JUST ANOTHER DAY

Just feet from District Attorney Hays Webb’s desk on the fourth floor of the Tuscaloosa County Courthouse, the office is abuzz with conversations among prosecutors. A police investigator, head slightly bowed, lopes through an open office door, his forehead already beaded with summer sweat from the short walk across the alley from the Sheriff’s Office, to discuss the details of a gun case. “Another shooting? At 7:45 a.m. on a Tuesday?” asks a passing paralegal, her dismay softened by Alabama’s characteristically languid vowels. An Assistant District Attorney gives her a quick hug as she passes on her way downstairs to court, trailed by a police investigator carrying a box of evidence, including a 9mm handgun a defendant was accused of using to commit murder.

Glancing down at the felony report in her hands, the first page emblazoned with a “Gun Present” stamp, its crimson ink bleeding out onto the page at a forty-five-degree angle, the Assistant District Attorney braces herself to review yet another several hundred pages of evidence photos, witness statements, phone records, and other information pertinent to the prosecution of criminal cases involving firearms. She puts down her coffee cup and sighs as she opens Filemaker, the office’s internal case management system. She has 596 felony cases to prosecute, many of which involve a gun. Her files marked “Gun Present” span the gamut of human frailty, bad decisions, and just plain terrible luck. Drug deals gone wrong enough to involve a shooting that, despite the shooter’s intentions, left the victim alive due to bad aim. Love triangle murders with the victim shot in the head at such close range the ballistics expert states that the defendant must have pressed the gun barrel directly against the victim’s sweat-beaded forehead before pulling
the trigger in the bed they used to share. Bystander shootings at apartment complexes that have become battlegrounds between rivals. Drive-by shootings committed by defendants with lengthy criminal histories.

Seeing “Gun Present” evokes vivid images of scenes from myriad cases. “Bang!” explodes the muffled reverberation of close-range gunfire in her mind as she looks at evidence photos taken at the crime scene, developing her theory of the case as she imagines a home invasion victim’s absolute terror in their last living moments. “Bang!” goes the gun fired by another young shooter who, with more bravado than skill, fails to kill his teenage rival. “Bang!” ends the drug deal gone wrong.

She and her fellow felony prosecutors spend much of their time sorting through the detritus of such human suffering chronicled in police reports, victim and witness statements, crime scene photos, videos, and physical evidence related to near-daily violence as they search for truth while trying to make sense of the senseless. Murdering another human being for a half-pint mason jar of marijuana. For making too much noise next door at a Fourth of July party. For wanting to see other people. The list goes on.

The red “Gun Present” stamp on a felony report does not relate only to the actual misuse of a gun, as it also recognizes the increased danger any time a gun is present during the commission of any crime. These are the “what if” cases with guns—those scenarios that do not involve a shooting but nonetheless have significant potential for violence due to the presence of a firearm. “Bang!” could have screamed the sawed-off shotgun propped against decaying particleboard cabinets when police executed a search warrant in a mobile home following a confidential informant’s controlled buy of a large amount of methamphetamine earlier that day.

“Bang!” could have resounded from the 9mm handgun and its multiple magazines the patrol officer found lodged under the front seat of a car driven by a man with multiple felony armed robbery and assault convictions. “It’s my wife’s gun,” the driver tries to reason with officers as he puts his hands behind his back, his mind now in countdown mode until his parole officer inevitably revokes his freedom and sends him back to prison. “I didn’t even know it was in there.” “Bang!” could have sent a bullet racing into the body of the woman whose ex-boyfriend’s family beat and pepper sprayed her while he waved his handgun in her direction, vowing to return and kill her. Indeed, “bang” could result from the presence of a gun during even a simple misdemeanor theft; the presence of a gun during any intentional criminal act changes the significance of the crime.

The Assistant District Attorney knows she must stay focused on the facts beyond change, and if they point to a crime, how to build her case with what
she has—to be on the offensive instead of worrying constantly about what
the defense is going to do. Her job is to see where the facts and law intersect
when analyzing the evidence and assembling the state’s case. Proper prepara-
tion demands that she challenge all from every source, and when confident that she has arrived at Truth, craft an unassailable story that resonates
with those who will determine guilt or innocence. She understands that her
witnesses and her victims may not want to talk. She believes it when they
say they’re scared, that they don’t like police. She’s less credulous when
they say they are “too busy” to come talk to her at the courthouse about a
criminal case. She understands it’s an impossible position to be in, so she
doesn’t dwell on it. She can’t. There are too many people, indeed an entire
community, counting on her and her fellow prosecutors.

