

BOOK REVIEW

***Undue process: Persecution and punishment in autocratic countries.* By Fiona Feiang Shen-Bayh. Princeton: Princeton University Press, 2022.**

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This book explores the strategies of always-insecure autocrats as they seek to shore up and maintain their power. Its approach is anchored in a loose rational choice theory, which holds that autocrats impose sanctions against their enemies strategically to maximize impact and minimize cost. Opponents outside or at the periphery of the regime who are open in their opposition can be treated with a heavy hand. Autocrats can use a variety of blunt instruments to control them: assassination, states of emergency, press and assembly bans and preventive detention. However, more subtle measures are called for when dealing with rivals within the inner circle of power. Here, the challenge is to cut out particular individuals who pose threats without garnering sympathy for them among associates. The author's "main claim is that a judicial approach is ideal for defusing threats from insider elites because of the immediate threat they pose to regime cohesion." In such situations, "the autocrat can attempt to use the ritual of a trial to restore submission to his rule by illustrating the consequences of defying his authority" (43).

Although the theory is in general, author, Fiona Feiang Shen-Bayh, restricted her examination to an area and time period she knows best, English post-colonial Africa. Still, this limit allowed her to explore the turbulent politics of seven countries with autocratic rulers in East and West Africa over a period of 30 years. During this period, each of them experienced coups and attempted coups, coupled with a great many actions to disrupt allegations of attempted coups and other forms of anti-regime activities. Some challenges were initiated by organized opposition groups, and others came originated within the autocrat's own ruling circle. She shows that insider challenges (or perceived challenges) to autocrats were regularly met with criminal prosecution, while outsider challenges or perceived challenges were met with blunter, more preemptory responses, often detention without a hearing (99–101). She was unable to gather systematic data on outcomes for those subjected to extrajudicial treatment, but she has assembled good accounts for those criminally prosecuted, who are overwhelmingly insiders. The bulk of the book focuses on these cases and their aftermaths.

Over the roughly 30-year period of rampant instability following independence in the seven former English colonies the author examined, it appears that about 1,500

insiders (individuals and small groups) were charged with plots to overthrow the state. Of this group, she reports that 971, or 66%, were convicted. About 20% of those convicted were sentenced to death; the other 80% were sentenced to terms in prison. Of those convicted, 598, or 62%, had their sentences commuted (19% of those condemned to death had their sentences commuted, and 74% of those sentenced to prison had their sentences commuted). One hundred sixty-four, or 17%, of all those convicted were executed (104–105).

The author shows that the outcomes were predictable. Prosecutors and judges are selected for loyalty to the regime, and continued employment and advancement depends on it. Furthermore, many former English colonies, especially in the years immediately after independence, depended heavily upon former colonial magistrates to staff their courts. These judges serve at will or for short terms and are supplied with good salaries and housing, having more comfortable lives abroad than they would in England. They accommodated to regime interests, often with enthusiasm. Thus, the worried nervous autocrat is assured that criminal prosecutions of internal enemies will unfold as planned.

Shen-Bayh's analysis shows that the public rituals the trial have their intended effects. They discourages defections from the inner circle, and shore up support for the regime. However, toward the end of the book, she briefly discusses the common law practice of *nolle prosequi*, that is, the suspension of prosecution. She finds that the *nolle* can also serve much the same functions as ritualized trials, except here the state dangles the possibility of reinstating prosecution over a suspect like Damocles' sword rather than convicting and punishing. Both the accused and would be supporters fall in line.

This leads me to wonder about still other low-visibility processes that she identifies. If the *nolle* is used strategically to "restore submission to [the autocrat's rule]," so too may other near-invisible pretrial processes, such as the decision *not* to prosecute at all and the decision to accept a guilty plea instead of going to trial. Indeed, her identification of the gap between charges brought and convictions obtained suggests that the decision not to push for conviction, with or without the *nolle*, must have been used strategically and with some success.

Similarly, I imagine, but I cannot assert with confidence since there is no information, many convictions – perhaps the vast majority – in Shen-Bayh's database were obtained not after public trial but through quiet guilty pleas with some concessions for cooperation. Public proceedings may have been nonexistent, but prosecutors could reach their intended audiences, and their actions would have their intended effects. The cumulative effect of these low-visibility processes might far outstrip the impact of public degradation ceremonies in the occasional well-publicized political trials. Indeed, this quiet approach might be more effective than highly publicized trials, at least if public trials remained credible threats. Attending to these findings in more detail certainly would have complemented the analysis of high profile trials.

Shen-Bayh's study and the implications of the processes just below the surface that she has identified have the potential of radically transforming our understanding of political trials, at least in autocratic societies. Classic accounts of political trials advanced by Rusch and Kirchhheimer, Judith Shklar, and others and captured on films of the Nuremberg trials or the Eichmann trial in Jerusalem focus on the public spectacle. Such trials are designed to kill demons and reassert the social contract. Indeed,

Durkheim maintains that crime and hence *all* criminal trials are political since their function is to reinforce social solidarity. Here, to succeed, actions must be visible and widely talked about.

In contrast, Shen-Bayh shows that political trials to be effective, at least in some settings, do not even need to take place. Nearly invisible actions well short of trial or in commutations after conviction appear to be powerful enough to intimidate and bind insiders ever closer to the autocrat. Quantitatively, such actions appear to be vastly more numerous than the ritualized public trials that constitute her primary concern. The importance of these implications would have been strengthened had the subterranean features of this process been excavated more thoroughly. Still, her work points the way to this possible reformulation of the importance of a nearly invisible political pretrial process as a complement to the political trial.

One final point. The author is self-effacing to a fault in describing her labors in deciphering standard data sets, collating and cross-checking them, and then supplementing them from a variety of other arcane sources in various locations. Any graduate student interested in finding a model research report that involves theory building and testing, large-scale data collection that mixes quantitative with qualitative methods, and that is substantively important, would be well advised to read this book closely. I am not alone thinking so highly of this work. *Undue Process* received the 2023 Theodore Lowi Award from the American Political Science Association for the best first book by a young scholar. A richly deserved honor.