

Uneasy Alignments: A Multidisciplinary Exploration of Mental Health and Legal Systems Entanglements

Corey S. Shdaimah

Richard C. Boldt

Follow this and additional works at: <https://digitalcommons.law.umaryland.edu/jhclp>

Recommended Citation

Corey S. Shdaimah, & Richard C. Boldt, *Uneasy Alignments: A Multidisciplinary Exploration of Mental Health and Legal Systems Entanglements*, 27 J. Health Care L. & Pol'y (2024).

Available at: <https://digitalcommons.law.umaryland.edu/jhclp/vol27/iss1/2>

This Article is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Journal of Health Care Law and Policy by an authorized editor of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

UNEASY ALIGNMENTS: A MULTIDISCIPLINARY EXPLORATION OF MENTAL HEALTH AND LEGAL SYSTEMS ENTANGLEMENTS

COREY S. SHDAIMAH* & RICHARD C. BOLDT**

Abstract

The Uneasy Alignments Symposium explored coerced therapeutic interventions across practice areas. Critical scholars have long noted that treatment and carceral systems surveil and control marginalized populations. However, the turn to mental health within the legal systems has been embraced by mental health and legal providers without sufficient critical reflection. We asked Symposium speakers—primarily from local Baltimore and Maryland communities—to consider how this came to be, the consequences for communities and families, and how social workers and lawyers can critically reflect and respond to these developments. The Symposium revealed: 1) harmful mental health and legal system entanglements with little benefit to those most in need; 2) a failure to consider the perspectives of frontline workers and the people, families, and communities negatively impacted by programs and policies; and 3) an absence of discussion about who should be served. Responding to these failures, we heard calls for community sited, community driven, and community administered services and systems.

* Corey Shdaimah, LLB, LLM, PhD, is Daniel Thursz Distinguished Professor of Social Justice at the University of Maryland School of Social Work. Her research examines how people navigate policies, focusing on the criminal legal system and dependency court. *The Compassionate Court?: Support, Surveillance and Survival in Prostitution Diversion Programs* (Temple University Press), co-authored with Chrysanthi Leon and Shelly Wiechelt, is her latest book.

** Richard Boldt, J.D., is the T. Carroll Brown Professor of Law at the University of Maryland Francis King Carey School of Law. He teaches and writes in the areas of constitutional law, criminal law, mental disability law, and torts.

This special issue has roots in a prior symposium. In 2009, the co-organizers of the 2022 Uneasy Alignments Symposium, Corey Shdaimah and Richard Boldt, participated in a program entitled “Problem Solving Courts: A Conversation with the Experts,” hosted by the *University of Maryland Journal of Race, Religion, Gender & Class* under the stewardship of MSW/JD alumna Ingrid Lofgren.¹ Richard cast a critical eye on drug treatment courts and mental health courts; Corey similarly reflected on the court-affiliated prostitution diversion program that had recently emerged in Baltimore. We quickly recognized kindred spirits: educators and scholars in professional schools whose graduates seek to apply their craft, often in ways that promise to ameliorate harm and suffering, invited to combine our knowledge and skills to improve outcomes for stigmatized or marginalized clients.² At the time, many in both social work and law were eager to embrace new programs that combine rehabilitation with social control, help with leverage, and compassion with guidance. We were concerned that these hybrid innovations would produce a less rosy picture, both in theory and practice, than their advocates suggested. Some of the trepidations we shared—primarily with public defenders—have materialized.³ Over the years, we have seen fraught professional practice where social workers, lawyers, and other human services workers have been encouraged, in good faith, to compromise professional ethics and loyalties, often for individualized (if not always unimportant) client gains. Unfortunately, these problem-solving initiatives frequently amplify state power to reach deeper into people’s lives and psyches than either mental health or legal system interventions can on their own. They also tend to obscure the need for broader societal changes.⁴

These are precisely the kinds of worries that were the focus of this Symposium and special Issue. We are excited to continue a dialogue that started at the Symposium, across a wide array of areas where mental health and legal systems combine, purposely convening scholars and practitioners who are working in or near Baltimore from the University of Maryland Francis King Carey School of Law and the University of Maryland School of Social Work, as

1. *Problem Solving Courts: A Conversation with the Experts*, U. MD. L.J. RACE, RELIGION, GENDER & CLASS (Nov. 6, 2009), https://digitalcommons.law.umaryland.edu/rrgc_symposia/sym20091106/.