This is a book about prosecutors. It is also a book about guns. Yet there
are a number of things that this book is not, and it is important to get those
out of the way first to avoid disappointing readers who may have expected
something else. This book is not a damning exposé of southern criminal
justice practices, a collection of grand claims about the nature or state of
justice in America, or a hand-wringing diatribe about ostensibly broken
approaches to the administration of justice. You won’t find any shocking
accounts of corruption or analysis droning on about theories of little rele-
vance to the gritty realities that make up the law in practice. Too many
people who have never made an arrest, prosecuted a case, or worked in a
correctional facility have already busied themselves with those approaches
because it is easy to make sweeping generalizations and claims to truth
from outside the everyday operations of criminal justice. When viewed
from the interior depths of the law in practice, however, the picture becomes
far less clear and the correctness of the popular notions now in vogue much
less certain. In fact, although it was not the authors’ intent, this book may
well be seen as a defense of the system.

THE JUSTICE ASSEMBLAGE: THEORETICAL FRAMES

Coauthored by a district attorney, an anthropologist, and a geographer, all of
whom have extensive experience as researchers and criminal justice practi-
tioners, this book takes the reader inside the everyday operations of the law
in practice at a courthouse in the Deep South. Scholarly and popular
accounts typically depict prosecutors as the most powerful criminal justice
actors because of their abilities to file criminal charges, choose the cases they
pursue, make recommendations for bail amounts and sentencing, and make
plea offers to defendants. Yet prosecutorial powers are simultaneously
defined and limited by legislators who create criminal law and policy, by police who conduct criminal investigations and make arrests, by juries and judges who determine a defendant’s guilt or innocence, by parole boards that make determinations about an incarcerated person’s eligibility for freedom, and by voters who elect the district attorney (Bellin 2019). *Gun Present* illuminates the cultural and relational assemblages of actors, knowledges, and practices that comprise the everyday contexts in which prosecutors carry out their duties around one of the most pressing and politically charged challenges: the disposition of criminal cases involving guns.

Uniting and building on four transdisciplinary bodies of literature—assemblage theory, law and society, studies of discretionary decision-making in context, and violent and carceral geographies—this book argues that the everyday realities shaping the law in practice comprise a justice assemblage of individual people and the interactions they have with one another as they navigate the institutional structures and practices central to the administration of justice. This argument makes three significant contributions to both academic literature and popular discourse surrounding violent crimes committed with a gun. First, focusing on the work of prosecution in a midsize southern city provides powerful insights into what many scholars (e.g., Sklansky 2016; Arora 2018; Chambliss 2018) believe to be the tense position of elected district attorneys, who must aggressively prosecute violent crimes committed with a gun while simultaneously upholding their constituents’ Second Amendment rights. Second, the book emphasizes that the violent crimes committed with a gun are hardly confined to major metropolitan areas; in fact, the number of crimes committed with a gun in the greater Birmingham, Alabama, area, which includes Tuscaloosa County, is disproportionately high and, when adjusted for population size, amounts to the second-highest homicide rate in the nation (Archibald 2021). Third, to our knowledge, no researchers have ever received total ethnographic access to a state prosecutor’s office. This access allowed our research team to arrive at a nuanced understanding, from the vantage point of prosecutors, regarding the governing social and institutional cultures that together comprise the moral universe of a southern District Attorney’s Office and, in turn, how criminal justice and community actors come together in the administration of justice, from arrest through investigation to prosecution.

**Assemblage Theory**

Philosopher Gilles Deleuze and psychoanalyst Félix Guattari (1980) originally conceptualized assemblage theory to understand systems and institutions as comprised of interlocking parts, rather than a unified whole.
Assemblages, translated from the French *agencement*, meaning “layout” or “arrangement,” are dynamic and entail “a constructive process that lays out a specific kind of arrangement” (Nail 2017, 24). Assemblages are dialectic in that they are both abstract concepts and actually existing phenomena that structure society (Legg 2011). Scholars use the term *assemblage* as a descriptor, an ethos, and a concept to understand human relations within specific sociospatial formations (Anderson and McFarlane 2011). Assemblage theory allows us to theorize the social relations that structure the world as existing in constant reorientation and recomposition to one another while nonetheless constituting an order with tremendous collective expressive capacity (Anderson et al. 2012).

