

[← I Went to David Brooks' Class So You Don't Have To](#)

[Weekend Reading →](#)

Would America Be Better with Private Prosecutions?

JANUARY 16, 2013 [LEAVE A COMMENT](#)

I've been debating this idea for a while. I first learned about private prosecutions in *The Justice Cascade* by Kathryn Sikkink, in which she examines human rights prosecutions in Argentina, Portugal, and Greece and argues that they contributed to the creation of the International Criminal Court by diffusion of the concept of human rights prosecutions. In her chapter on Argentina, Sikkink mentions [a characteristic of the Argentinian judicial system](#) that allowed human rights prosecutions to occur, and it's a practice common in Latin American civil law systems (and maybe civil law systems in Europe and Asia – I don't know). Basically, in common law systems like America's, the state is always the prosecutor in criminal cases. This stems from the notion that a crime against the state's laws is a crime against the state/society as well as a crime against the actual victim. While this functions in many ways, it fails in instances where the state doesn't want to proceed with prosecutions either because the case is deemed too weak to be successful or because the state is actually culpable or even the perpetrator of crimes.

In Argentina, after years of disappearances and human rights abuses by the military regime, some people began to circumvent state prosecutions by leveling accusations at members of the state police independently through private prosecutions. Others were able to use private prosecution to force wary state prosecutors in the judiciary to continue moving forwards against the executive. Sikkink believes that this is just one of many things that allowed human rights prosecutions to arise in Argentina, but it is surely an important one.

While private prosecutions aren't part of the American justice system, I wonder if they should be. I'm no lawyer, and this isn't realistic, but it could be a tool with which victims typically unable to see perpetrators prosecuted (because the crime was ignored by the state or they were victimized by societal problems as much as by actual perpetrators) could still seek justice. Right now you can sue others in civil court and win monetary judgements, but the prosecution in criminal court is run by the state. If you end up in jail, it's because the state thought you should be in there and a jury agreed. What if, instead of just suing for damages, victims of foreclosure fraud could get fraudulent bankers facing jail time? What if, to circumvent police that refuse to call date-rape "rape," victims of sexual assault could send rapists to jail?

Obviously this is no guarantee of justice: rich bankers and corporate executives would have the best lawyers, and even rogue police could be protected by their own, and judges and juries are just as affected by rape culture as the rest of coeity. But it could be a start. Especially if lawyers were willing to take up these cases pro bono (or non-profits/social movements could start funds to pay fees) victims that usually can't afford to seek out justice would be that much closer to some peace of mind. If only a few trigger-happy stand-your-ground neighbors, poisoned-your-water-supply polluters, or you-were-drunk-but-you-still-said-yes rapists who usually stay free instead found themselves in jail, it would send a message that just because you are powerful or your crimes don't get everyone's attention doesn't mean you won't at least be brought before a court and maybe found guilty.

Of course, even if it were possible to implement this, there would be problems. The power of some groups could still be strong enough to dissuade some from filing prosecutions, and the shaming of some victims would be too much for many to even think about coming forward. And it isn't unrealistic to think that corporations-as-people would use private prosecutions to enact even more overreach against each other, whistle-blowers, and the usual victims.

[★ Like](#) Be the first to like this.

[FILED UNDER JUSTICE AND CRIME](#) [TAGGED WITH CIVIL LAW, CRIMINAL LAW, PRIVATE PROSECUTIONS](#)

Leave a Reply

Enter your comment here...

I'm tweeting about

2. Political Sociology: intro to the field, examines sociology of conflicts, nationalism, state-building, democracy, revolution, etc.~~~
[11 hours ago](#)

1. Political Parties in the Developing World: PoliSci class looks at how parties form, how they reach out to voters, how they shape politics~~~
[11 hours ago](#)

I am now crowdsourcing my class schedule. Two classes have openings and I don't really know which to take, both are semi-interesting:~~~
[11 hours ago](#)

Catch up on your

[Weekend Reading](#)

I'm talking about

[Advocacy Annual Report](#)
[Arizona ASU Barack Obama](#)
[Bookshelf Caine Prize CAR](#)
[Development DRC Elections Gun Control](#)
[HB 2675 Higher Education ICC](#)
[Invisible Children](#)
[Kampala Bombings Kony 2012 Kristof](#)
[Less Than Three Let's All Go to the White House](#)
[Lord's Resistance Army Nom Occupy Organic Pets](#)
[Protest Race Resolve Rotary](#)
[International Rwanda Schools for Schools](#)
[SGS Internship Shootings](#)
[South Sudan State Government](#)
[Stress Sudan Teaching](#)
[Transportation Tuition Uganda](#)
[US Senate WIPW Working](#)

People are talking...

