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"We Can't Just Do It Any Which Way" – Objectivity Work among Swedish Prosecutors

Abstract

Objectivity is a principle widely acknowledged and honoured in contemporary society. Rather than treating objectivity as an *a priori* defined category to be tested empirically, I refer to the construction of objectivity as it is accomplished in practice as "objectivity work" and consider how Swedish prosecutors in interviews make and communicatively realize (i.e. "make real") its claims. In analyzing two facets of objectivity work – maintaining objectivity and responses to objectivity violations – seven mechanisms are identified: appeals to (1) regulation, (2) duty, and (3) professionalism; responses to violations by (4) incantations of objectivity, (5) corrections, (6) proclamation by contrast, and (7) appeals to human fallibility. Directions for future research emphasize cross-cultural and cross-occupational comparisons, not only within the judiciary as objectivity is of a general concern in any area where disinterested truths are claimed. The concept of objectivity work allows one to study how various actors bring principle into everyday life.

Keywords

Objectivity work; Prosecutors; Accounts; Ethnomethodology; Constructionism; Sweden.

Objective legal proceedings are something of a criterion for a constitutional state. Objectivity should facilitate, if not guarantee, equality before the law. Agents within the legal system often equate this unwavering idea with legal practices: it is understood that the majority of trials take place in a process devoid of value judgments (Conley and O'Barr 1990:60; cf. Baumgartner 1994:130). For decades, social researchers of legal settings have continuously claimed this assumption to be wrong (Conley and O'Barr 1990). Also, in popular culture, questions of whether the legal process has been upheld or violated in terms of equality before the law serve as a major critical theme (e.g. Rogers and Erez 1999). Studies of prosecutors' decision-making are generally guided by these concerns, striving to determine, or measure, whether prosecutors make objective decisions.

This article takes a different point of departure. Objectivity is not seen as an external category that *a priori* is defined for empirical testing. Rather, it is viewed as it is manifested in people's related legal practices, namely, the everyday work of how prosecutors themselves refer to and demonstrate objectivity as a fundamental goal

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when they talk about their work. In practice, objectivity must be construed and assigned meaning in relation to the concrete particulars of prosecutorial routines. I refer to the construction of objectivity as it is accomplished in practice as "objectivity work" and consider how Swedish prosecutors in particular, make and communicatively realize (i.e. "make real") its claims.

Objectivity is almost always of a general concern when it comes to studies of prosecutors. Still, the practice of objectivity *work* is seldom (if ever) investigated there; the main focus is almost exclusively on decision-making outcomes and its variation with regard to extra-legal factors such as the effects of race on prosecutorial decision-making. Studying objectivity work does not mean that the leading question is whether prosecutors actually make objective and neutral decisions. The aim rather is to investigate how prosecutors talk about and "do objectivity" in their accounts of professional practice.

From an ethnomethodologically influenced point of departure, interest is directed towards how abstract categories such as rationality (Garfinkel 1988), justice (Maynard & Manzo 1993) or – in this case – objectivity are accomplished and manifested in people's everyday practice. My ambition is not only to investigate the prosecutors' explicit "declarations of objectivity" but also the more subtle demonstrations of "an objective stance". But how do we know when and how people accomplish objectivity without defining the concept? What are the markers or indications of objectivity to guide the analysis? For analytical purposes, it is assumed that we share certain basic associations and assumptions as to what characterizes objectivity. The concept of objectivity is generally associated with impartiality, neutrality and an emphasis on the factual. It is not associated with emotional or personal accounts. A common western cultural conception is that, in the administration of justice, objectivity should facilitate (if not guarantee) equality before the law.

The legal world is one of many settings where objectivity work may be studied. The Swedish legal system offers an interesting case since there are strong beliefs that the Swedish legal system is unparalleled in being an impartial and neutral system. For instance, the widespread idea that Sweden is a non-corrupt country is evident in the Transparency International Corruption Perceptions Index (TI 2006). Another example is that any potential discrimination in the Swedish legal system has long been regarded "as a non-issue in Swedish research" (Diesen, Lernestedt, Lindholm, Pettersson 2005:134). This serves as a possible explanation for the neglect of this as a political and especially as a research issue; the regulation of the Swedish administration of justice is assumed to either render discrimination impossible or make it extremely difficult.

Objectivity work and related research

Principle, while broadly upheld, does not translate into the construction of related matters of everyday life for prosecutors. The concept of objectivity work turns our attention to the construction process, as the constructive sense of "work" does in a related research literature dealing with the everyday construction of identity, biography, and social problems. The addition of the concept of work – as in identity work (Snow and Anderson 1987), biographical work (Holstein and Gubrium 2000), and social problems work (Holstein and Miller 2003) – points to the continuous and practical features of meaning-making, which in the case of prosecutorial decision-making, indicates how objectivity as principle is construed in practice. Concepts such

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as identity, biography, and culture are commonly used in reified forms as "something you have" (cf. Berger and Luckman 1966). Similarly, objectivity tends to take on personified versions, referring to "something you are" (cf. Rogers and Erez 1999:268). Yet, people just don't "have" an identity or "are" objective. Something must be done to achieve and maintain these as states of being that take account of the particulars of what in practice is understood and indicated to be objective.

Objectivity work is not limited to prosecutorial practice. It takes place in many settings and has been studied more or less explicitly outside the law. There are a number of professions that are similarly expected to carry out their work objectively that is to say in an impartial and matter-of-fact way. Journalists constitute such a group (e.g. Clayman 1992:163), scientists another (e.g. Latour 1987:54; see also Billig 1996:4). Issues of objectivity and neutrality also are significant topics in studies of medical settings (eg. Lutfey 2004; Beagan 2000), although here this has not necessarily been framed in terms of objectivity work. There are, of course, differences in both the degree and standard of objectivity between and within these professions. Whereas for journalists, scientists, and physicians these revolve around professional codes or ethics, an insistence on objectivity in the exercise of authority is inscribed into and demanded by the law:

> Courts of law, administrative authorities and others charged with fulfilling specific functions within the public administration sector shall take everyone's equality before the law into just consideration and observe objectivity and impartiality (Swedish Government Constitution 1 chapter 9§)

Prosecutors' Decision-Making

In American social science studies, the prosecutor is ascribed a decisive role in the career of a case through the legal system. The prosecutor's work comprises a high degree of independent decision-making, which also has become subject to criticism relating to an abuse of power (Ma 2002). Despite the criticism, the prosecutor's powers have increased in recent decades, while judicial supervision can be said to have become somewhat passive (ibid.). It thus follows that the prosecutor is perceived as having a kind of superior power in the American legal system (e.g. Wilmot and Spohn 2004; Rainville 2001; Steinberg 1984). Indeed, the prosecutor's work is sometimes described in rather dramatic or drastic terms, such as "guarding the gateway to justice"[i] (Spohn, Beichner, Davis-Frenzel 2001; Frohmann 1991).