Assemblage theorists strongly caution against describing assemblages as analogous to networks, as doing so vastly dilutes the assemblage’s social complexity. Assemblages are tetravalent—derived from *valency* in the sense of how chemists and biologists conceive of the combining powers of elements or molecules—with four types (*tetra*) of combining powers (*valency*) that operate along two distinct axes: first, between the intermingling *machinic assemblage* of bodies, actions, and passions (content) and that of a *collective assemblage* of bodies, acts, and statements (expression); and second, between territorial stabilizing *lines of articulation* and that of deterritorializing *lines of flight*. . . . A machinic assemblage (A) of two bodies encountering by chance (a line of flight (D)) also produces the encounter as a territory (C) and a space of articulation, thus articulating together, in expressive enunciation (B), something quite precise that could not be said if such compositions were not taking place (Dewsbury 2011, 150).

Conceiving of a particular social order as an assemblage, then, allows us to understand that social structure, and therefore social change, emerges through the everyday practices of human interaction (Dewsbury 2011).

As an ontology of relational practices, assemblage theory conceives of the social world as essentially relational, heterogenous, and fluid in ways that enable particular patterns and types of power to circulate, replicate, and, in turn, exert influence on the dynamic connections that structure social life (Cloatre 2018). Relationships and relational dynamics within the assemblage are processual and together form a precarious whole (Müller 2015). Affect plays a significant productive role in the process of bringing this precarious whole into being and stabilizing social relations within it through the creation of mutual wishes and desires among individuals and the social worlds of which they are a part (Müller and Schurr 2016).
Geographers, drawing on the work of philosopher Manuel DeLanda, have noted the utility of assemblage theory for analyzing democratic network governance, the coordination between actors and communities that, when taken together, constructs the social world and political action within it (Van Wezemael 2008). DeLanda builds on Deleuze and Guattari’s original conceptualization of the assemblage to propose moving beyond the “reified generality . . . of ‘society as a whole’” to envision “a multiscaled social reality” through which “a whole emerges from the interactions among its parts . . . and once it comes into existence it can affect those parts” (DeLanda 2006, 34). These parts include both the human and nonhuman world; for example, geographers note that disaster risk management assemblages attempt to manage disasters-in-the-making, yet in so doing, also create socio-environmental problems of their own (McGowran and Donovan 2021). Political geographers emphasize how ethnography, a method central to our project, has both the potential “to bring forward multiple voices to investigate the becoming of political events” and “even more promise for analyzing and intervening in the emergent politics of socio-material-affective assemblages” (Ghoddousi and Page 2020).

Geographers also note the importance of considering the role of objects within assemblages, which is particularly salient for our study of guns and their meaning within the justice assemblage. Describing objects as “smoldering furnaces of affects that are capable of creating, policing, and destroying the very contours of existence,” geographer Ian Shaw explains,

> A world is a constellation of objects. These objects are constellated together because they affect each other . . . objects are constantly *affecting*. In their very existence, they force themselves upon each other; reducing, reshaping, channeling, annihilating, eroding, fusing, scouring, electrifying, and so on. An object, in this sense, is not defined by its brute materiality or an underlying “life.” Either maneuver would be a form of reductionism. Instead, an object is precisely what it does . . . no object exists apart from its world: to exist is to affect and be affected by the world (Shaw 2012, 620–21).

Despite the tremendous utility of assemblage theory for the study of crime and justice, criminologists have been surprisingly slow and reluctant to adopt it. Our study, accordingly, represents a critical criminological intervention by conceiving of justice itself as an assemblage. In so doing, we unite and build on preliminary criminological theorizing about the potential for assemblage theory to provide new insights into, for example, the social processes by which communities and institutions define and respond to crime (Crewe 2010). Crime is itself an assemblage because it “is both a
designation for an event and a category of acts and practices which are diverse and historically and geographically contingent” (Crockett Thomas 2020, 72) and those who commit crimes “are produced from their material and its affective relations with the rest of the world” (Crockett Thomas 2020, 75).

