risks.²² The first risk is that as lawmakers become increasingly reliant on prosecutorial discretion to compensate for poorly drafted statutes, they are less motivated to draft legislation carefully. The second risk pertains to criminal justice systems that depend on discretionary enforcement to adhere to the principles of

quately regulate them.²³ This concern is effectively addressed in countries that uphold the principle of MP.

Other authors examining the principle of MP in Italy have highlighted its connection to the principle of legality. Keisuke Nakao and Masatoshi Tsumagari have asserted that in European judiciaries, a case is nearly always brought to court as mandated by criminal laws, with the prosecutor’s discretion being severely restricted (referred to as “MP” or the “principle of legality”).²⁴ Author Rocco Neri indicated that the principle of MP functions as the embodiment of criminal legality within the framework of proceedings. Moreover, safeguarding the principle of legality also involves protecting the principle of substantive quality from the perspectives of both substantive criminal law and procedural criminal law.²⁵ Furthermore, a collective of authors, Francesco Rossi, Giulia Ducoli, and

Giuseppe Schena, emphasized that MP under Article 112 of the Constitution is embedded in the DNA of the Italian criminal justice system, alongside other fundamental principles such as procedural legality.²⁶

In agreement with the perspectives mentioned above, Krzysztof Krajewski, in his article on prosecution and prosecutors in Poland, highlighted that the prosecution process in Poland, like in other European countries such as Germany and Austria, is governed by the legality principle of MP. He further explained that this principle aims to ensure fair and impartial treatment of defendants, prevent the misuse of prosecutorial discretion, and protect prosecutors from influences favoring specific defendants.²⁷

In another development, Abiola Makinwa also demonstrated a series of evidence regarding the close relationship between these two principles by pointing out countries that apply the principle of MP. Specifically:

- In Austria, the Criminal Procedure Code establishes a strict principle of legality. Law enforcement authorities are obligated to investigate and prosecute offenses *ex officio* upon becoming aware of a suspicion of such an offense. Plea bargaining is prohibited in Austria.
- Similarly, in Argentina, the criminal justice system is based on the principle of legality and MP.
- The principle of legality and MP also applies in Spain.
- In Azerbaijan, prosecutors adhere to the principle of legality and MP.

The author also provided evidence that even countries that have expanded the principle of

opportunity still maintain a connection between the principles of MP and legality. These countries include Chile, Croatia, France, the Netherlands, Montenegro, and Norway.²⁸

5. Preventing Prosecutors from Arbitrary Abuse of Power

Today, there is a widely held perception of the public prosecutor as “the master of pretrial proceedings—*dominus litis*.” The prosecutor functions not only as a party in criminal proceedings but also as a public (repressive) entity that independently assesses the existence of legal requirements for criminal prosecution, initiates and conducts investigations, manages actions in pretrial proceedings, and ultimately makes decisions regarding the issuance of an indictment.²⁹ When the principle of MP is applied, the activities of the public prosecutor are governed by precise sequences of preparatory actions that are not discretionary. Public prosecutors are not allowed to suspend or delay investigations or press charges for mere convenience. Ermes Antonucci points out that from the outset of this principle’s establishment, it was introduced in Italy in 1948 with the adoption of the republican Constitution; this principle was created to prevent the exercise of prosecutorial powers in a discriminatory manner or being influenced by political power, as was the case during Fascism.³⁰

With a similar objective in mind, author Joachim Herrmann notes that in Germany, the Code of Criminal Procedure of the German Reich was enacted in 1877 and remains in force after numerous revisions. The Code embraced the principle of compulsory prosecution, considering the

equal enforcement of criminal law and protection against prosecutorial arbitrariness as paramount values. Concerns were raised that granting extensive discretion could lead to regional disparities in administering criminal law and might subject prosecutors to suspicions of being influenced by political motives and considerations of expediency.³¹ Allowing prosecutors to make selective decisions regarding prosecutions would expose them to potential risks. Author Rocco Neri refers to a speech delivered on the other side of the globe, where prosecutors enjoy considerable autonomy.³² This speech was given by United States Attorney General Robert Jackson in 1941, who later became a distinguished Supreme Court justice. Jackson underscored that if a prosecutor can choose which cases to pursue, they also possess the power to select whom to prosecute, thereby steering investigations to find evidence supporting alleged crimes by those individuals. He emphasized that this poses a significant danger inherent in the role of the prosecutor to both citizens and democracy. The powers granted to our public prosecutors, all of which are variously linked to the principle of obligation, render this danger much more serious and immediate than in any other country with a consolidated democracy.³³

This reality has also been acknowledged in South Korea, as authors Iljoong Kim and Jeawook Byeon admitted that prosecutors in South Korea prefer politically motivated or easy cases. On the contrary, prosecutors appear to have the least preference for violent crimes, property crimes, and particularly sexual crimes. Prosecuting these types of

crimes does not significantly contribute to career advancement, and it is generally more challenging to secure material evidence for them.³⁴

In studies on MP, the authors also emphasize that restricting discretionary powers in prosecutors is a prerequisite for ensuring equality in criminal justice. We will clarify this issue in the content below.

6. Ensuring Equality

Every criminal justice system strives to uphold the principle that “citizens are equal before the law.” When prosecutors decide not to pursue cases for various reasons—such as political influence, personal ambition, or even inability to gather sufficient evidence—author Ermes Antonucci asserts that the concept of MP was introduced to prevent public prosecutors from exercising biased authority or being swayed by political considerations. This ensures that all individuals are treated equally under the law.³⁵

Author Joachim Herrmann presents a similar viewpoint and asserts that in Germany, compulsory prosecution, except where otherwise stipulated by law, is considered a constitutional requirement based on the equal rights clause. As a result, the duty of mandatory charging aims to ensure equal treatment by minimizing arbitrary or discriminatory enforcement decisions.³⁶

Additionally, in his article, Ante Novokmet emphasizes that when establishing a European Public Prosecutor’s Office (EPPO) within the European Union (EU), one of the foundational principles for its operation is the principle of MP. In this context, the principle of MP is intended to ensure that all offenders

of criminal offenses are treated equally by the EPPO, free from discrimination on any grounds or influence from everyday politics. It involves initiating and carrying out criminal prosecutions only when there are reasonable grounds to believe that an offense within the EPPO's jurisdiction has occurred or is ongoing and when no procedural barriers exist to commencing proceedings. This guarantees that citizens are informed in advance about the conditions under which law enforcement and the EPPO are authorized to intervene in their fundamental rights and freedoms. This mitigates the risk of autocratic authorities taking action.³⁷