Ma (2002:25) draws attention to the fact that the scope of the American prosecutor's authority does not lie in the power to prosecute, but rather in the power *not* to prosecute in cases where there is sufficient evidence. In particular, the decision not to prosecute for sexual offences has been the subject of close scrutiny (e.g. Mac Murray 1988; Frohmann 1991).

A number of studies have been conducted with the aim of discerning and examining patterns in American prosecutors' decision-making, both quantitatively (e.g. Rainville 2001; Wilmot and Spohn 2004) and qualitatively (e.g. Frohmann 1991; 1997). Legal decision-making seems to be guided by a number of external (legally irrelevant) factors such as ethnicity (e.g. Free 2002), the victim's character traits (e.g. Spohn, Beichner, Davis-Frenzel 2001) and the offender's social status (e.g. Baumgartner 1994:143). Challenging these results, Katz (2001:454) suggests – on the basis of Frohmann's field research in Californian prosecutors' offices – that prosecutors' work is more about story telling than judging people from "external"

characteristics. Regardless of personal values, Katz maintains, the prosecutors are concerned with drafting scripts appropriate to the legal process at hand (cf. Emerson and Paley 1994).

Corresponding studies of prosecutors' decisions have not been carried out to any great extent in Sweden. The Swedish jurist Claes Lernestedt, however, draws attention to a growing tendency that the absolute duty to prosecute is being undermined: "Today it is possible for a prosecutor to neglect to prosecute someone that has committed a crime and could be convicted for it." (ibidem: 118). Furthermore, Leijonhufvud (1996:48) emphasizes that Swedish prosecutors bear "a very great responsibility" for what is examined or not examined in court, which demands "impartiality and objectivity in the exercise of duty."

The interest in legal discrimination in Sweden seems to have increased, not least through a number of journalistic investigations of reports, prosecution decisions and sentences; several of which have come under the spotlight in recent years. One example is Katarina Wennstam's (e.g. 2004) extensive exposition of verdicts of rape. Swedish lawyers and criminologists have also challenged "equality before the law" [*Likhet inför lagen*] in a book bearing the same title (Diesen et al. 2005). The authors maintain that there is empirical evidence that, even within the Swedish legal system, there is structural discrimination in terms of gender, class and ethnicity.

All in all, it can be ascertained that when prosecutors feature in social scientific research, the issues mainly concern whether they actually make neutral and objective decisions according to the principle of equality before the law. This study is not guided by such framing and neither intends to try to prove nor deny the prosecutor's objectivity. The focus is rather on objectivity *per se*; the point of departure being in how prosecutors themselves both talk about and display objectivity in what can be called "objectivity work".

Although not paying particular attention to objectivity *work*, Rogers and Erez (1999) examine how legal practitioners (of which some were prosecutors) interpreted objectivity into legal beliefs. They conclude that each practitioner had differing perspectives on who and what was objective. Nevertheless, by pointing out examples of subjectivity and emotion displays among legal practitioners, the authors tend to deal with the familiar question of whether or not prosecutors are objective, concluding that subjectivity "…was an active and resonate feature of their routine activities." (Rogers and Erez 1999: 285).

Whereas sociological research has drawn attention to the significance of a variety of extra-legal factors (i.e. beyond formal law) in shaping judicial decision-making, it has been criticized for a narrow look for cognitive aspects, disregarding emotional dynamics (Lange 2002). A growing body of literature in the context of both the United States and United Kingdom legal systems suggests that expression and management of emotions is a significant part of the legal professions' every-day work (e.g. Anleu and Mack 2005; Bandes 1999; Harris 2002; Karstedt 2002; Lange 2002). A key aspect in the emotion literature is behavioral control among legal practitioners, whether it regards suppressing improper emotions or eliciting appropriate emotional responses in court. From what I can tell, these themes are mainly investigated on the basis of interviews with legal practitioners, in which they explicitly talk about emotions.

There may be a resemblance between "emotional labor" and "objectivity work". For instance, Anleu and Mack (2005: 614) suggest that acting in accordance "…with such judicial ethics as impartiality, neutrality, and fairness often depends on the successful performance of emotional labour in the courtroom." However, this conclusion is not based on what happens in the courtroom, but rather on magistrates'

interview accounts of how they talk about the necessity not to let feelings and sympathy "get in the way of what you do" (Anleu and Mack ibidem: 611). Such a statement is similar to the ways my prosecutors invoke two incompatible perspectives, the legal and the human, when personal values and (seldom) emotions are discussed (author). I would suggest that – in the interview context – both the magistrates and the prosecutors are engaged in objectivity work rather than emotional labor. The concept of objectivity work is indeed more sensitized to my data that give no evidence of, for example, "suppressed emotions". Objectivity work, on the other hand, is carried out in a particular language and linguistic style with the aim to display "a professional attitude", and as such it is highly visible in the data transcripts.

Furthermore, the concept of emotional labor tends to rely on theoretical assumptions that are very different from the ones that are guiding this analysis. For instance, asserting that legal regulation also involves emotional dimensions, Lange (2002: 205) states: "Both what social actors think and feel produces behaviour." Another theoretically informed perspective stipulates the contrary: behavior (or preferably, *interaction*) produces what people think and feel. The concept of objectivity work is derived from this latter perspective.

