

Legal Compliance, Categorization and the Disappearing of Suffering

Author : Wendy Anne Bach

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Armando Lara-Millán, [Redistributing the Poor: Jails, Hospitals, and the Crisis of Law and Fiscal Austerity](#) (2021).

Just a quick warning—Armando Lara-Millán’s *Redistributing the Poor: Jails, Hospitals, and the Crisis of Law and Fiscal Austerity* is a depressing read, particularly, for those of us who have, at some time in our poverty law careers, litigated class actions. It’s not as if we did not know, when, for example, negotiating compliance benchmarks for institutional defendants (jails, public housing agencies, welfare departments, public hospitals...), either that the purpose of those benchmarks could be easily evaded or that our lawsuit might result in pulling resources away from another need. But knowing this abstractly, and earnestly planning against it, is one thing and reading a book that exquisitely describes how legal pressure often does little more than redistribute pain, is an entirely another.

Lara-Millán is a sociologist. In *Redistributing the Poor*, he challenges fundamental narratives at the heart of a significant branch of socio-legal scholarship. He suggests that the overarching recent U.S. historical narrative that many of us assume is true—that we are seeing the results of “overinvestment in criminal justice and underinvestment in public health”—fundamentally misunderstands the way the United States governs the poor. “In short, the idea of *redistributing the poor* draws attention to how states agencies circulate people between different institutional spaces in such a way that generates revenue for some agencies, cuts costs for others, and projects illusions that services have been legally rendered.” (P. vii.)

Millán conducted his fieldwork in two locations—the intake section of a jail and the waiting room of a public hospital. He watched as staff in these spaces sorted human beings into formal and informal administrative categories – gang member, person in need of mental healthcare, level 3, level 4, real criminals, welfare seekers, drug seekers, and more. In addition, he dug deep into local archival material – giving us access to the day-to-day bureaucratic decision-making and budgetary constraints that led to the human sorting he observed. The book is deeply-researched, provocative, and persuasive, and I imagine it will shake the waters of settled ideas in Lara-Millán’s field. For legal scholars who read and write in those socio-legal spaces, it is essential reading.

But for this jot I want to focus, through a description of just one example, and on what Lara-Millán teaches us about the ways in which, in an age of fiscal austerity, administrative compliance with legal mandates can result in little more than the disappearance and reallocation of suffering.

I’ll begin with one thing Lara-Millán observed while watching staff process human beings from arrest into the jail’s many housing categories. From the perspective of those who are responsible for this task, one of the biggest threats comes from those who either “shut down” becoming non-responsive to orders or “act up” during the process by “yelling, cursing, screaming, fighting, getting out of line, disobeying staff direction, refusing to cooperate, and otherwise causing a commotion during the processing.” (P. 49.) These incidents disrupt the smooth flow of intake. To solve this problem, deputies call on nursing staff who administer “psychotropic drugs, pain medication, and mixes of sedatives ...to ensure the machine-like flow of the intake process.” (P. 49.) The results were two-fold. Efficiency was enhanced, and the targeted inmates received a “medical mark” in their files, making it more likely, at least in the short term, that they would be processed in medical housing in the jail.

Lara-Millán makes three separate and persuasive arguments to explain what he observed. First he argues that this

“solution” was an administrative resolution of two unrelated progressive legal pressures; second that austerity meant fundamentally that, despite legal pressure, the jail did not and would not have enough space in medical housing to meet the real need, and third that to resolve these competing pressures, the administration invested what little resources they had not primarily into avoiding violence and providing care but instead into feigning legal compliance.

The progressive legal pressures at play, brought about by a series of federal investigations and civil rights litigation, targeted two separate harms: excessive force incidents and the failure to provide mental health care. The administration of medication and subsequent medical marking became a way to solve both problems. It lowered the rates of excessive force and demonstrated the provision of care. On the face of it, legal compliance is achieved. But that left administrators with an additional problem. There simply were not enough medical spaces in the jail to actually meet the demand for mental health services. Those processed in at intake had to be processed out, to make space for others who disrupt the administration of the jail. As we watch administrators solve that problem, what becomes clear is that the emphasis is not really on the provision of care. Instead, administrators place emphasis on feigning compliance through the processing of inmates into and out of the medical category. As Lara-Millán discovers, as the jails came under increasing pressure to meet mental health needs, it received significant funding for that purpose, funding that was pulled, by the way, from community mental health. But these resources did not really go to meeting therapeutic needs. Instead, “the newly hired personal [sic] for medical and mental healthcare were almost entirely made up of security and processing personnel *not* therapeutic personnel.” (P. 83.) These processing personnel “were tasked with continuously upgrading and downgrading inmates between the limited medical spaces and general population spaces of the jail” (P. 84), thus resolving the issue of the limited space. In the end administrative emphasis is focused not so much on the progressive goals—avoiding harm and providing care—but on administering categories that redistribute both human beings and the harms they suffer.

This example, and the many others in the book, raise profound questions about the efficacy of progressive legal reform. Lara-Millán’s task is not to solve this problem, but that hardly relieves the pressure on those who do pursue legal reform to wrestle with its implications. And that, of course, is just one reason why everyone interested in poverty law should read this book.

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