Another important point to note is that ensuring equality under this principle applies not only to individuals but also to legal entities. Simone Lonati and Leonardo S. Borlini point out that, unlike countries within the Common Law system that apply the principle of discretionary prosecution, the MP principle, which obligates prosecutors to investigate every reported criminal offense, is incompatible with negotiated settlements between public authorities and private corporations, such as deferred prosecution agreements or non-prosecution agreements, which are based on the principle of discretionary prosecution.³⁸

7. Compatibility with Legal Systems and Judicial Culture

It cannot be stated with absolute certainty that MP is exclusively compatible with the inquisitorial system prevalent in CIL countries. In contrast, DP is exclusively compatible with the adversarial system common in COL countries.³⁹

However, Nuno Garoupa made a broad observation, noting that MP is more suitable for nations where the prosecution is not excessively powerful, particularly in comparison to COL countries, which frequently apply DP. DP necessitates that prosecutors be afforded high levels of autonomy and independence, aligning with the adversarial model in COL systems where the prosecutor's role is not "secondary" to that of the judge or the executive branch. Concerning judges, in countries with a predominant inquisitorial system, the prosecutor's role is secondary to the judge; in those with a predominant adversarial system, the prosecutor has a specifically distinct role that is certainly not secondary to the judge.⁴⁰

About the executive branch, Nuno Garoupa offers a brief typology with categories defined by the values that define the system:

- (a) Hierarchy: the prosecutorial body has strong control over prosecutorial rights (eventually a monopoly) and a considerable degree of control over the agency's investigative resources and tactics (in some particular cases, the prosecutorial body also plays the adjudicative role of a judge).
- (b) Coordination: the prosecutorial body has more prosecutorial rights than the agency but limited ability to influence the agency's investigative decision-making.
- (c) Subordination: the prosecutorial body is weak (only reviews the evidence provided by the agency) or ultimately fully subordinated to the agency (it is a

branch of the enforcement agency).

From this, Garoupa asserts:

*Whereas the American model is somehow closer to the hierarchical system, the European model seems similar to a coordination system (with the United Kingdom being closer to the subordination model). As the prosecutor loses control over prosecution rights and allocation of investigative resources, the risk of not achieving prosecutorial goals is higher. Therefore, this is another reason to think that the European model should attract more risk-averse individuals than the American model. And if control over prosecution rights and allocation of investigation resources operate as an incentive device, the European model produces fewer incentives than the American model.*⁴¹

In the American model, Joachim Herman borrows the words of another, stating that “Americans may have considerable difficulty imagining a criminal justice system based on the concept that the prosecuting authority should have limited, rather than pervasive and uncontrolled, discretionary powers.”⁴²

The third factor that Nuno Garoupa mentions in addressing the question of why mandatory prosecution is preferred over selective prosecution is the “Organization of prosecution.” However, this can be expanded to include the factor of “judicial culture.” Mandatory prosecution is more suitable than discretionary prosecution in civil law systems, where prosecutors are bound by numerous standards and regulations within a comprehensive legal framework characterized by a high degree of systematization and codification. These systems feature specific rules that can be directly applied, including provisions of substantive and procedural criminal law

that guide prosecutors in their decisions. In contrast, prosecutors in common law systems face fewer restrictions on their prosecutorial activities. They operate within a judicial culture that values legal creativity derived from specific cases and emphasizes that the judicial system’s response must be tailored to the unique circumstances of each case, thus favoring discretionary prosecution. Organizationally, prosecutors in civil law systems are constrained by prosecutorial institutions, while their common law counterparts enjoy greater individual autonomy. Consequently, the opportunity to consider additional factors creates space to reward behavior that prosecutors deem desirable, promoting self-policing and self-reporting.⁴³ It appears that European prosecutors have less discretion and are more subject to the weight of bureaucracy. Thus, incentives are weaker for individual European prosecutors than for their American counterparts in this regard. It is worth noting that in many European countries, prosecutors are part of the judiciary and answerable to high judicial councils, a situation quite distinct from the American context.

8. Prevent Domestic Violence and Protect Its Related Victims

Ultimately, another perspective on the rights and needs of victims of domestic violence has sparked debates among American scholars regarding MP. The roots of this issue date back to the mid-1980s when some county prosecutors faced accusations of neglecting domestic violence cases.⁴⁴ These MP cases have been termed no-drop policies, evidence-based policies, or victimless

policies, all aimed at addressing intimate partner violence. Notably, the term MP carries different connotations in the perspectives of American researchers and appears frequently in various journal articles and book chapters. Under a “hard” or strict no-drop policy, a victim is warned that failure to respond to a subpoena to testify may lead to her arrest and incarceration, similar to the defendant. In contrast, a “soft” or flexible no-drop policy is presented to the public as firm; nonetheless, each victim is assured that if she opts not to prosecute, her request to withdraw charges will be honored, potentially after counseling or following the suspect’s initial court appearance.⁴⁵ In essence, in both scenarios, the victim’s decision-making ability is compromised once charges are filed. She will then serve as a witness in the case, while the state takes over as the complaining party.⁴⁶ However, the advantages of this policy were not clearly highlighted in certain studies, though they formed a basis in the literature.

The primary benefit of this policy was to protect victims of domestic violence from revictimization. For instance, prior to highlighting the victims’ perspective, Hare addressed the assertions made by Davis and Smith that “no-drop” regulations strip abusers of their power to threaten retaliation unless the charges are dropped.⁴⁷ Similarly, Guzik referenced Dawson’s viewpoint that the purpose of MP is to ensure the state takes action to safeguard victims from further harm.⁴⁸

The broader purpose of the MP in domestic violence was to protect the community. Finn referenced Goodman, Bennett, and Dutton in her paper, stating that the no-drop

policy was established to ensure better justice outcomes for victims and communities by preventing prosecutors from frequently dismissing domestic abuse cases due to the victim’s reluctance to proceed.⁴⁹ Another important aspect in Finn’s research revealed that this policy was welcomed because it clarified that domestic abuse is a crime against society, not solely against the individual who has been harmed. Additionally, other reasons for pursuing MP were discussed in these papers, such as Goolkasian’s (1986) assertion that it “increases the batterer’s guilty pleas” and Corsilles’ (1994) observation that “case attrition rates were lower.”⁵⁰ These factors could certainly serve as additional evidence for the previous sections.

RQ3: What are the main reasons for renewing MP

As a legal-political issue, replacing MP with DP raised many questions about DP’s advantages and disadvantages, including its cost trade-offs. However, numerous studies indicated that internal factors within each country were significant efforts toward achieving an adjustment. Based on our SLR process, the details of these factors are as follows.