Judicial Talk

Related research extends to analyses of talk in judicial contexts. These draw upon observational data of "naturally occurring talk", such as interactions that take place during court proceedings (e.g. Atkinson and Drew 1979; Conley and O'Barr 1990; Holstein 1993). Certain "court researchers" have also explicitly studied how agents such as judges, aided by linguistic subtleties, attain neutrality (Atkinson, M. 1992) as well as other ends. Hobbs (2003) shows, for example, how a lawyer strives to reach solidarity with members of the jury by shifting between popular and more professional language. Komter (1994) has also studied how prosecutors make accusations during court proceedings. The author identifies a number of institutional factors that appear to facilitate accusations; everyday accusations are much more problematic and indirectly conveyed.

Studies of legal proceedings have also been conducted in Sweden, mainly at Linköping University, where a research group combined observations of district court proceedings with follow-up interviews with the parties involved (see e.g. Adelswärd, Aronsson, and Linell 1988; Linell and Jönsson 1991). Adelswärd (1989) illustrates how asymmetrical circumstances that affect the relationship between prosecutor/judge and the defendant can sow seeds of misunderstanding. Even friendly encouragement on the part of the prosecutor can be perceived as sarcasm by the defendant. Adelswärd's (1989: 742ff) descriptions of court proceedings are both interesting and relevant to my study. She found the absence of dramatic, rhetorical techniques striking. Furthermore, she describes the lowered tones, the lack of direct accusations and the absence of signs of suspicion as circumstances that contributed to the experience of a neutral atmosphere. The description indicates a different kind of rhetoric to that which is perhaps expected, particularly if previous knowledge of "court talk" has been acquired from American TV series – something that Adelswärd humorously points out. If anything, it is about a conversational style where dramatic rhetoric is regarded as being unprofessional – in itself a striking rhetorical style when it comes to factual constructions (cf. Billig 1996:4). It is this type of conversational style, one that both influences and affects the prosecutors' arguments in the interviews, that forms the basis of the forthcoming analysis.

Method of procedure

The empirical material for this analysis has been taken from two separate studies, one concerning the judicial handling of women battering (author) and the other arising from Swedish legal cases with the aim of investigating stories and arguments regarding bribery and corruption (author and coauthors). In both studies, interviews were conducted with prosecutors (supplemented by police fieldwork, interviews with police officers, and charged and sentenced people) with the aim of eliciting stories of their experiences on issues of women battering and bribery and corruption. "Objectivity" was never made explicitly topical.

Eighteen interviews form the basis of the analysis. Seven interviews were completed during 1994 for the women battering study and eleven interviews were conducted 2002-2003 for the study on bribery. In this latter study I was assisted by [co-worker] who conducted six of the interviews. Each interview lasted for about an hour and was tape-recorded with two exceptions where technical problems prevented recording. These, however, have been included in the analysis with the responses paraphrased based on interview notes. Apart from two cases where a telephone conversation was conducted, all interviews took place in the prosecutors' offices.

Revisiting the Interview Material

My new interest in these interviews is based on the lingering fascination with prosecutors seldom addressing difficulties with a uniform and objective application of the law. Professional exercise of duty is often described candidly and without drama: "If there's proof, you prosecute. It's as simple as that", as one prosecutor put it. Indeed, it was my questions that the interviewees found rather odd – which they sometimes implied and sometimes frankly expressed.

In revisiting the interviews, now with the lens of objectivity work, I can see that my questions are not only characterized by a layperson's lack of knowledge of the prosecutors' legal training and regulated profession. They are also based on a sociological approach that is often quite foreign to interviewees. Areas that seemed problematical to me, for example evaluation of evidence that leads to dismissal, could be laconically commented on as being the most obvious thing in the world: "Then you just don't have *enough* evidence".

The opposite was also the case. Phenomena that I took for granted, such as case screening on the basis of a number of organizational and individual grounds[ii] would be perceived as a provokingly distorted description of reality. Such questions on my part sometimes gave rise to long expositions of law and order and the need for objectivity. There are also traces of corrections to my questions in the interview transcripts ("The question is wrongly posed!"), together with well-meaning "sermons" from the prosecutors from a legal perspective. The analysis should be read in the light of the specific circumstance that the encounter between two perspectives constitutes: it prepares the way for explanatory statements, accounts and positions expressed in terms of the discourse of the recommended perspective.

Revisiting old material with new questions is a possibility that is not often utilized (Atkinson, P. 1992:452). Research material is usually regarded as being "finished with" when the project in question is complete. Qualitative material is usually particularly well endowed with varying aspects that imply that "collect and chuck" methods leave much of the material unanalysed (Åkerström, Jacobsson, and

Wästerfors 2003:353). Previously analysed research material can, of course, be reused in a number of ways. One example is to apply a radically different analytical perspective. Another example is to make use of those "by-products" that tend to be generated in every research project. The analysis presented here can be said to be an attempt to take advantage of the unused surpluses of two different studies: how prosecutors talked about their work in a more general sense. It can be added that certain ethical misgivings may have arisen vis-à-vis those interviewed in the choice of investigating a phenomenon that had not been fully outlined: "objectivity" as a topic in itself was never mentioned by me as an interviewer. At the same time, I maintain that grappling with unpredictable questions that appear in a research project ought to be regarded as defensible, albeit in line with the original guarantee of anonymity.

In approaching the material with these new questions, I have selected the prosecutor interviews from the studies concerning violence against women and bribery, listened to the taped recordings, and transcribed selected parts of the material more carefully than before. To a certain extent this approach and procedure relate to quite a different analytic style: detailed transcriptions facilitate a more linguistically oriented analysis (cf. Åkerström et al. 2003:351ff). Furthermore, whereas the interviews to the previous studies mainly served as sources of information, for this analysis they are treated as sources of conversation (cf. Holstein and Gubrium 1995; Potter 1997:149).

A note on translation

A professional translator translated the first Swedish draft into English. Several adjustments have been made since then. Translating interviewees' accounts is a delicate matter, particularly when the analysis is concerned with how people account for their practices by focusing their choices of words and phrases. As a foreigner it is impossible to know all the nuances a language offers its native speakers. Legal terms are also difficult to translate since they may have different meanings in different legal systems. The analysis is concerned with accounting processes, rather than legal process and my wish is that any inaccuracies regarding legal terms will not obscure analytic arguments.