2. Richard C. Boldt, *The “Tomahawk” and the “Healing Balm”*: *Drug Treatment Courts in Theory and Practice*, 10 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 45 (2010); Corey S. Shdaimah, *Taking a Stand in a Not-So-Perfect World: What’s a Critical Supporter of Problem-Solving Courts to Do?*, 10 U. MD. L. J. RACE, RELIGION, GENDER & CLASS 89 (2010).

3. See generally CYNTHIA H. ORR ET AL., AMERICA’S PROBLEM-SOLVING COURTS: THE CRIMINAL COSTS OF TREATMENT AND THE CASE FOR REFORM (2009), <https://www.nacdl.org/getattachment/d15251f8-6dfe-4dd1-9f36-065e3224be4f/americas-problem-solving-courts-the-criminal-costs-of-treatment-and-the-case-for-reform.pdf>; Mae C. Quinn, *Whose Team Am I on Anyway? Musings of a Public Defender About Drug Treatment Court Practice*, 26 N.Y.U. REV. L. & SOC. CHANGE 37 (2000).

4. COREY S. SHDAIMAH, CHRYSANTHI S. LEON & SHELLY A. WIECHELT, *THE COMPASSIONATE COURT?: SUPPORT, SURVEILLANCE, AND SURVIVAL IN PROSTITUTION DIVERSION PROGRAMS* (2023).

well as participants from our sister institutions, Morgan State University and the University of Maryland Baltimore, so that we may help each other think about our respective roles in relation to these policies and programs.

The co-sponsorship of the School of Social Work Thursz Social Justice Lecture Series and the *Journal of Health Care Law and Policy* as initiators and hosts of this conversation arose from the spirit of critical reflective practice that is a key mission of both. Daniel Thursz was the Dean of the School of Social Work from 1966–1976 and had a long career working at all levels of social work practice, including in the arenas of aging policy at the national level, community based social work, and organizational leadership.⁵ He was known for an abiding commitment to social justice, as both a guiding principle and a call to action in his personal and public life and for the kind of reflective practice that these commitments demand and this Symposium embodies. Similarly, the *Journal's* mission is to promote solution-oriented legal scholarship, to improve and challenge current health law and policies.

The Uneasy Alignments Symposium took on the use of legal coercion to force engagement or compliance with therapeutic interventions across a variety of areas, including child welfare, families, and criminal legal systems. Critical scholars have long noted that both treatment and carceral systems are used to surveil and control marginalized populations, including women, immigrants, and racialized minorities. However, the turn to mental health within the legal systems has largely been embraced by mental health and legal providers and agencies without sufficient critical reflection. We asked speakers to consider why and how this came about, the consequences for communities and families, and how social workers and lawyers in all of their roles can critically reflect on and respond to these developments. Our panelists hailed primarily from Baltimore, Maryland, and surrounding areas to draw focus on local developments and to foster ongoing dialogue.

These are important questions. Social work foremother Jane Addams suggested that thinking about working for justice with others may not provide “peace of mind,” but rather “pangs and throes to which the poor human understanding is subject whenever it attempts to comprehend the meaning of life.”⁶

The Hebrew prophet made three requirements from those who would join the great forward-moving procession led by Jehovah. “To love mercy” and at the same time “to do justly” is the difficult task; to fulfil the first requirement alone is to fall into the error of indiscriminate giving with all its disastrous results; to fulfil the second solely is to obtain the stern policy of withholding, and it results in such a dreary

5. *About Daniel Thursz*, U. MD. SCHOOL OF SOCIAL WORK, <https://www.ssw.umaryland.edu/thursz/about-daniel-thursz/?&> (last visited July 20, 2023).

6. JANE ADDAMS, *DEMOCRACY AND SOCIAL ETHICS* 70 (The Macmillan Co. 1907).

lack of sympathy and understanding that the establishment of justice is impossible. It may be that the combination of the two can never be attained save as we fulfil still the third requirement—"to walk humbly with God," which may mean to walk for many dreary miles beside the lowliest of His creatures, not even in that peace of mind which the company of the humble is popularly supposed to afford, but rather with the pangs and throes to which the poor human understanding is subjected whenever it attempts to comprehend the meaning of life.⁷

Critical law and social work practice and scholarship tell us we must be concerned by the implications of our helping endeavors, and, if we are patting ourselves on the back too much, that means we are probably not paying attention. We appreciate the willingness of a growing number of scholars and practitioners to join us in thinking carefully about the uneasy alliances between mental health and legal systems proliferating since we first encountered one another in 2009.