9. The (Overweight) Workload for the Criminal Justice System

Pressure from a massive workload, along with many accused persons and defendants, is the main reason why judicial systems that have traditionally applied MP tend to move closer to DP. Europe is the cradle of MP, where prosecutors must prosecute the most serious offenses when the evidence clearly shows that

there is nothing to negotiate. But as Mary Finn points out, even a well-arranged trial consumes time and money, and if these are not enough to handle the current volume of cases under MP, the rule will have to be revised in some way to accommodate this fact.⁵¹

Another interesting case is that of Poland. Krajewski asserts that pressure from the MP compels prosecutors to prioritize bringing charges in the most trivial cases, not being permitted to dismiss them, and also because they offer an easy way for them to achieve “wins” and improve their statistical performance, leading to notable issues with “over-prosecuting.”⁵² Prosecutors and courts are inundated with petty cases, including those that attract public attention due to their absurdity. On a more serious note, the MP in Poland has even strained diplomatic relations between Poland and the UK, emphasizing Polish prosecutors’ fixation on minor offenders. More than half of the European Arrest Warrants processed by UK courts originated from Poland. Most of these cases involved trivial offenses, which frustrated the British government due to their obligation to cover the costs of court proceedings. If a suspect is abroad and there is no way to overturn the sentence, the prosecutor must temporarily suspend the investigation until the suspect is apprehended. However, excessive suspensions may create issues with the prosecutors’ superiors, who might interpret this as a sign of inefficiency. The most effective solution seems to be issuing a European Arrest Warrant; in that case, the British could then be blamed for failing to locate the suspect. This situation partly arises

from the rigid interpretation of the MP principle and the fundamental weakness of the inflexible hierarchical structure of the Polish prosecution, where justifying decisions to superiors takes precedence over making rational choices.⁵³

Italy is also a notable case that we study—a country so committed to the MP principle that it even constitutionalizes it. Many papers have highlighted the harms caused by the prosecution process, including (i) the prosecution of all crimes without evaluation, which contrasts with the need to ascertain the facts and achieve the detection and punishment of the offender. This is supported by pre-trial investigations that can last up to two years; (ii) the mandatory principle presents significant problems, including unequal treatment of crime reports, with considerable prejudice regarding the timing of their consideration, which varies based on the different organizational policies adopted by each Public Prosecutor’s Office.⁵⁴ In another paper, Ermes Antonucci pointed out the gap between the MP principle and its practical implementation in Italy, stemming from the large number of crime reports and the chronic lack of resources available to public prosecutors’ offices.⁵⁵ The heavy workload affects both prosecutors’ offices and courts. Over time, pending cases increase the backlog, limiting the Court’s ability to manage, proceed with, and rule on case files in a timely manner.⁵⁶ Among these cases, many involve serious or complex crimes that require substantial time and resources to resolve. Therefore, the constitutional principle of MP has not been displaced or amended, but it has gradually been

altered through the introduction of new rules.⁵⁷

In Asia, from the late nineteenth century, while most Western countries applied the MP principle, Japan opted for the DP method for handling minor offenses to lower imprisonment costs. It was officially established as a legal remedy in 1922 and is considered to have the positive effects of alleviating the burden of short-term penalties and promoting the rehabilitation of offenders. Conversely, despite being a nation that utilizes the DP principle, the overwhelming workload has created a vicious cycle in the reform process in Korea. In their research paper, Kim and Byeon point out the difficulties faced by prosecutors in Korea managing a large number of routine criminal cases, citing excessive workloads. According to data from the Supreme Prosecutors' Office of Korea, prosecutors in criminal departments nationwide are assigned over 1,600 cases each. This heavy caseload has forced prosecutors to prioritize simpler cases that align with their career paths. As a result, prosecutors may concentrate more on straightforward cases rather than those involving violent or property crimes.⁵⁸ Thus, the work pressure is so intense that a lack of resources, owing to high crime rates in unstable countries or a tendency toward over-criminalization, paints a bleak picture of reform.

In recent decades, caseload and resource pressures have compelled civil law justice systems to allow prosecutorial discretion, particularly for minor offenses. Yet, even in this context, sufficient elements of this prevailing perspective persist in contemporary legal traditions, serving to resist a move toward

granting extensive enforcement discretion to prosecutors as a solution for the shortcomings of substantive law.⁵⁹ This resistance is evident in the legislative process, where the principle of parliamentary sovereignty prompts legislative agencies to adopt often broadly defined offenses; numerous examples exist of statutes that are intentionally or unintentionally overinclusive. Civil law jurisdictions have long maintained that well-drafted codes can and should minimize the need for discretionary application as well as statutory interpretation of criminal laws.⁶⁰

Due to several factors such as the transnational scale of many of today's most serious forms of crime; security concerns; the increasing demand for stricter sanctions; the rise of populism; and the tendency to use criminal law primarily as a symbolic tool to reassure citizens and secure electoral consensus; the issue of penal legislation inflation, along with the overcrowding of public prosecutors' offices, appears to be increasingly prevalent in Europe as a result of MP.

10. Interest Factor and the Harmonization among Public and Private Interest

In terms of interest factor, MP, with its requirement to prosecute all crimes and criminals, whether for minor offenses or serious felonies, weak or strong cases, often leads to an overconsumption of social resources. Compared to DP, economists argue that MP is seen as inefficient when applied across all crimes. To optimize social benefits, the primary policy should lean toward discretionary prosecution, allowing prosecutors to

dismiss less severe cases or those lacking strong evidence. The application of mandatory prosecution is considered impractical, as it would produce a large number of individuals facing prosecution.⁶¹

Concerning the relationship between public and private interests, CIL countries typically establish strong states that intervene significantly in civil life. This model leads to greater state influence and control over criminal justice to protect public interests, as seen in mandatory prosecution in all cases, leaving no room for negotiation or plea bargaining, unlike COL systems that employ discretionary prosecution and plea deals.⁶² Among CIL countries, socialist nations have historically demonstrated even more robust state power, driven by subjective factors like the distinctive nature of a one-party political system and objective influences such as the effects of the Cold War, which necessitated a strong state presence. In some instances, the state's authority in criminal justice was even associated with the concept of "proletarian dictatorship," aimed at combating crime and counterrevolutionaries.

However, following the collapse of this system, the demand for social harmony became more prominent, necessitating alignment between public interests and those of other societal stakeholders. It is only at this point that "the legitimacy of criminal law" began to be more thoroughly understood. The legitimacy of criminal law implies that criminal interventions can only be justified when there is a need to protect fundamental legal values from acts that are dangerous or harmful to society in the absence of alternative solutions to criminal law.