Maintaining objectivity

Two major facets of objectivity work will be examined. The first, in this section, deals with how actors maintain the objective order in appeals to locally established entities such as rules, duty, and professionalism. The ways this is accomplished – appeals to rules and regulations, appeals to duty, and displays of professionalism – will be discerned in detail. The section following this one deals with the distinguishable types of accounts that are offered when the objective order is violated or questioned: incantations of objectivity, corrections, proclamation by contrast, appeals to human fallibility. Taken together, these analyses will show how and in what ways the objectivity of prosecutorial decision-making is constructed in practice and how violations of objectivity are constructed so that the basic sense of objective decision-making is nonetheless sustained. The various ways this is accomplished can be thought of as the constructive mechanisms that sustain objectivity in practice, working to bring principle into everyday life.

Appeals to Rules and Regulations

As noted earlier, the American prosecutor is described as the unbridled central figure of the judicial system (e.g. Wilmot and Spohn 2004; Rainville 2001; Steinberg 1984; Frohmann 1991). In contrast, the Swedish prosecutor's role and significance is depicted as restrained and controlled – at least according to how the prosecutors included in this study describe themselves and their work. "We are just a gearbox between the police and the courts", says one interviewee, and alludes to their dependency on these "enormous colossi" to carry out their work. A prosecutor's work is further described as being relatively technical and stringently regulated and something quite independent of the individual prosecutor's background, ambitions and personal values.

Emerson and Paley (1994) have criticised social scientific studies on the exercise of justice for simplifying the relationship between rules and discretion, where the one is regarded as the antithesis of the other. Such a dichotomy disregards the varied interpretation of the rules that is unavoidable, for instance, the discretion used "…to determine the relevant 'facts' or 'situation' to which specific rules apply…" (Emerson and Paley ibidem: 231).

Many of the prosecutors featured in this study also appear to base their arguments on the dichotomy rules–discretion. Their reasoning appears to be based on the principle "the more of the former the less of the latter" and vice versa. Rules and regulations are thus emphasized as a kind of assurance against arbitrariness in general. Related appeals are one way of realizing (i.e. making real) objectivity in practice. One example is taken from an interview with a prosecutor who talks about a situation where she has prosecuted a man for bribery. In judicial terms the offence was clear-cut, but concerned a relatively small sum of money. Even the prosecutor describes the matter as "a mere trifle". In the light of this, we talk about whether she could have chosen *not* to prosecute.

> **Interviewer**: But *you* would have been guilty of misconduct if you hadn't taken this up when you, when you received (.) notice about it, or?
>
> **Prosecutor**: No, I would've passed judgment.
>
> **Interviewer**: Yes (.) right, that's the procedure.
>
> **Prosecutor**: In that case I would've- then I would've passed judgment and taken the decision not to open investigations and later it had (.) the decision had been sent to the county court that in turn would've had the possibility to take it (.) my decision to the district prosecutor for reconsideration. It isn't a question of just throwing report notifications in the trash can (laughs) kind of but (.) it [the report] would have been *judged* (slight emphasis) here.[iii] *(bribery-8-f)*

A "judgment" and a "decision" are contrasted against report notifications that are arbitrarily thrown into the trash can. The account aims at demonstrating the precision of the law in contrast to its arbitrariness. A decision is not just something for the individual prosecutor, but is rather regarded as one element in a system of (possible) control actions that guarantee its upholding.

Another prosecutor describes how accusations of partiality are handled:

> Well, as objectivity is an integral part (.) of the job, it's clear that a statement to the contrary must be taken seriously. And there, there we have special rules about how we handle that type of report. /---/[iv] If there is no substance, the district prosecutor makes a report to the effect that there

> is no reason to suspect any breach- If it does turn out to be a statement of something definite, then we are obliged to report it to the Prosecutor-General in Stockholm, who then decides whether to initiate investigations or whatever. So there are regulations and procedures as to how we deal with something like this, we can't just do things any which way. It's all been decided. *(bribery-2-m)*

Both interviewees quoted above describe the regulations as an already-decided upon course of action that covers a wide variety of decisions. There are no surprises, "It's all been *decided*". The actual rules and regulations surrounding the case are regarded as guarantees for the elimination, or at least the minimization, of arbitrariness. Descriptions like the above also mean that the ambition to demonstrate the regulations' independence of the individual prosecutor is also reached; the matter is handled bureaucratically, irrespective of who is dealing with it.

Appeals to Duty

A second way of constructing objectivity involves professionals explaining both the general work and specific decisions through reference to the law, duty and assignments. For this purpose, there is an organizationally embedded vocabulary to fall back on. Scott and Lyman (1968:54) state that "[o]rganizations systematically provide accounts for their members in a variety of situations." Some interviewees discuss specific cases in the light of anticipating that their decisions may be challenged. When this happens one often actualizes the professional task and duty. This is what the prosecutor cited below does when asked why he didn't allow investigations into a number of reports of bribery but only those that related to fraud:

> It's part of the prosecutor's duty to limit inquiries to that whatever you think can be verified and that which is, that is punishable. So it had eh, from a point of view of the penalty, it didn't have that much importance. *(bribery-1-m)*

Other explanations can include anything from an obligation to prosecute to an obligation *not* to indict, which is something that Frohmann (1996; 1991) also pointed out and studied among American prosecutors. Common to such explanations is that the specific case in question is constructed as free from options. A Swedish example of the former is the prosecutor who finds reasons to justify her decision to indict in a case that the police who handled the case didn't regard as being particularly serious. She gives some credit to the investigator, but only from a perspective that is assumed to be inconsistent with the law:

> **Prosecutor**: Yes, of course I thought he [the accused] was a total idiot, and naïve with it.
>
> **Interviewer**: I see.
>
> **Prosecutor**: (1.0) But that's nothing- Well I must, hmpf, you know, eh, eh, it, that kind of, of opinions you cannot make-
>
> **Interviewer**: -decisions-
>
> **Prosecutor**: -decisions on. Rather um, the task, my duty, it sounds (laughs) very important this but um. The duty, the duty of my work after all is to make

> sure that, um, that the requirements of the law are met. If it's like that, then I'm actually obliged to start a prosecution.
>
> **Interviewer**: Yes, exactly.
>
> **Prosecutor**: Well, um, if I don't press charges even if it is a crime then I am guilty of breach of duty. But um (sighs). *(bribery-8-f)*

Here the prosecutor stresses *the duty* at hand: establishing if "the requirements of the law is met". She seems to say that she is not the kind of civil servant who just would have an opinion one way or the other. On the contrary, she makes careful assessments and decides in accordance with the law. This is a decisive portrayal of a professional prosecutor that doesn't mistake subjective opinions for objective professional work, although she comments apologetically on the professional formulations: "it sounds (laughs) very important this but um". Also, note that I actively encourage the professional description.

