
Norms urging prosecutors to “seek justice” by playing a quasi-judicial role and striving for fairness to defendants are often assumed to have deep historical roots. Yet, in fact, such a conception of the prosecutor’s role is relatively new. Based on archival research on the papers of the New York County District Attorney’s Office, *The Discretionary Power of “Public” Prosecutors in Historical Perspective* explores the meaning of the word “public” as it applied to prosecutors in the nineteenth century. This article shows that, in the early days of public prosecution, district attorneys were expected to maximize convictions and leave defendants’ rights for defense counsel to champion. However, rather than bowing to pressure to pursue the most severe charges in all cases, prosecutors entered plea bargains to lighten their workloads and sought capital verdicts for marginal individuals—especially domestic killers—to sate the public’s desire for retribution and deterrence. Because domestic killers violated widely held norms of masculinity and lacked political influence, seeking the death penalty in their cases represented a safe discretionary decision that did not anger the political bosses to whom the District Attorney’s office was beholden. As this article demonstrates, “public interest” is a mutable abstraction. In the nineteenth century, neither the newspapers nor the voters equated the term with defendants’ rights. Hence, modern scholars seeking to reform prosecutorial ethics must take greater care to define the “public interest” and its relevance to their agendas.

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