The state's passivity could lead to serious consequences. Therefore, regarding substantive law, one of the fundamental principles is that only acts that are dangerous and harmful to society should be criminalized. In the realm of procedural criminal law, it is unnecessary to prosecute every crime, as this could potentially result in the abuse of criminal repression, contradicting the law's function within society and undermining its legitimacy.⁶³

These countries have recognized that discretionary prosecution is an effective solution that procedural criminal law can implement to better balance societal demands with the harmonization of various interests within society. Often, state institutions and international relations, along with the need to protect national security, are involved. A prosecutor's discretionary power can be exercised through non-prosecution decisions to safeguard other critical public interests, such as preventing sensitive national security information from being publicly exposed during criminal proceedings in terrorism-related cases. The choice not to prosecute may also serve as a bargaining chip when the offender is willing to cooperate with authorities. Contrary to being applied solely to minor offenses, the common law system of plea bargaining not only helps alleviate the courts' backlog but also acts as a powerful tool to obtain essential information leading to the arrest of other members of the same organization or affiliated criminal groups.⁶⁴

11. Political Factors

The principle of mandatory prosecution was once widely established in

communist countries, as it aligned with the mindset of the ruling communist parties in those nations. At its peak, this principle was highly regarded for the following characteristics:

First, communists have always emphasized the value of equality. They view the principle of MP as embodying the idea of “guaranteeing the equal treatment of all citizens under the law,” which will significantly contribute to achieving equality. This principle fundamentally involves equal prosecution of all crimes, fairness among offenders, and it also ensures equality for all victims. Equality is a central goal of communism, and in socialist countries, MP demonstrates the egalitarian nature of the communist regimes in these nations.

Secondly, while both aims seek to protect public interests, socialist countries implement MP to emphasize the state’s willingness for unwavering intervention through criminal justice institutions, characterized by new structures designed on Soviet ideas and principles, which are ostentatiously “progressive,” “proletarian,” and “revolutionary” in nature.⁶⁵ Here, the public interest pertains to the collective needs of society under the leadership of the Communist Party, and the MP for all crimes also embodies the political mission of the prosecution office, transforming it into “the general guardian of the ‘socialist rule of law’ and an ‘avant-garde of class struggle,’” serving as a tool for the Communist Party to combat various adversaries, whether political dissidents or ordinary criminals.⁶⁶

In contrast, adversarial systems view the prosecution as representative of society, as “the prosecutor is the plaintiff’s attorney where the

plaintiff is society or the community.”⁶⁷ Furthermore, DP protects public interests, but if criminal prosecution appears inappropriate or lacks purpose, it may not move forward, considering the extent of social harm caused by the crime and the intent behind the prosecution.⁶⁸

Thirdly, the principle of MP aligns with the principle of socialist legality as established in the constitutions and laws of communist nations. The principle of MP clarifies criminal legality within legal proceedings. It outlines the objective that laws enacted by the state to regulate society must be consistently applied and strictly followed.

Fourthly, the principle of MP is linked to the role of the state organ responsible for executing not only prosecutorial powers but also supervisory ones, specifically the procuratorate. During this time, the procuratorate functions as a general watchdog assigned to oversee compliance with the law by state administrations, local governments, and all civic, professional, cooperative, and self-governing bodies, as well as by citizens.⁶⁹ By exercising supervisory power, the procuratorate can identify law violations, equipping it with sufficient information to prosecute and compelling it to pursue all cases where criminal conduct has been established.

However, the factors mentioned above are merely the tip of the iceberg. The hidden part of the iceberg includes negative elements within the internal workings of the political and criminal justice systems in these countries, which have contributed to the collapse of communism and the evolving values and approaches to the application of the principle of MP in these regions today.

Firstly, the ideal of equality, where all crimes are prosecuted in theory, faces practical limitations due to the constraints on the resources of criminal justice agencies and, on a broader scale, societal resources. The idealization of equality in criminal justice had to yield when many former socialist countries had to embrace the principle of prosecutorial opportunity due to economic factors and the inefficiency of resources in pursuing unnecessary cases, as analyzed in the earlier part of this article regarding the factor of workload (overweight). Prosecuting all crimes may achieve equality in theory, but without considering the practical limitations of limited resources, it remains merely a formal concept. When transitioning to a capitalist system, former socialist countries had to recognize this reality to avoid overly ambitious goals and theoretical ideals.

Secondly, today, most former socialist countries no longer emphasize rigid adherence to the requirement of socialist legality and absolute compliance with the law. Compliance with the law, both in general and within criminal law, is now viewed from a more multidimensional perspective. These perspectives are also evident in the work of author Tereza Dleštíková. Furthermore, in this paper, the author references the views of Novotný, who points out that, beyond the previously mentioned factors, the legitimacy of criminal law is a crucial consideration. According to Novotný, the legitimacy of criminal law rests on the premise that criminal interventions can only be justified when necessary to protect fundamental legal values from dangerous or socially harmful acts for which there is no viable

alternative to criminal law. Failing to address such acts through the legal system could potentially lead citizens to take matters into their own hands, resulting in chaos in society.⁷⁰

Thirdly, the principle of socialist legality, which requires a high level of state oversight and control over various aspects of social life, grants significant power to the procuratorate—the state body assigned this task, as previously discussed. However, during the era of communism, like other state institutions, the prosecution authority did not prioritize the interests of society but instead existed to serve the interests of the ruling party and leadership class. The Procuracy functioned in a manner reminiscent of a military environment, was highly politicized, and became a tool for social control. It operated within a deeply politicized setting, advancing the political agenda and adhering to the directives of the higher authorities, particularly within the top-down model.⁷¹

As societies have become more democratic, the rule of law has replaced the legalistic approach and emerged as a new value in this political atmosphere. Currently, the supervisory role of the procuratorate has significantly diminished, evident in the cases of the Russian Federation, China, and Vietnam. Other countries have shifted to the procuracy model.

12. Respect for the Discretion of Victims of Domestic Violence

Getting back to the rights and needs of victims of domestic violence created a lot of apprehensions about reaming MP in domestic violence cases.

Firstly, Keith Guzik claimed in his investigation that MP exposes abusers to a range of power operations that manipulate them in various ways.⁷² So, the purpose to protect the victims could be failed. In another scenario, Mary Finn wondered what battered women want to achieve in the prosecution process.⁷³ Her study indicated that for many reasons—such as fear of retaliation or revictimization, love, or the need for financial resources and emotional support from the offender—not all battered women wanted to pursue the prosecution charge until it resulted in a conviction. The author suggested that prosecutors should establish effective communication with victims to understand these situations without uniformly imposing the MP policy on all parties.

Secondly, David Ford strongly commented in his article that a no-drop policy provides similar protections for system interests, and any assertions of victim protection are essentially empty platitudes intended to divert attention away from other, more important, prosecutorial goals.⁷⁴ The claims made by prosecutors that defendants coerce victims into dropping charges are merely grounds for controlling victims to retain strong cases and eliminate those who are not as committed. In ideal situations, MP increases the possibility of plea deals, which reduces the number of court proceedings.

Despite these differing and narrow perspectives, the conclusions above contributed to various thoughts on MP and its development trends.