Actions can be accounted for in terms of commitment as well as attachment (Scott and Lyman 1968:54). The prosecutors seem to prefer commitment-terms such as "obligation" and "a prosecutor's duty". Scott and Lyman (ibidem) emphasize circumstances where explanations referring to attachment would be regarded as inappropriate or socially unacceptable. Their example is rather dramatic: "Hangmen who, when questioned about their occupation, profess to be emotionally attracted to killing, are not likely to have their account honored." (Scott and Lyman ibidem)

Of course, the prosecutor is not an executioner. The need to demonstrate an aspect of duty rather than attachment can, however, be quite similar. Someone with a definite inclination to "nail" people would hardly match up to the neutral and objective image that Swedish prosecutors want to portray. On the whole, "prosecution style", as discussed in more detail below, can be described as something restrained and toned down.

Appeals to and Displays of Professionalism

A third way of constructing objectivity is found in appeals to and displays of professionalism. Several prosecutors refer to a professional attitude when we talk about not including "feelings in the work" or whether one makes uniform evidentiary values. "It's part and parcel of the job" maintained one prosecutor, and dismissed the possibility that similar situations might be assessed in different ways.

The way in which prosecutors talk about their work signals their regard for professional duty, or conversely: their commitment to professionalism can be signalled in many different ways in a kind of subtle, professional self-presentation. Although the law is indeed based on social morals, in the prosecutors' accounts the very concept of morals (in all senses) is regarded as being something separate from the law. The concept is not included in judicial vocabulary, so to speak.

It is not only the legal professions[v] that have to decide on traditionally moralistic questions. The same is also true for professions within, for example, the medical, educational and social work fields. Bergmann (1998) emphasizes the "rational" framing of these professions and how the work is "demoralized":

> However, they work within institutions that function according to 'rational' models and criteria, and they therefore are officially constrained to 'demoralize' issues, couching them in terms of scientific or bureaucratic rationality. Professionals are trained to take a 'neutralistic' stance with respect to the problems they deal with. (p. 291)

Professional training in "demoralization" can help to explain the difficulties of trying to persuade a professional to express him or herself in moral terms about the exercise of that profession (cf. author). In the following interview extract, the interviewer wonders what the prosecutor thinks about bribery from a moral standpoint. The interviewer's laughter indicates that the question in itself is not easy to pose. As the conversation unfolds it is evident that the prosecutor finds the question odd:

> **Interviewer**: Let's go back to comparing bribery with other crimes. How would you say that it relates to, what might you call it (laughs) m- moral reprehensibility or (laughs) something of that kind?
>
> **Prosecutor**: I thought you were going to ask something quite different.
>
> **Interviewer**: Aha. What did you think I was going to ask?
>
> **Prosecutor**: I thought you were going to ask whether, whether, if they were more difficult to investigate than others.
>
> **Interviewer**: Well, yes, you can answer that too.
>
> (Both laugh)
>
> **Prosecutor**: Yes. Yes, because that's easier [to answer]. Because it, it [bribery] belongs to those difficult to determine crimes since nobody wants (.) to participate [development of the subject] (*ctd*.)

The interviewee avoids the question by formulating another, in his view, more relevant or reasonable question under the circumstances. After dwelling on the subject for a while, the prosecutor returns to the question of "moral reprehensibility" – this time to develop the idea of why it is not relevant to a prosecutor:

> **Prosecutor**: No, all this about moral reprehensibility- yes (1.0) It isn't (1.0) it doesn't actually depend on the prosecutor having any point of view about, about moral (.) reprehensibility. On the contrary, it is the case that when we go on training courses (.) we become especially aware of not allowing for any moral standpoints when we are in court. "Thou shalt not moralise in court" is a classic expression that is instilled in you from the very beginning. You can't sit in court and say that [the interviewee switches to a pompous tone of voice] "Honourable Court! Look at this lost soul who, in the most cruel and un- un- unreasonable manner, has violated something".
>
> **Interviewer**: (laughs)
>
> **Prosecutor**: /---/[vi] No, we *don't* moralise, *shouldn't* anyway. But eh (.) it is eh (.) how the crimes are rated on the penalty scales or, or (.) its latitude, that is to say between the least and highest sanction, that gives you an idea as to how the law has regarded it. *(bribery-2-m)*

The prosecutor's illustration of a fictitious moralizing colleague stands in sharp contrast to the dispassionate and technical description that follows. Here, decisions are not made in terms of moral indignation. Instead, it is the placing on the penalty scale that prevails, according to acknowledged latitudes, all in line with judicial regulations.

Displays of professionalism are not always as clear-cut and single-minded as explicit appeals to professionalism such as the one of the above prosecutor. An

appropriate prosecution style can be demonstrated in a more subtle way, such as in the following quote where an emotionally indifferent attitude is demonstrated. We are talking about women that choose to return to the man who has assaulted them:

> **Interviewer**: Do you get upset when a woman goes back to someone who has assaulted her?
>
> **Prosecutor**: No, I don't care one jot (laughter). It doesn't concern me at all. No, I don't get involved. It's her decision (4.0) So that it's (4.0) it isn't a standpoint you take but (.) it's just a case you have to (.) complete. Then what (1.0) what people make of their lives, I mean it's not my (.) that's not my problem, is it? *(women battering-2-f)*