Two themes run through our work; both were apparent in the contributions of many who participated in this Symposium. One centers on the promise of, and difficulties in accomplishing, effective collaboration between lawyers, social workers, and other frontline workers embedded in the legal and human services bureaucracies that serve and manage clients who have little social, economic, and political power. The other involves our deep intellectual and practical ambivalence toward neoliberal reforms in the criminal legal system and other potentially coercive legal processes. This critical ambivalence requires thinking carefully about the role of lawyers, social workers, and others in the framing of problems targeted by these initiatives and the nature of the therapeutic solutions offered.

Behavioral health interventions located in, or supported by, various legal processes generally are understood as targeting some identified "problem." But, picking up the story at this point obscures important information about how social problems are conceptualized in the first place. The process by which a problem is brought into focus and consolidated necessarily contains both "definitional" and "remedial" components.⁸ As this process moves ahead, each component implicates the other in a dynamic, often cyclical fashion. Thus, "[t]he use of a remedy, while following from a particular definition of the trouble, simultaneously serves as a test of that definition."⁹ This process is recursive, iterative, and made even more complicated by virtue of the competing positions of the relevant actors. Differing perspectives may lead to "highly partisan and

7. *Id.* at 69–70.

8. Robert M. Emerson & Sheldon L. Messinger, *The Micro-Politics of Trouble*, 25 SOC. PROBS. 121, 121 (1977).

9. *Id.* at 123.

hotly contested” understandings of what the problem entails and what results the attempted remedies have produced.¹⁰

Much of the attention of the presenters at this Symposium was directed to the ways in which legal, social work, or other behavioral health interventions that target social problems are shaped by the institutional and political contexts in which they take place after “the problem” is identified. However, the generally unobserved negotiations that shape the highly individualistic, often medicalized conception of these problems are an important part of the story, as well. For example, the narrative of addiction and recovery in drug courts centers responsibility on individual offenders and on the individual pathologies that are understood to drive criminal conduct. The daily work of problem-solving judges, lawyers, social workers, case managers, and others takes place within a larger context in which the economic dislocation and systematic marginalization experienced by those caught up in these courts is repackaged as an individual problem of irresponsibility. Once repackaged and described in these terms, it is natural that the remedial interventions offered are behaviorist measures designed to incentivize participation in the mainstream economy. Speakers across the Symposium’s panels identified similar processes by which systemic injustices become obscured through the individualistic, highly medicalized, problem-solving practices that dominate many of the spaces where the legal profession and the helping professions intersect.

Symposium contributors brought deep expertise across a variety of contexts including mandated sex offender treatment, child welfare, intimate partner violence, and juvenile justice. Each panel was designed to include a mix of academics, who bring conceptual lenses and research knowledge, and practitioners from law and social work. Most contributors were also students or educators who are committed to future professional practice. Our intention was to bring research and critical theory into dialogue with practice. We invited participants to consider what ideas practitioners should take away from the discussion and what insights researchers might gain from the contributions of those embedded in practice. Another way to gain perspective on systems we are used to working in is by looking at other systems. Often, comparative analysis helps us to rethink elements of our work that we take for granted. The purpose of this Symposium was to bring experts from a range of practice and research fields to think fruitfully across topics that are too often siloed. The Symposium contributors documented an array of coerced and cascading invasive practices that result from combining mental health and legal systems. Even well-intentioned interventions, especially when they are consequential and intrusive, should give us pause.

10. *Id.* at 125.

In looking at emerging patterns, Morgan State University doctoral student and adjunct professor Korey Johnson introduced the *In the Home Panel* comprised of experts in the fields of child welfare, juvenile justice, and intimate partner violence with the question: “Do you think the harms created by these interventions are intentional?” It is not surprising that all the panelists responded in the affirmative, noting that these systems in fact work the way that they are designed. All pointed to the deeply embedded racism, classism, social control, and paternalism that drive these systems, despite the public knowledge and well-documented research that highlights the ongoing injustices and inequities that they entrench.