IV. Discussion

Both mandatory and discretionary prosecution are well-regarded principles in countries with a long-standing legal tradition. These principles form the foundation for constructing the criminal procedure systems of each nation. Each system delineates the authorities involved at every stage of the proceedings, outlining their roles, duties, and powers, as well as the relationships among them. Like the themes in *Pride and Prejudice*, the former (MP) is often deeply entrenched, while the latter (DP) appears difficult to replace. However, although the concepts of mandatory and discretionary prosecution are distinct, they represent two sides of the same coin. In legal scholarship, experts have long examined which principle would prove more effective in the criminal justice

system. Keisuke Nakao and Masatoshi Tsumagari reference in their paper the contrasting opinions of numerous scholars regarding the superiority of each principle. For instance, Easterbrook and Landes argue that DP is more effective than MP.⁷⁵

Conversely, Garoupa argues that MP is preferable when prosecutors are adequately shielded from their outcomes or display risk aversion, as suggested by a decision-theoretic model.⁷⁶ Clearly, scholars have their reasons for asserting that this principle is superior to others. However, the authors of this study note that these two principles, while independent, share a close relationship with each other (two sides of the same coin). Therefore, in the articles and chapters the group has chosen to

review while discussing the principle of MP, it is only possible to write something about discretionary prosecution and vice versa. The authors' perspectives may vary, but only when both concepts are juxtaposed can the essence, advantages, and disadvantages of each principle be clarified and highlighted. Publications primarily demonstrate the advantages and disadvantages rather than presenting an extreme analysis of any principle.

By analyzing the content above, we have partially explained the advantages and limitations of the principle of MP. Many countries currently applying this principle tend to adapt strengths from the principle of discretionary prosecution, transforming them into a choice principle that operates alongside the principle of MP. For example, in Croatia, the principles of legality and MP are upheld, but in certain instances, the principle of opportunity may be applied. Article 206(d) of the Criminal Procedure Code states that the prosecuting authority can decide to postpone and ultimately dismiss criminal prosecution for offenses punishable by a monetary fine or imprisonment of up to five years if the suspect agrees to fulfill one or more obligations outlined in the Criminal Procedure Code.⁷⁷ Similarly, in Poland, which also follows the principles of legality and MP, defense mitigation may be presented to the prosecutor. Articles 335 and 387 of the Criminal Procedure Code allow for a resolution to be reached between an alleged wrongdoer and the authority administering justice, resulting in a more lenient sentence and the closure of the case.⁷⁸ Even in Italy, considered the birthplace of MP, there are ongoing efforts to

balance and enhance the effectiveness of prosecution. Italian authors have highlighted the inherent limitations of this principle, including the heavy workload and the inevitable need to harmonize the principles in the future.⁷⁹ Interestingly, countries that adhere to the principle of discretionary prosecution also partially embrace MP and recognize the inherent limitations of this principle. It can be said that the trend toward harmonization is a choice that countries are making as they strive to adopt the essence of both principles and create a balanced and effective approach.

Some civil law and post-Soviet countries are eager to renew MP in their judicial reform. However, this cannot be a revolution because of the complex nature of the issue. Moreover, each change may require a constitutional adjustment. To help readers better understand the process of transition between these two fundamental principles from the articles selected for analysis, our group has structured a harmonious procedure between the two MP and DP principles based on three specific options of harmonization.

1. Option 1: Open-Minded about Mandatory Prosecution While Watching over Discretionary Prosecution

In countries such as Italy, Poland, and the Czech Republic, the perspective on MP has been slightly modified. In Italy—the only Western country where the principle of MP is enshrined at the constitutional level—one author emphasizes that the Public Prosecutor's discretionary power is neither free nor uncontrollable; instead, it is an obligation

defined solely by the need to integrate the case through investigation and a precise understanding of concrete facts, followed by making a reasonable decision based on those facts.⁸⁰ Similarly, another commentator in Poland notes that there is a growing belief that the MP principle, intended to prevent arbitrary, unequal, or discretionary variations in treatment, is creating issues that no one knows how to resolve. Courts and prosecutors are overwhelmed with minor cases, some of which make national news due to their absurdity. Prosecutors bring these cases to court because they cannot ignore them, and it is easy to investigate and win such cases.⁸¹

In particular, several articles in the Czech Republic examine the relationship between substantive law (criminal provisions of the Penal Code) and procedural law (regulations of the Criminal Procedure Code). The author explains that the necessity of criminal prosecution should be derived from the goal of protecting society. There will be many instances where prosecution is not warranted if this goal is not met.⁸² This perspective is reflected in Darryl K. Brown's article, where he notes that prosecutorial discretion is one of two pathways for closing the gap between liability and culpability.⁸³

This is why the perspective on discretionary prosecution is no longer merely a reflection of the common-law legal system, which harbored fears of unjust prosecution and disregard for criminals. Instead, it is regarded as a "flexible" solution to address certain challenging issues for countries within the civil law system. The perceptions of MP and DP have evolved. MP emphasizes formal equality, where all crimes are

prosecuted, while DP aims for substantive equality in each specific case. DP strives for individualized fairness, taking into account the necessity of prosecution based on various factors, including those related to the offense, the offender's background, and their behavior.⁸⁴

2. Option 2: Reviewing Available Provisions that Represented Discretionary Prosecution

In some cases, replacing MP with DP did not initiate the application of the prosecution in its full sense. In countries such as Poland, the Netherlands, Turkey, Romania, and Serbia, authorities focus on a more effective implementation of existing regulations, which can be seen as elements of prosecutorial discretion. For example, in Poland, the law allows for some exceptions, primarily stemming from the substantive concept of an offense outlined in Article 1, paragraph 2 of the Criminal Code. This is sometimes interpreted as granting prosecutors considerable latitude to refrain from prosecution.⁸⁵ In Chile, the principle of opportunity works alongside the principle of legality and MP. Under sections 237 and 238 of the Chilean Code of Criminal Procedure, prosecutors are allowed, under specific conditions, to propose to one or more defendants an alternative mechanism to postpone the investigation, known as the conditional adjournment of the investigation.⁸⁶ In Croatia, the principle of legality and MP are predominant. However, in certain circumstances, the principle of opportunity may be applied. In the Netherlands, the principle of legality (without MP) coexists with the principle of opportunity. Article

74 of the Dutch Penal Code permits the public prosecutor to resolve (transactions) cases involving criminal offenses punishable by imprisonment of fewer than six years. In Montenegro, the principle of opportunity allows the public prosecutor to decide to delay criminal prosecution for offenses punishable by a fine or imprisonment for up to five years if it is determined that pursuing criminal proceedings is not practical, considering the nature of the offense, the circumstances of its commission, and the offender's history and personal characteristics, provided that the suspect agrees to fulfill one or more obligations specified by this Code.⁸⁷ Although the so-called "principle of opportunity" did not grant prosecutors significantly greater authority in every case, it opened an additional avenue for alleviating the burden of proof.

