ABOUT THE BOOK

This volume brings together a broad range of scholars working within a variety of procedural traditions in Europe, North America and China. The first section contains three papers that address the use of discretion during the investigation and prosecution stage of criminal proceedings; the second section deals with negotiated justice and various types of plea agreements in Spain, China and Italy. In the third section, different approaches to the exclusion of evidence are discussed, relating to Switzerland, Germany and a potential EU approach. The fourth section discusses discretion in relation to the death penalty in the US. At the heart of these issues is the problem of reconciling prosecutorial and judicial discretion with the principle of legality. The need to avoid arbitrary decisions is key, but the authors come to differing conclusions as to the impact and value of judicial discretion at different stages of the process and in different jurisdictions.

Discretion is the theme of the collection, and the writers believe it can be characterized in positive terms, as it ensures that justice is tailored to the individual and to the facts of the case rather than being applied mechanically. However, without a clear legal framework, it risks allowing arbitrary decisions based on bias or other legally irrelevant factors. All of the papers collected in the book teach us something about the way that discretion plays out in different systems and how it is understood and adapted within existing legal norms and cultures.

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