In order to be in a position to make objective and impartial decisions, one naturally shouldn't have any personal interest in the outcome. Judging from the "correct indifference" (Adelswärd 1989:743) demonstrated above, personal attachment is also regarded as being inappropriate. Even without a directly posing of the question of personal attachment, an appropriate indifference or disinterest was displayed during the interviews. One prosecutor talks about how, for example, he had indicted a number of local politicians for bribery, and what the consequences were:

> And that led to ah eh in so far as they hadn't seen fit to resign from their political assignments before, they did so afterwards (I: yes) I think that they- I wonder if they hadn't already resigned? But I'm not sure about that (I: yes) since that's not interesting to me at all, is it (I: no) whether they are continuing their political work or not. *(bribery-10-m)*

The significance of the interviewee's digression, as to whether the politicians resigned or not, is toned down by the comments that follow ("since that's not interesting to me at all, is it"). In accordance with what Potter (1996:124) calls *stake inoculation*, it seems to be important to emphasize indifference in order to avoid the suspicion that one should have any kind of interest in individual cases. At the same time, there is evidence of a limitation to the strictly legal duty: when it's over the case is closed. Any interest beyond this is regarded as not being particularly appropriate.

The fact that I have been highlighting demonstrated indifference and disinterest should not in any way be taken as a statement that prosecutors *are* insensitive, uninvolved and indifferent. It is the actual demonstration that I find interesting, as it tells us something about the assumptions and norms that a prosecutor's professional exercise of duty is based on. Such demonstrations seem to be an inclusive element in the overall project, which is to show an objective (matter-of-fact, neutral) approach to the exercise of duty. Of course, other techniques can also be applied to demonstrate objectivity, techniques that varies according to situation and context. A further example is Maxwell Atkinson's (1992) study of British judges' dialogues with the accused. The judges sought to display "neutrality" by systematically avoiding words, sounds, and phrases that had any affiliating function in terms of how everyday conversation might be interpreted.

Responses to Objectivity Violations

The interviewees generally managed to provide evidence of a correct and distanced bearing, often in a quite refined way. When objectivity in any sense was questioned, the prosecutor's objective position came across in a more direct or blunt way. The following section deals with the interviewee's tendency to "repair" the objective order when it is threatened or violated, even in the subtlest sense. Thus, the "violator" may sometimes be the interviewee him- or herself when, for example, "non-relevant judicial" matters crop up. At other times it was the interviewer who were thought to apprehend the legal world in the wrong way. For the prosecutors, such contexts or situations of objectivity violations tended to elicit a variety of responses. Four types of responses were distinguished analytically: Incantations of objectivity, corrections, proclamation by contrasting perspectives, and appeals to human fallibility.

Incantations of Objectivity

In plain terms one type of response to objectivity violations can be described as some kind of incantation that is automatically added to an expression of something that appears to lack judicial relevance. Three examples of prosecutors' accounts are given where "the incantation" is underlined.

> 1. And then you may have a personal opinion (.) <u>which, which, which you (.) are not affected by (.) when you work on the case</u>." (*bribery-2-m)*
>
> 2. In part eh there was a great deal of public interest for the fact that it was eh political, local politically distinguished people that were indicted (I: yes) <u>it isn't anything that affects my actions in any way</u> (*bribery-10-m)*
>
> 3. "What!?" they say [those suspected of bribery]. "I ha- haven't thought about it at all eh Am I supposed to be a receiver of bribes because I ta-" And I, I really think that this is, in the sense of personal experience, that this is not anything you say just to avoid responsibility. But I can definitely say that investigators and others perceive these viewpoints as genuine in the sense that it really corresponds to their [those under suspicion] perception. <u>It doesn't help them in the end, so to speak, although it is still judged as a crime but-</u> *(bribery-8-m)*

In none of the above examples has the interviewer questioned, nor in any way doubted, what the prosecutor has been saying. It is rather as though they themselves realize that they find themselves in a "non-judicial-relevant-situation". The first example is concerned with the prosecutor's personal perception. The second example refers to the media interest that a legal case attracts. The third example touches upon the recognition of the lack of knowledge on the part of the accused that the action was criminal. When such "legally irrelevant" events are discussed it can happen, as in the above examples, that the interviewees regard themselves as being out on a limb. An "incantation of objectivity" has the effect of bringing the conversation back to its discursive track. The comments tend to be seen as promoting objectivity, and perhaps even creating it.

Corrections

A second way of responding to objectivity violations is by corrections. As has already been mentioned, prosecutors do not always welcome a sociological/layperson's perspective of judicial issues. They often expressed this in subtle ways, such as a shrug of the shoulders or raised eyebrows. Occasionally there would be more a direct rebuke in terms of establishing the judicial perspective by using the correct terminology, such as rejecting the term "women battering" on the grounds that it is "newspaper talk". One prosecutor firmly states: "We don't use it. It's called actual bodily harm here".

In another interview I am corrected in a more indirect way, which causes me to repair the mistake myself. In this instance, I am interviewing the prosecutor in the light of his dismissal of a case of women battering where a woman maintained that she had been struck by her husband.

> **Interviewer**: Do you *think* that he assaulted her? (1.0) You know, [do you think so] personally?
>
> **Prosecutor**: Well, does it really matter what I personally think? *(ctd.)*

The interviewee indicates an unwillingness to discuss the matter in the terms I suggest. Both "think" and "personally" are very inadequate terms to use if one wishes to maintain an objective order. It takes a little while before I take the prosecutor's reluctance on board, but having done that I subsequently acknowledge the prosecutor's professionalism, which I have underlined in the extract:

> **Interviewer**: Ah but, oh, I imagine (prosecutor laughs) that this is how one thinks (.) <u>I understand that you work from the point of view of what can be substantiated</u>.
>
> **Prosecutor**: Yes well, but it isn't really- yes, of course we do. That is to say (.) yes, I'm pretty well convinced that he did. *(women battering-7-m)*

It seems as though my concession of "what can be substantiated" as the decisive principle for the dismissed case makes it possible for the prosecutor to admit to a personal perception of what had happened to the woman in question.

In another case, the interviewee corrected her own choice of wording in a distanced way as though to draw attention to the correct terminology. She answers a question about a case in the following way: "Yes, I thought so. Or 'thought' (.) the term is *judged* - if it is to be expressed rather more elegantly (laughter)."