In summary, when applying the principle of opportunity in these countries, the relevant conditions primarily involve the following considerations:

- (1) The act's impact on the public interest is not significant.
- (2) The accused's role in the perpetration of the act is minor.
- (3) The potential penalty for the act is minor.

Additionally, factors such as the offender's age, personal characteristics, and criminal history will be considered when determining whether to initiate criminal proceedings.

3. Option 3: Strictly Control Discretion Prosecution

MP countries and discretionary prosecution ones could interpret option

3 in two ways. The former must provide and carefully implement new criminal procedures in accordance with the concept of discretionary prosecution. In contrast, the latter has started to limit the powers of prosecutors by establishing new guidelines.

In some countries, the shift toward discretionary prosecution may be somewhat stronger when new provisions in the Criminal Procedure Code bear similar names to those in countries that implement discretionary prosecution. However, the application of these regulations remains cautious and accompanied by specific oversight measures; for instance, in Poland, which also follows the principle of legality and public prosecution, Articles 335 and 387 of the Criminal Procedure Code permit a resolution to be reached between an alleged offender and an authority administering justice. This resolution may result in a more lenient sentence than would otherwise be imposed, and the case is subsequently closed. However, unlike the provisions in the U.S., this is not contingent upon a guilty plea.⁸⁸ Moreover, the new Polish regulations enable the court to request that the prosecutor provide additional evidence but have not yet officially reverted the case to the investigation stage. This also rules out the possibility of the Procuracy Office suspending the case. The change in law is aimed at enhancing the accountability of prosecutors regarding the quality of investigations and evidence.

In the rest of the world, countries adopting discretionary prosecution seek to restore the values of MP. The history of the adversarial system and discretionary prosecution, as

noted by Jonakait, propels these countries to stage 3 of harmonization.⁸⁹ Specifically, in Japan, “the MP power granted to Kensatsu Shin-sakai (Prosecution Review Com-missions, or “PRCs”) is one of three reforms designed to increase lay participation over the last decade. PRC members review non-charge decisions made by Japanese prosecu-tors.”⁹⁰ The prospect of MP through PRC review undoubtedly prompts prosecutors to pursue some cases more aggressively than they other-wise would. However, quantifying

the frequency of this “hidden impact” proves impossible.

Another example is MP in dom-estic violence cases in the U.S. “County prosecutors, who were criti-cized for neglecting domestic vio-lence cases until the mid-1980s, are now encouraged to pursue MP.”⁹¹ The reasons behind these countries’ shift toward MP fall outside the scope of this paper. Nevertheless, the legal actions they have taken partly reflect the balance of compet-ing interests in resolving criminal cases.

V. Conclusion

Mandatory prosecution (MP) is a component of certain justice systems in which prosecutors are required to file charges if there is sufficient evi-dence to support a conviction. This contrasts with discretionary prosecu-tion (DP), where prosecutors have significant latitude in deciding whether and how to proceed with prosecution. The former is employed in criminal procedure law (e.g. Germany) and is mandated by the Constitution (e.g. Italy). Conversely, other countries (e.g. the United States) do not impose this require-ment and foster the practice of plea bargaining as part of DP. In either case, any changes may necessitate a constitutional amendment, which involves a complex process for each state to manage its transition regard-ing these two fundamental prin-ciples. Therefore, the primary aim of this paper is to explore the research scope relating to MP and identify the main reasons for either maintain-ing or renewing MP before discuss-ing three specific harmonization options to modify or adjust the two

principles based on various case studies. This paper employs a sys-tematic literature review (SLR) to search the Scopus and Web of Science (WoS) databases from 1970 to 2022, analyzing a total of 28 papers (English only) to review and assess the implementation of either MP or DP principles in different countries. Our findings demonstrate that MP persists due to its sustainable values, such as legality and equality, and its overwhelming ability to prevent criminal justice from arbi-trary and abuse of power. As two sides of one coin, either MP or DP has advantages and disadvantages to maintaining the rule of law, integ-ity, transparency and/or abuse of powers of each jurisdiction. Thus, we also identified and illustrated at least three options to help wide audi-ences better understand the tran-sition process of these two fundamental principles based on a harmonious procedure. Finally, but also to conclude the discussion, we also acknowledge the lack of research in English and in the Scopus database

from socialist or former socialist countries that have adopted MP. This raises doubts for the authors' group about whether these countries are still adhering to this principle or if there have been any changes.

Notes

[The authors sincerely thank the Vietnam National University, Hanoi — University of Law, for their valuable support during the execution of this project. We would also like to express our gratitude for the specific recommendations from the editor-in-chief and two anonymous reviewers.]

[**Disclosure Statement:** No potential conflict of interest was reported by the author(s).]

[This article has been completed as part of a research project funded by the Vietnam National Foundation for Science and Technology Development (NAFOSTED) under grant number (505.01-2023.07).]

1 Article 6 of the *Declaration of the Rights of Man and of the Citizen* of the French Revolution (1789).

2 See Neri, "The Strange Case," 597.

3 See Krajewski, "Prosecution and Prosecutors," 82.

4 See Erhard, Jensen, and Zaffron, "Integrity." The authors point out that legality is defined by taking the state's role into account as the system of laws and regulations of right and wrong behavior that are enforceable by the state (federal, state, or local governmental body in the United States) through the exercise of its policing powers and judicial process, with the threat and use of penalties, including its monopoly on the right to use physical violence.

5 See Nakao, and Tsumagari, "Discretionary vs. Mandatory Prosecution," 1.

6 See Neri, "The Strange Case," 595.

7 See Krajewski, "Prosecution and Prosecutors," 81.

8 See Herrmann, "The rule of compulsory prosecution," 470.

9 See note 5 above.

10 See Makinwa, "Public private cooperation."

11 Some basic contents of the Discretionary Prosecution could be found in Article 40

in the Criminal Procedure Code of the French Republic, Article 152 and other articles in the Criminal Procedure Code of the Federal Republic of Germany.

12 See Antonucci, "The Evolution of the Principle," 2.

13 Some basic contents of the Discretionary Prosecution could be found in Article 175 Criminal Procedure Code of China, Article 226 Criminal Procedure Code of Russia.