 [scott on I Went to David Brooks' ...](#)
 [elvislevel on I Went to David Brooks' ...](#)
 [Lakia Johnson on I Went to David Brooks' ...](#)
 [Lakia Johnson on I Went to David Brooks' ...](#)
 [Lakia Johnson on I Went to David Brooks' ...](#)

Currently Reading...

[Six Degrees: Our Future on a Hotter Planet](#) by Mark Lynas

» Blogs in Your Inbox

Enter your email address to follow this blog and receive notifications of new posts by email.

Sign up!

» Blogs You Should Read, in No Particular Order

[Poly Sigh](#)

[Ph.D. Octopus](#)

[Duck of Minerva](#)

[The SGACollaborative](#)

[Governing Through Crime](#)

[Student Activism](#)

[Mbore or Less Bunk](#)

[Notes from the Field](#)

[Gin and Tacos](#)

[@Laurenist](#)

[Reclaim UC](#)

[Occupy California](#)

[A View from the Cave](#)

[Roving Bandit](#)

[A Fistful of Euros](#)

[Zungu Zungu](#)

[Crooked Timber](#)

[South/South](#)

[Feministe](#)

[Wronging Rights](#)

[U.S. Intellectual History](#)

[The Eyeball Kid](#)

[Chapati Mystery](#)

[Excremental Virtue](#)

[How to be a Retronaut](#)

[Tiger Beat Down](#)

[The Funambulist](#)

[Historiann](#)

[Airminded](#)

[Politics Outdoors](#)

» Blogs on Human Rights, Justice, and Africa

[Africa is a Country](#)

[Bored in Post-Conflict](#)

[Congo Siasa](#)

[Foole's No Man's Land](#)

[haba na haba](#)

[Justice in Conflict](#)

[Justice in Conflict](#)

[Opinio Juris](#)

[PhD Studies in Human Rights \(Bill Schabas\)](#)

[Rachel Strohm](#)

[Sahel Blog](#)

[Securing Rights](#)

[Texas in Africa](#)

» Blogs in the Grave

[AidWatch](#)

[Axis of Evel Kniesel](#)

» Archives

[January 2013](#) (6)

[December 2012](#) (14)

[November 2012](#) (9)

[October 2012](#) (11)

[September 2012](#) (9)

[August 2012](#) (3)

[July 2012](#) (3)

[June 2012](#) (9)

[May 2012](#) (12)

[April 2012](#) (11)

[March 2012](#) (11)

[February 2012](#) (11)

[January 2012](#) (6)

[December 2011](#) (1)

[November 2011](#) (4)

[October 2011](#) (3)

[September 2011](#) (5)

[August 2011](#) (5)

[July 2011](#) (8)

[June 2011](#) (8)

[May 2011](#) (12)

[April 2011](#) (4)

[March 2011](#) (4)

[February 2011](#) (4)

[January 2011](#) (2)

[December 2010](#) (5)

[November 2010](#) (3)

[October 2010](#) (3)

[September 2010](#) (2)

[August 2010](#) (8)

[July 2010](#) (14)

[June 2010](#) (24)

[May 2010](#) (13)

[April 2010](#) (5)

[March 2010](#) (9)

[February 2010](#) (6)

[January 2010](#) (7)

[December 2009](#) (3)

[November 2009](#) (4)

[October 2009](#) (7)

More of Me

[/Academia.edu](#)

[/Linked In](#)

[/Twitter](#)

Categories

:D

Select Category



Blog at WordPress.com.

Theme: **Enterprise** by **StudioPress**.