Proclamation by Contrast

Proclaiming the objectivity ideal by contrasting the legal language with everyday vocabulary is a third way of responding to suggested flaws in the objective order. The idea that professional status and distance to the lay perspective is sustained through linguistic barriers represents a long established viewpoint (Hughes 1994: 37). Several interviewees dramatize such linguistic differences with the practical aim of showing how professional judgments serve the objective ideal and, as such, are far more superior than merely opinions of ordinary people.

Interviewees regularly mark everyday opinions by sloppy expressions that are often spiced with swear words. By contrast, the language of objectivity is characterized by "correct" language, free from evaluative terms. In this section I give

space to a particular interviewee who further reinforces this contrast by switching between different "voices". He uses exaggerated dialect to distinguish the everyday perspective, while "his own" voice is used to describe the judicial. The exposition is most likely provoked by my lack of knowledge about "case prioritization". With all the desired clarity, the prosecutor successfully – in both content and style – highlights the defectiveness of my argument. With disguised voice (an exaggerated broad dialect indicated by quotation marks) he conjures up dramatic scenarios:

> **Interviewer**: But isn't it the case that you actually *have* to prioritize if you have a heavy workload? I'm thinking of you personally now, as your work-pile increases.
>
> **Prosecutor**: (sighs) (2.0) That's all very well, but do you mean that as an individual prosecutor I should sit here and say "no (1.0) I don't think that dope is important, it can't be that dangerous so quite frankly I couldn't care less", while another colleague sits in his office and thinks "well no, tax evasion, that's really ridiculous and nothing at all to get worked up about so I'll scrap the case", and yet another thinks that "home distilling, ah it really ought to be legal so I'll dismiss that case". Another can sit there and say that "old biddies that get whipped, well they've asked for it, so I'll write that off because I don't think it's worth wasting time over, after all in most cases they've deserved it". (1.0) Is that what it should be like? I certainly hope not.
>
> **Interviewer**: Not really. *(ctd.)*

The description is rhetorically effective: is there any other response to the challenging moral question ("Is that what it should be like?) than a submissive "not really"? The prosecutor's "terrible scenario" of what he and his imaginary colleagues should do from the point of view of their personal opinion is illustrated by a choice of words that is the complete opposite of objective and judicial language; he makes conspicuous use of non-judicial terms (e.g. "dope", "old biddies that get whipped") and evaluations (e.g. "they've asked for it"). The statements are delivered in an everyday and linguistically slipshod style. The choice of the word "think" is significant. The sequences are developed in terms of what a number of colleagues *think* about this, that or the other. Here, there is neither professional "judgment" nor objective "consideration".

The accented speech (in quotation marks) that the interviewee uses is not only effective in a dramatic sense but also offers him possible agents against which to position himself (cf. Holsánová 1998:108). The prosecutor's self-presentation is formulated in implicit negations: the cited voices stand for everything he himself is against. The interview proceeds with the interviewee tautologically establishing that: "The prosecutor should deal with the offences that are criminalized!" After this he continues (following a short digression) to declare his standpoint, which seems more decisive as a result of my objections:

> **Prosecutor**: We can't have prosecutors expressing their personal views because that's a dangerous road to go down (3.0) Are we to start indicting foreigners more than Swedes? Are we to-
>
> **Interviewer**: Don't you think that something like this has any significance? Is there no room for (.) for personal views or whatever experience you have, etc?

> **Prosecutor**: [Starts to talk before I have finished] No, I regard that as being completely wrong. I can't allow my personal views on home distilling or dope or-
>
> **Interviewer**: No, but say-
>
> **Prosecutor**: [raises his voice] actual bodily harm or what I do or don't think, affect my, my prioritization of, of (.) the crimes I am trying to combat. *(ctd.)*

The above exposition is the closest I came to a passionate utterance on the part of a prosecutor – an utterance regarding the importance of a dispassionate application of the law. It is reminiscent of anthropologist Philip's comment after having studied a number of American judges:"…the clearest ideological stance the judges take is that they are not ideological…" (Philips 1998: xv).

As has previously been suggested, it is possible that my initial questions released this subsequent declaration of non-judgemental assessments. The personal framing of the question could have been interpreted as me wanting to elicit the interviewee's consent to, or "approval" of a more arbitrary order. This was clearly something that he was not prepared to give. As soon as I am allowed to develop my argument, I reformulate the question:

> **Interviewer**: No, that clearly isn't right, and one's ideal may be that something like that shouldn't even exist. But I just wonder if there is (.) like other colleagues (.) whether there is any *scope* for (.) the prosecutor's personal opinions? *(ctd.)*

First and foremost I take the opportunity to establish that arbitrary judgments are "wrong". By modifying the question to include "other colleagues", and also by alluding to the "prosecutor" as an abstract role, the framing is considerably different. When the question is no longer about the interviewee's personal opinion (he has also had an opportunity to position himself) he is then able to discuss the issue. Interestingly enough, he now straightforwardly describes how matters can be re-prioritized for reasons other than those laid down by the law:

> **Prosecutor**: Yes, that's right, if I am not particularly active in putting forward my investigation, the period for prosecution will expire. If there is something that I think is (.)
>
> **Interviewer**: A little [indicates that the case could be of little interest or lesser importance]
>
> **Prosecutor**: Less- Yes. It's got so bad in Stockholm that nobody wants to investigate frauds below a hundred thousand, or so I've heard. Those cases are put on one side until they expire. *(women battering-4-m)*

With surprising ease, the interviewee appears to abandon his concern for an account that indicates the very opposite of what he has previously championed. It indicates the importance of establishing one's point of view before allowing an outsider (as the interviewer that I am) to be party to informal or personal accounts of the exercise of the profession. The dialogue also shows that the framing of questions in interviews, are equally important to analyze.