The limited body of criminological work that utilizes assemblage theory remains largely confined to analyses of affective assemblages, security assemblages, and surveillant assemblages. For example, feminist criminologists have examined rape trials to understand the courtroom as an affective assemblage with its own established practices and customs that interact with the top-down imposition of law and policy reforms to produce courtroom truths (Carline, Gunby, and Murray 2020). Domestic violence researchers likewise advocate for further development of an intersectional assemblage theory to understand the material and sociostructural processes that enable violence against women (Farr 2021). Studies of surveillant assemblages note therapeutic surveillance in drug courts’ combination of personal relationships, intimate knowledge, and pastoral care (Moore 2011); the function creep of video surveillance images transferred from private sources to police as part of criminal investigations (Wilkinson and Lippert 2012); and the assemblage of penal governance at work in juvenile justice contexts (Gray 2013). Yet assemblages are inevitably products of their sociocultural contexts, and to understand how the justice assemblage takes shape, we turn to law and society scholarship.

**Law and Society**

Law and society scholarship focuses on how legal rules and decisions are both products of and negotiated within the social context that produced them. Law and society research regards the legal system as an abstract entity that realizes its concrete powers through the law in practice. For example, law and society research has examined how language is integral to all aspects of the law in practice due to the extraordinary weight words hold in legal settings, with linguistic analysis of the everyday practice and application of the law revealing the microdynamics of the legal process (Conley, O’Barr, and Conley Riner 2019). Likewise, anthropologist Robin Conley Riner (2016) has explored how communication strategies, such as linguistic and physical distancing between jurors and defendants, are critical aspects of capital trials because they function as a form of discursive violence that enables death sentencing (Conley Riner 2016).

Law and society researchers are attuned to the nuanced intersections between institutions and the social worlds that surround them and
accordingly recognize ethnography’s power to convey the nature of the law in practice. Early anthropological work in this area emphasizes that because institutions are the sum of individual ideas distilled in a common shape, different kinds of institutions collectively allow individuals to think different kinds of thoughts and respond to different kinds of emotions (Douglas 1986). More recent research recognizes the cross-cultural interrelations between law, custom, and justice, as law makes aspirational claims to truth, justice, and morality in all societies (Pirie 2013).

Cultural politics influence legal and governmental practices, and the law in practice is accordingly a tense site for the negotiation of tradition, justice, and morality, as is evident in tensions, revealed by ethnographic research in Hopi Tribal Court, between the language of Anglo-American law and Hopi culture (Richland 2008). Ethnographic research on the daily practices of French supreme courts demonstrates the foundational role of legal reasoning in constructing and altering the social realities that shape associations between people, things, and concepts (Latour 2010). According to Kohler-Hausmann (2018), the systemic nature of the intersections between law and society are likewise apparent in how jurisdiction-wide and politically driven policing priorities influence the types of cases seen at District Attorney’s Offices, as occurred with the rise of stop-and-frisk policing that brought large numbers of misdemeanants into court. Prosecutors’ everyday work is accordingly an ideal site to examine how legal decision-making occurs among individuals within institutions because prosecutors are fiduciaries accountable to and aligned with the interests of the public (Green and Roiphe 2020a).

Law and society research has also analyzed the court as a performance and a public spectacle. Some legal scholars have observed that contemporary courts are overburdened because they have historically been so successful in resolving cases and now face an overload of cases that in earlier eras would have been handled informally in the family or community (Flango and Clarke 2015). Levels of public confidence in politico-legal institutions are evident in public hearings, where individuals enact their social positions as part of a sensorial performance that impacts audiences both within and without the courtroom (Barrera 2013). Court’s performative aspects are particularly evident in capital trials, where some researchers have argued that political machinations ultimately outweigh the additional due process requirements that such cases demand in the form of jurors and psychological experts (Kaufman 2020). Ethnographies of criminal courts, as mediators between policing and correctional facilities, have argued that important disconnects exist between dominant cultural understandings of
the court as an impartial institution and institutional realities that can allow entrenched racism to flourish (Gonzalez Van Cleve 2016). Likewise, courtroom ethnography of sexual assault trials indicates the potential for forensic science, expert narratives, and witness accounts to publicly reinforce gender and race stereotypes (Hlavka and Mulla 2021).

