
Book Reviews

Jennifer Balint, Editor

Hard Bargains: The Coercive Power of Drug Laws in Federal Court. By Mona Lynch. New York: Russell Sage Foundation, 2016.

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Feeling low on your outrage? Then read Mona Lynch's book, *Hard Bargains: The Coercive Power of Drug Laws in Federal Court*, which takes the reader on a journey through the convoluted and often shocking realities of federal drug trafficking policy. The book offers an exceptionally compelling account of how drug trafficking cases are selected, processed, and adjudicated in three different regions of the country (a fourth was excluded for sensible and well-explained reasons). The result is an unprecedented account of how the federal system is geared to "suppress defiance and punish non-compliance" (4). The book makes for an absorbing read as you encounter one outrage after another; yet, Lynch maintains a scientist's stance throughout—letting the coercive use of prosecutorial power speak for itself. She offers no hyperbole and none is needed.

As Lynch teases apart "how complex and competing bodies of law get interpreted and applied in the real world" (152) she uncovers a dismaying array of consequences produced by federal prosecutors' tremendous power, including the proactive punitiveness of selecting cases precisely *because* they will be subject to harsh sentences. Many other troubling outcomes arise from the calculation that Lynch asserts drives all federal sentencing in drug cases: drug weight multiplied by criminal record produces the appropriate sentence (60). It turns out that both of the equation's determining factors are subject to interpretation ranging from exaggeration to virtual falsification. "Relevant conduct" in drug cases, for example, includes conduct gleaned from "*uncorroborated* reports by informers who allege and detail past drug transactions with the defendant" (emphasis added, 27). Similarly, drug weight can be based on "historical weight" in which "informants provide information that is used to estimate drug weight for alleged past trafficking acts—they tell the case law enforcement agents how much was sold,

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how often, and for how long” and “*no drugs have to be found or tested or put on the scale*” for it to affect convictions and sentencing (emphasis added, 54). Together, relevant conduct and historical weight not only can severely increase a defendant’s potential maximum sentence, but they point to an even more profound concern. While the merits of shifting power from judges to prosecutors deserves substantial debate, current practice comes awfully close to bestowing prosecutors with the most powerful privilege of all: defining reality itself.

A key strength of *Hard Bargains* is how Lynch explores this theme of prosecutorial power from a variety of methodological angles. Her innovative take on conducting a “comparative case study” entails sustained observation and inquiry across and within jurisdictions coupled with longitudinal case processing data to provide context. She also utilizes a “case analytic approach” in which she followed specific cases through adjudication. This multi-method, multi-site, historically situated analysis is precisely what is needed in order to grapple productively with the complexities of the process and substance of law. Indeed, her methodology is a contribution in and of itself.

Lynch’s concise yet insightful history of drug laws reveals details such as it being rooted in an impetus to monitor health care professionals with a focus on administrative and tax compliance. It also introduces race and racism as important themes of the book. For instance, Lynch writes that Harry Anslinger, who became head of a new domestic narcotics enforcement agency in 1930, suggested “that white women who were high on marijuana were seduced into having sex with black men and that fully half of all crime committed by blacks and Latinos was committed under its influence” (15). Given that he is the father of modern drug laws, Lynch goes on to demonstrate how the groundwork Anslinger laid continues to reverberate to this day.

Poignant examples are to be found throughout. In one federal district she examines, Lynch finds an extraordinary level of paternalism laced with messianism. Prosecutors there use words like “time out” (45) to describe a person’s incarceration, demand extensive associational and geographic restrictions (lists of forbidden people and places) during supervised release (47), see prosecution as “working with” defendants (53), view prosecution as a way to “save” the defendant (49), and see prosecution as a “life-saving endeavor” (50). Such language is embedded in a description of a district where prosecutorial work is viewed as protecting the Black community from itself. In another district, people charged with illegal entry or reentry across the country’s southern border, often while carrying illegal drugs in a backpack, are processed en masse in “flip-flop” court. These defendants are charged with both a felony and a misdemeanor, opening up the option to bargain away the felony by immediately pleading guilty, waiving certain rights (including a

trial), and accepting a sentence of up to 360 days. In this high-volume court where efficiency is paramount, Lynch describes observing a defense attorney joking with his client about pointing to “si” or “no” on a piece of paper so the client would know the “correct” answer to the judge’s questions. In one of many potent anecdotes that animate the text, Lynch notes that upon hearing this quip, everyone in the room laughed.

The implications of such observations point to where the book could have offered more in the way of analysis. Although Lynch conducts 63 formal interviews and 12 shorter informal interviews, *Hard Bargains* does not offer any systematic analysis of this valuable qualitative data. As a result, an opportunity is missed to methodically bring to light the meaning state actors assign to their roles, practices, and decisionmaking. Given the paucity of scholarship on federal case processing, such analysis could be quite revelatory.

Nonetheless, *Hard Bargains* engages well with a perennial and problematic gap in the literature on decisionmaking in the criminal justice domain. Accessing prosecutorial decisionmaking is notoriously difficult as is obtaining systematic data about case processing or sentencing that includes information about the judge. Lynch’s approach tackles both problems with notable success.

Overall, what Lynch powerfully demonstrates is how, in myriad ways, there actually is no functional check on prosecutorial power. Her work therefore raises the pressing question of how to effect change. Although she concludes with some perspectives on how deeply entrenched this power is and provides some specific recommendations for change (e.g., reducing statutory maximums), Lynch has made quite clear the difficulty of disentangling the substance and process of law. About this truth, one of the most disheartening epilogues in a scholarly book you are likely to encounter leaves no doubt. It follows that the outrage will continue. But, hopefully, so will such distinguished scholarship.

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The Truth About Crime: Sovereignty, Knowledge, Social Order. By Jean Comaroff and John L. Comaroff. Chicago: University of Chicago Press, 2016.

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In their most recent book, anthropologists Jean and John L. Comaroff consider how crime and policing have transformed