14 See Brown, "How Criminal Law Dictates," 5.

15 See Catherine, and Byrne, "The Benefits of Publishing."

16 See Xiao, and Watson, "Guidance on Conducting"; Newman, and Gough, "Systematic Review."

17 See Gough, David, and Oliver, "Introduction to Systematic Reviews."

18 See Moher et al., "Preferred Reporting Items."

19 See Li, Rollins, and Yan, "Web of Science Use."

20 See Cuccurullo, Aria, and Sarto, "Foundations and Trends."

21 See Aria, and Cuccurullo, "Bibliometric: An R-tool."

22 See Brown, "How Criminal Law Dictates."

- 23 Ibid.
- 24 See Nakao, and Tsumagari, "Discretionary vs. Mandatory Prosecution."
- 25 See Neri, "The Strange Case."
- 26 See Rossi, Ducoli, and Schena, "Pre-trial Procedure in Italy."
- 27 See Krajewski, "Prosecution and Prosecutors."
- 28 See Makinwa, "Public private cooperation."
- 29 See Novokmet, "European Public prosecutor's Office."
- 30 See Antonucci, "The Evolution of the Principle."
- 31 See Herrmann, "Rule of Compulsory Prosecution"; Kim and Byeon, "Discretionary Prosecution of Regulatory."
- 32 See Neri, "The Strange Case."
- 33 Ibid.
- 34 See Kim, and Byeon, "Discretionary Prosecution of Regulatory."
- 35 See Antonucci, "The Evolution of the Principle."
- 36 See Herrmann, "Rule of Compulsory Prosecution."
- 37 See Novokmet, "European Public prosecutor's Office."
- 38 See Lonati, and Borlini, "Corporate Compliance and Privatization."
- 39 See Rossi, Ducoli, and Schena, "Pre-trial Procedure in Italy."
- 40 See Garoupa, "Some Reflections."
- 41 Ibid., 27.
- 42 See Herrmann, "Rule of Compulsory Prosecution," 468.
- 43 See Makinwa, "Public private cooperation," 248.
- 44 See Hare, "What Do Battered Women," 611.
- 45 See Ford, "Coercing victim participation," 671.
- 46 See Choudhry, "Mandatory Prosecution and Arrest," 17.
- 47 See Hare, "What Do Battered Women."
- 48 See Guzik, "The Forces of Conviction."
- 49 See Finn, "Evidence-based and Victim-centered."
- 50 Ibid., 444.
- 51 Ibid.
- 52 See Krajewski, "Prosecution and Prosecutors."
- 53 Ibid.
- 54 See Neri, "The Strange Case," 599.
- 55 See Antonucci, "The Evolution of the Principle."
- 56 See Rossi, Ducoli, and Schena, "Pre-trial Procedure in Italy."
- 57 See Antonucci, "The Evolution of the Principle."
- 58 See Kim, and Byeon, "Discretionary Prosecution of Regulatory."
- 59 See Brown, "How Criminal Law Dictates."
- 60 Ibid.
- 61 See Garoupa, "Some Reflections."
- 62 See Rossi, Ducoli, and Schena, "Pre-trial Procedure in Italy."
- 63 See Dleštíková, "(De) criminalisation of psychedelics."
- 64 See Betti, "The Duty to Bring."
- 65 See Krajewski, "Prosecution and Prosecutors," 83.
- 66 Ibid., 84.
- 67 See Garoupa, "Some Reflections," 27.
- 68 See Dleštíková, "(De) criminalisation of psychedelics."
- 69 See Krajewski, "Prosecution and Prosecutors."
- 70 See Dleštíková, "(De) criminalisation of psychedelics."
- 71 See Krajewski, "Prosecution and Prosecutors."
- 72 See Guzik, "The Forces of Conviction."

73 See Finn, "Evidence-based and Victim-centered."

74 See Ford, "Coercing victim participation."

75 See Nakao, and Tsumagari, "Discretionary vs. Mandatory Prosecution."

76 See Garoupa, "Some Reflections."

77 See Karas, Bonacic, and Buric, "Pre-trial procedure in Croatia."

78 See Makinwa, "Public private cooperation."

79 See Antonucci, "The Evolution of the Principle"; Neri, "The Strange Case"; Rossi, Ducoli, and Schena, "Pretrial Procedure in Italy."

80 See Neri, "The Strange Case."

81 See Krajewski, "Prosecution and Prosecutors."

82 See Dleštíková, "(De) criminalisation of psychedelics."

83 See Brown, "How Criminal Law Dictates."

84 See Dleštíková, "(De) criminalisation of psychedelics."

85 See Krajewski, "Prosecution and Prosecutors."

86 See Makinwa, "Public private cooperation."

87 Ibid.

88 See Krajewski, "Prosecution and Prosecutors."

89 See Jonakait, "The Rise of."

90 See Steele et al., "Lay participation in Japanese."

91 See Hare, "What Do Battered Women."

CRediT Statement

Conceptualization: HTL, LCL, STM, LCL. Writing – original draft: NTP, YHH, STM, DQN. Methodology: HTL, STM, LCL. Formal analysis: HTL, LCL, NTP, YHH, STM, DQN. Project administration: STM, DQN. Data curation: HTL, LCL.

ORCID

Lan Chi Le  <http://orcid.org/0000-0002-8300-866X>

Hai Thanh Luong  <http://orcid.org/0000-0003-2421-9149>

Bibliography

- Antonucci, Ermes. "The Evolution of the Principle of Mandatory Prosecution in Italy. A Problematic Case of Gradual Institutional Change" *International Journal of Law, Crime and Justice* 66 (2021): 1–10. doi:10.1016/j.ijlcj.2021.100481.
- Aria, Massimo, and Corrado Cuccurullo. "Bibliometrix: An R-tool for Comprehensive Science Mapping Analysis." *Journal Informetr* 11, no. 4 (2017): 959–975. doi:10.1016/j.joi.2017.08.007.
- Betti, Stefano. "The Duty to Bring Terrorists to Justice and Discretionary Prosecution." *Journal of International Criminal Justice* 4, no. 5 (2006): 1104–1116. doi:10.1093/jicj/mql055.
- Brown, Darryl. "How Criminal Law Dictates Rules of Criminal Procedure." *Rutgers University Law Review* 70 (2017): 1093–1115.
- Catherine, Pickering, and Jason Byrne. "The Benefits of Publishing Systematic Quantitative Literature Reviews for PhD Candidates and other Early-career Researchers." *High Educ Res Dev* 33, no. 3 (2014): 534–548. doi:10.1080/07294360.2013.841651.
- Choudhry, Shazia. "Mandatory Prosecution and Arrest as a Form of Compliance with Due