Finally, law and society researchers have additionally explored the social role that evidence plays from investigation through trial as criminal justice professionals utilize evidence to create their narrative of a particular case. In homicide cases in the United Kingdom, for example, a reciprocal relationship exists between narrative and evidence, with detectives, scientists, and other experts embedding forensic science into narrative as they make their case for prosecution (Brookman et al. 2020a). Forensic evidence is a form of knowledge, with each piece possessed of its own social life and biography, and Swedish prosecutors engage in legal storytelling as they utilize forensic evidence to produce knowledge and this evidence, in turn, creates social relationships as cases move from crime scene to courtroom (Kruse 2016). Yet evidence is just one aspect of how prosecutors build a successful case. In sexual assault cases, for instance, forensic evidence is auxiliary, occasional, and nondeterminative in most rape cases, with victim willingness to testify and victim injuries the strongest predictors of case outcomes (Sommers and Baskin 2011). Understanding the social role each aspect of the legal process plays in the administration of justice also requires attending to legal actors’ everyday use of discretionary decision-making in context.

Studies of Discretionary Decision-Making in Context

Studies of discretionary decision-making in context emphasize prosecutors’ professional lives and identities as dynamic and in dialogue with political and judicial will, individual conscience, and office organizational cultures that may variously prioritize individual autonomy versus consistency across cases (Levine and Wright 2013). Some scholars contend that sovereignty, rather than discretion, best captures the scope of prosecutorial powers due to prosecutors’ abilities to bring, or decline to bring, criminal charges against an individual even when legal reason exists to do so (Sarat and Clarke 2008).

Prosecutors, like all practicing lawyers, routinely need to reconcile legal objectivity and their duty to uphold the law with dilemmas in their community of practice (Levin and Mather 2012). According to Wright and Levine (2014), decision-making and approaches to professional role often shift throughout a prosecutor’s career, with less-established prosecutors
more likely to aggressively pursue cases and, without appropriate supervision, potentially cause harm in the forms of overcrowded trial dockets; procedural delays for victims, witnesses, and defendants; and pushing the limits of disclosure obligations.

Historically, prosecutors’ discretionary latitude has prompted scrutiny, and during both the Progressive Era and now, progressive prosecutors were elected following popular support for criminal justice reform and believe(d) that crime is a social phenomenon better addressed by community services than prison; however, unlike today, Progressive Era prosecutors publicly announced their intentions to implement professional norms and practices to promote the values of fairness and proportionality (Green and Roiphe 2020b). Prosecutors’ discretionary latitude, combined with their accountability to the public, prompts them to mitigate (or minimize) discretion’s potential to result in harm. For example, Swedish prosecutors engage in “objectivity work” by appealing to regulations, duty, and professional standards while simultaneously responding to problems that arise in the exercise of discretion by restating their objectivity, correcting the issue, contrasting the problem with those of others, and recognizing human fallibility (Jacobsson 2008). In some cases, prosecutors may issue a public statement regarding their reasons for not pursuing a case to signal their stance on a given criminal justice issue, demonstrate accountability, and create a historical record of their decision (Roth 2020). Prosecutors’ accountability to the public occurs in tandem with the dynamics of their interactions with other law enforcement actors. Prosecutors and law enforcement agents mutually monitor one another as part of a working group that brings charges in a criminal case, as prosecutors need a thorough investigation and evidence from police to prosecute the case and, in turn, law enforcement agents need prosecutors to build a compelling case by mobilizing a narrative around law enforcement agents’ investigations and evidence (Richman 2003).

Just as prosecutors’ discretionary powers are beholden to the public and to law enforcement agents, jurors’ exercise of discretion figures prominently in prosecutors’ minds as they craft their arguments in a criminal case. Jurors exercise discretion and engage in the interpretation of the law through the lens of their own lived experiences, acting as democratic interpreters between the law and those tasked with its practice (Carroll 2014). Prosecutors’ discretion is both contingent and reflexive, with their case narratives developed through a creative and collaborative process with continual reference to jurors’ potential interpretations of those narratives (Offit 2021). While prosecutors still exercise discretion during the voir dire