A few clear lessons emerged across topics and populations:

1. We have both *too much and too little* mental health intervention. Perhaps unsurprisingly, this issue falls within what has been framed as the under policing/over policing paradox.¹¹ There is far too much intervention in ways and in places where it can do harm, and insufficient support in ways that are both effective and helpful.
2. We have failed to attend to the *missing voices* in our programs and policies. These voices include:
 - a. The frontline workers that Michael Lipsky has famously called street level bureaucrats.¹² This group is made up of lawyers, social workers, and judges but also police officers, parole and probation officers, and child welfare workers. These are the consequential actors who are the focus of our research and with whom we work. Many who attended our day long Symposium raised questions about identifying and managing possible harms, navigating hurdles that impede them from performing in compliance with professional judgment and ethics, and knowing when to strive for improvements from within versus when their presence is a form of complicity.
 - b. Individuals, families, and communities that are targeted by the uneasy alliance between legal coercion and behavioral health intervention. Some within these groups may offer support for these neoliberal practices in the face of existing problems, but others call for their reform, or, for making them

11. Christopher Lewis & Adaner Usmani, *The Injustice of Under-Policing in America*, 2 AM. J.L. & EQUAL. 85, 85 (2022).

12. MICHAEL LIPSKY, STREET-LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES (1980).

obsolete by creating systems and policies that are more equitable and more effective.

These are the voices that can tell us: “This is what harms.” “This is what helps.” And we are not hearing them enough.

3. The need to be honest about who our client is—and we might have many—and how we must serve them.¹³ Are we serving the goals of the State or an agency *against* the interests of the people who are targets of programs and policies, when there are inherent conflicts of inflicts? Who is our client in this scenario? Who are we serving? Who do we want to be serving? Who *should* we be serving?
4. Finally, we heard a call for *community sited, community driven, and community administered services and systems*. So many of the systems described by our panelists that create harm are exogenous to the communities that they serve, surveil, and regulate. We are entrenching systems that do not actually work well for all sorts of reasons, including the incentives that drive institutions and programs to self-perpetuate even when they may be irrelevant or harmful. And they are not necessarily responses embedded in the ethos and the needs of the community.

We can distill some core guidelines from these overarching lessons that might be helpful moving forward. In order to mitigate or avoid harm and provide effective and culturally responsive policies and programs (e.g., the right kind of wanted services), we must elicit the input of those who are impacted by policies. Our understandings of problems and their solutions should be driven by the communities in which they are situated.

We also heard from Symposium attendees, and people who are in our research and whom we serve, that they are tired. Some of their insights are new, others are familiar. Regardless of whether we are repeating the same or new versions of similar arguments and facts, they must be said. That is one role we must embrace: listening, validating, bearing witness, educating ourselves and others who work for change. We must also acknowledge that power does not give up easily. We must continue to fight. People (sometimes we ourselves) may have raised similar critiques thirty years ago, or twenty years ago, or even 100

13. See Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 79 n.37, 111–12 (2000) (discussing potential tensions between achieving a client’s substantive goals and building a mutually satisfying attorney client relationship); see also Hugh McLaughlin, *What’s in a Name: “Client,” “Patient,” “Customer,” “Consumer,” “Expert by Experience,” “Service User,”—What’s Next?*, 39 BRIT. J. SOC. WORK 1101, 1107–09 (2009) (challenging framing of recipients of social work services as “service users”); NAT’L ASS’N OF SOCIAL WORKERS, CODE OF ETHICS (2021), <https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English>.

years ago.¹⁴ Yet, we must continue to learn and share and reflect and critique. We must use media and act through our professional organizations. We must also hold ourselves and each other accountable, always asking questions. Are we doing okay? Are we doing the best that we can? What else can we be doing? Can we be an ally if we are engaged in forms of control or coercion?

In this special Issue following the Symposium, we ask: How can we draw on our respective professions of law and social work, which charge us with centering the dignity, worth, and autonomy of our clients?¹⁵ What does it mean if our professional practice—even with the best intentions—is at odds with our ethical obligations?

14. See, e.g., Amy J. Cohen, *Trauma and the Welfare State: A Genealogy of Prostitution Courts in New York City*, 95 TEX. L. REV. 915 (2017) (presenting a history of prostitution courts in New York, tracing critiques back to 1920s).

15. NAT'L ASS'N OF SOCIAL WORKERS, *supra* note 13; MODEL RULES OF PRO. CONDUCT (AM. BAR ASS'N 2020).