- Diligence Duties in Domestic Violence - the Gender Implications." In *Rights, Gender and Family Law*, edited by Julie Wallbank, Shazia Choudhry, and Jonathan Herring, 152–117. London: Routledge-Cavendish, 2009.
- Cuccurullo, Corrado, Massimo Aria, and Fabrizia Sarto. "Foundations and Trends in Performance Management: A Twenty-Five Years Bibliometric Analysis in Business and Public Administration Domains." *Scientometrics* 108 (2016): 595–611. doi:10.1007/s11192-016-1948-8.
- Dleštíková, Tereza. "(De) Criminalisation of Psychedelics in the Czech Republic—Where Are We Heading in Drug Policy and Legislation?" *International Journal of Drug Policy* 110 (2022): 103900. doi:10.1016/j.drugpo.2022.103900.
- Finn, Mary. "Evidence-Based and Victim-centered Prosecutorial Policies: Examination of Deterrent and Therapeutic Jurisprudence Effects on Domestic Violence." *Criminology & Public Policy* 12, no. 3 (2013): 443–472. doi:10.1111/1745-9133.12049.
- Ford, David. "Coercing Victim Participation in Domestic Violence prosecutions." *Journal of Interpersonal Violence* 18, no. 6 (2003): 669–684. doi:10.1177/0886260503253872.
- Garoupa, Nuno. "Some Reflections on the Economics of Prosecutors: Mandatory vs. Selective Prosecution." *International Review of Law and Economics* 29, no. 1 (2009): 25–28. doi:10.1016/j.irle.2008.07.001.
- Gough, David, Sandy Oliver, and Thomas James. *An Introduction to Systematic Reviews*. London: SAGE Publications, 2017.
- Guzik, Keith. "The Forces of Conviction: The Power and Practice of Mandatory Prosecution Upon Misdemeanor Domestic Battery Suspects." *Law & Social Inquiry* 32, no. 1 (2007): 41–74. doi:10.1111/j.1747-4469.2007.00049.x.
- Hare, Sara. "What Do Battered Women Want? Victims' opinions on Prosecution." *Violence and Victims* 21, no. 5 (2006): 611–628. doi:10.1891/0886-6708.21.5.611.
- Herrmann, Joachim. "The Rule of Compulsory Prosecution and Scope of Prosecutorial Discretion in Germany." *The University of Chicago Law Review* 41, no. 3 (1973): 468–505.
- Jonakait, Randolph. "The Rise of the American Adversary System: America Before England." *Widener Law Review* 14, no. 2 (2008): 323–355.
- Karas, Elizabeta, Zoran Burić, and Bonačić Marin. "Pretrial Procedure in Croatia." In *A Comparative Analysis of Pre-Trial Procedure in Europe: The Search for an Ideal Model*, edited by Edward Johnston, Rahime Erbas, and Dan Jasinski, 19–40. Istanbul: Istanbul University Press, 2020.
- Kim, Iljoong, and Jaewook Byeon. "Discretionary Prosecution of Regulatory Crimes: Disproportionate Emphasis and Consequences to Other Serious Crimes." *Asia-Pacific Journal of Regional Science* 1 (2017): 559–587. doi:10.1007/s41685-017-0052-2.
- Krajewski, Krzysztof. "Prosecution and Prosecutors in Poland: in Quest of Independence." *Crime and Justice* 41, no. 1 (2012): 75–116. doi:10.1086/665611.
- Li, Kai, Jason Rollins, and Erjia Yan. "Web of Science Use in Published Research and Review Papers 1997–2017: A Selective, Dynamic, Cross-domain, Content-based Analysis." *Scientometrics* 115 (2018): 1–20. doi:10.1007/s11192-017-2622-5.
- Lonati, Simone, and Leonardo Borlini. "Corporate Compliance and Privatization of Law Enforcement. A Study of the Italian Legislation in the Light of the U.S. Experience." In *Negotiated Settlements in Bribery Cases. A Principled Approach*, edited by Tina Søreide, and Abiola Makinwa, 280–308. Cheltenham: Edward Elgar Publishing, 2020.
- Makinwa, Abiola. "Public-Private Cooperation in Anti-Bribery Enforcement Nontrial Resolutions as a Solution." In *Negotiated Settlements in Bribery Cases. A Principled Approach*, edited by Tina Søreide, and Abiola Makinwa, 42–67. Cheltenham: Edward Elgar Publishing, 2020.
- Moher, David, Alessandro Liberati, Jennifer Tetzlaff, and Douglas Altman. "Preferred Reporting Items for Systematic Reviews and Meta-Analyses: The PRISMA Statement." *PLoS Medicine* 6, no. 7 (2009): e1000097. doi:10.1371/journal.pmed.1000097.
- Nakao, Keisuke, and Masatoshi Tsumagari. "Discretionary vs. Mandatory Prosecution: A Game-Theoretic Approach to Comparative Criminal Procedure." *Asian Journal of Law and Economics* 3, no. 1 (2012): 1–14. doi:10.1515/2154-4611.1071.
- Neri, Rocco. "The Strange Case of Italian Criminal Prosecution." *The Lawyer Quarterly* 11, no. 4 (2021): 595–604.
- Newman, Mark, and David Gough. "Systematic Review in Educational Research: Methodology, Perspectives and

- Application." In *Systematic Reviews in Educational Research: Methodology, Perspectives and Application*, edited by Olaf Zawacki-Richter, Michael Keeres, Svenja Bedenlier, Melissa Bond, and Katja Buntins, 3–22. London: Springer, 2020.
- Novokmet, Ante. "The European Public Prosecutor's Office and The Judicial Review of Criminal Prosecution." *New Journal of European Criminal Law* 8, no. 3 (2017): 374–402. doi:[10.1177/2032284417729934](https://doi.org/10.1177/2032284417729934).
- Rossi, Francesco, Giulia Ducoli, and Giuseppe Schena. "Pretrial Procedure in Italy." In *A Comparative Analysis of Pre-Trial Procedure in Europe: The Search for an Ideal Model*, edited by Edward Johnston, Rahime Erbas, and Dan Jasinski, 110–132. Istanbul: Istanbul University Press, 2020.
- Steele, Stacey, Carol Lawson, Mari Hirayama, and David Johnson. "Lay Participation in Japanese Criminal Justice: Prosecution Review Commissions, the Lay-Judge System, and Penal Institution Visiting Committees." *Asian Journal of Law and Society* 7, no. 1 (2020): 159–189. doi:[10.1017/als.2019.22](https://doi.org/10.1017/als.2019.22).
- Xiao, Yu, and Maria Watson. "Guidance on Conducting a Systematic Literature Review." *Journal of Planning Education and Research* 39, no. 1 (2019): 93–112. doi:[10.1177/0739456X17723971](https://doi.org/10.1177/0739456X17723971).
- Yamamura, Takehiko, Hiroshi Kinoshita, and Shigeru Hishida. "The Role of The Public Prosecutor with Treatment of Suspects Involving Suspended Prosecution Disposition in Accordance with The Crime Investigation Policy of Police in Japan." *Journal of Police Science & Management* 13, no. 4 (2011): 348–363. doi:[10.1350/ijps.2011.13.4.230](https://doi.org/10.1350/ijps.2011.13.4.230).