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## Prosecutorial discretion in international criminal justice

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# Propositions

Relating to the dissertation *Prosecutorial Discretion in International Criminal Justice* by Cale Jordan Davis

1. The prevailing understanding of discretion within the legal paradigm, which conceptualises discretion as an imagined space for free choice bounded by restrictions, fails to account for how decision-making operates in practice.
2. Discretion should be understood as the act of reaching a reasoned decision about the appropriate course of action to pursue.
3. The factors international prosecutors have considered when exercising their discretion are either functional, normative, or strategic.
4. The concept of ‘role identity’ can be used to explain why people consider any given factor when exercising discretion and thus help to explain why choices are made.
5. The factors international prosecutors have considered when exercising their discretion evidence that they have adopted the roles of norm performers, guardians, and builders.
6. A relational understanding of the role of international prosecutors provides a far more intricate account of what international prosecutors do than the popular characterisation that they are either agents of justice, parties to the proceedings, or diplomats.
7. A conscious recognition of, and engagement with, the roles prosecutors adopt *vis-à-vis* the numerous actors and concepts identified in this thesis would assist in overcoming the problems of role overload and gravitation.
8. An awareness of the motivations and assumptions that underpin daily practices in international criminal justice will permit a more nuanced account of how the law is developed and implemented than that offered by the formalist tradition.
9. Prosecutors derive authority from trust by the public. Accountability to the public requires them to be transparent about factors influencing their decision-making.