Appeals to Human Fallibility

When discussing the risk that similar cases are judged differently, the majority of prosecutors tone this possibility down, or even rule it out altogether. There are, however, ways of talking about differences in the application of the law, but this invokes a non-judicial response, namely, that "making mistakes is human". Referring to human fallibility is a fourth response to suggested defects of the objective order. In the following example, we discuss cases of women battering in general where the plaintiff ("the woman") no longer wishes to take part:

> **Interviewer**: But does it vary from prosecutor to prosecutor as to how far one can go without involving the woman.
>
> **Prosecutor**: Yes, I'm sure it does. (.) Yes (3.0) I suppose it does. But there are, there are rules you know (2.0) eh-
>
> **Interviewer**: except they don't always govern, or you can't always-
>
> **Prosecutor**: Well, it's, we are human after all and assess the- perhaps interpret the same material differently (2.0) so that eh- (2.0) it *is* sometimes difficult to judge, it really is. *(women battering-2-f)*

By referring to truths other than judicial ones – such as failure is human – the above prosecutor can acknowledge "different interpretations of the same material". There is a great reluctance to say this, however. In the following excerpt, though, there is no trace of such hesitation. Once again the issue is concerned with how the prosecutor handles the assault of women. This interviewee is the only one to take the initiative to suggest that the administration of justice doesn't always follow the rulebook:

> **Interviewer**: Does the case usually go to prosecution if there's only the woman's story to hand?
>
> **Prosecutor**: I think that depends on how ambitious the prosecutor is.
>
> **Interviewer**: Oh, I see. (2.0) There can be different assessments-
>
> **Prosecutor**: Yes, of course.
>
> **Interviewer**: -according to how far one takes it?
>
> **Prosecutor**: If one was to be completely honest, it has a lot to do with which prosecutor is in charge, which district it is in and (.) perhaps how much one has to do that particular day. You can be so swamped with other work on that very day that it can happen that (1.0) I can very well imagine that you (.) think that it might not work anyway. We're only humans after all. (*women battering-5-f*)

Administrative failings and deviations from the law are constructed as "human" – something other than law. Conversely, the judicial organization's handling of a situation or case is constructed as an everlasting grinding mill where the raw material (in the form of reports) is worked in a standardized and predictable way. It would seem that, just as predictably, the machine decides (rather than an individual) when a report no longer constitutes suitable raw material, but instead repudiates the process. If something goes wrong, it is not because of the machine but rather "the human factor". In the same way, laws appear reified as if they were something other than human products – "such as facts of nature, results of cosmic laws or manifestations of divine will (Berger and Luckmann 1966:106).

Conclusion

Objectivity work is not limited to matters dealing with correct procedure, but is engaged in all accounts of proper prosecutorial procedure. It is evident in varied narratives relating to descriptions of appropriate professional activity. Indeed, the prosecution style in itself may be described as the result of objectivity work.

In studying two facets of objectivity work – maintaining objectivity and responses to objectivity violations – I have identified seven mechanisms by which prosecutors support claims to objectivity in their work, thus bringing principle into everyday life. Swedish prosecutors cultivate objectivity by frequent appeals to (1) rules and regulation, (2) duty, and (3) professionalism. Also violations of objectivity are responded to or accounted for so that the major sense of objective decision-making is nonetheless maintained. I have called these responses (4) incantations of objectivity, (5) corrections, (6) proclamation by contrast, and (7) appeals to human fallibility.

An important direction for future research relates to two limitations of the analysis. First is the national venue of the objectivity work under consideration. These results are derived from Swedish material and may very well be culture-bound. It would be useful to compare the material from non-Swedish prosecutors in order to discern how general the mechanisms identified are to all prosecutorial objectivity work. A second direction deals with identifying different *forms* of objectivity work than the one found in an interview context. The study of objectivity work would profit from supplementing the interview data with other types of data, such as observations and documents.

Future research also relates to the potential for further hypotheses in this area. First, it is tempting to suggest that an "objectivity culture" cuts across judicial systems. Yet this has to be examined empirically. For instance, the mechanisms of objectivity work may vary with occupations within the legal system, given that the discursive resources at hand are not necessarily the same for prosecutors as, say, for judges. Another question is whether objectivity work is an important aspect also of employees without a law degree, for example in the everyday practice of court clerks.

Second, the results from this project can be compared with objectivity work in legal systems unlike the Swedish system. I have already suggested some significant differences between the Swedish and American legal systems that may be crucial to how principles of objectivity are discursively brought into practice. Or even more diverse, how do actors perform objectivity work in countries known for a corruptive judiciary? Is it possible to find a pattern – in spite of vast differences in legal systems – that suggests that objectivity work is a cross-cultural phenomenon?

Third, comparisons are not restricted to the legal occupations or varying legal systems. The concept of objectivity work is broadly applicable and can be studied in non-legal settings with the principle in tow. Objectivity is of a general concern in any area where disinterested truths are claimed. These are areas where authorities or experts are expected to treat those they serve in an impartial and objective way.

Objectivity is a principle of knowledge and service widely acknowledged and ostensibly honoured in contemporary society. Rather than testing an *a priori* defined category, the concept of objectivity work emphasizes the accomplishment of objectivity from the ground up and allows one to study how actors realize this abstract principle in practice.

Endnotes

i This is not to say that prosecutors describe themselves in such a way. They may very well downplay discretionary power, which was the case with the American judges studied by Philips (1998).

ii Social science scholars are well aware that grassroots bureaucrats screen cases according to organizational and individual circumstances (e.g. Lipsky 1980). Studies on case screening usually discuss the phenomenon in concrete terms (rather than criticize their existence): How does this work in practice? Which "clients" are included or excluded? See, for example, Miller's (1991) study on employment officers.

iii Transcription signs:

[ ]	Explanation within square brackets.
( )	E.g. laughter is depicted within brackets.
/---/	Sequence has been removed (and commented on in a footnote).
förf-	Hyphen indicates interrupted speech.
(1.0)	Silence in seconds.
(.)	Less than a second of silence.
Italics	Indicate emphasis.
<u>Underlined</u>	indicates a phrase I want to highlight for the reader.

iv Six lines removed where the prosecutor says that the first step is to find out whether there is "substance to the charge".

v In accordance with later definitions of "profession" this does not only refer to the traditional "status professions" but also includes so-called semi-professional groups (see, for example, Bergmann 1998; Miller 1991).

vi Six lines removed where the prosecutor speculates about whether moralizing is negotiable in American courtrooms and maintains that such a thing is not possible in Sweden (with the exception of defence lawyers).

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