

## **“WE’LL TAKE THE TOUGH ONES”: EXPERTISE IN PROBLEM-SOLVING JUSTICE**

Chrysanthi S. Leon\* and Corey S. Shdaimah\*\*

*Expertise in multi-door criminal justice enables new forms of intervention within existing criminal justice systems. Expertise provides criminal justice personnel with the rationale and means to use their authority in order to carry out their existing roles for the purpose of doing (what they see as) good. In the first section, we outline theoretical frameworks derived from Gil Eyal’s sociology of expertise and Thomas Haskell’s evolution of moral sensibility. We use professional stakeholder interview data (N = 45) from our studies of three emerging and existing prostitution diversion programs as a case study to illustrate how*

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\*Chrysanthi S. Leon is Associate Professor of Sociology and Criminal Justice at the University of Delaware, with secondary appointments in Legal Studies and Women and Gender Studies. She received her BA at Yale University and her JD and PhD in Jurisprudence and Social Policy from the University of California, Berkeley School of Law. Her major research interests are sex offender policies, women in the justice system, and the sociology of punishment. University of Delaware, Sociology and Criminal Justice, 325 Smith Hall, Newark, DE 19716, (302) 831-8683; santhi@udel.edu

\*\*Corey S. Shdaimah is the Daniel Thursz Distinguished Professor of Social Justice at the University of Maryland, School of Social Work. She received her LLB from Tel Aviv University, her LLM from the University of Pennsylvania, and her PhD from Bryn Mawr College. Her research focuses on how professionals and laypeople work around policies that they view as unjust or inefficient, primarily in the areas of prostitution policy, dependency court, and child care. University of Maryland, School of Social Work, 525 W. Redwood St., Baltimore, MD 21201.

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*criminal justice actors use what we define as primary, secondary, and tertiary expertise in multi-agency working groups.*

*Actors make use of the tools at their disposal—in this case, the concept of trauma—to further personal and professional goals. As our case study demonstrates, professionals in specialized diversion programs recognize the inadequacy of criminal justice systems and believe that women who sell sex do so as a response to past harms and a lack of social, emotional, and material resources to cope with their trauma. Trauma shapes the kinds of interventions and expertise that are marshalled in response. Specialized programs create seepage that may reduce solely punitive responses and pave the way for better services. However empathetic, they do nothing to address the societal forces that are the root causes of harm and resultant trauma. This may have more to do with imagined capacities than with the objectively best approaches.*

**Keywords:** *prostitution diversion, problem-solving courts, sociology of expertise, trauma, therapeutic jurisprudence, prostitution, sex work, specialized courts, social control*

In this article we explore the role of expertise in multi-door criminal justice to enable new forms of intervention within existing criminal justice systems. Expertise provides criminal justice personnel with the rationale and means to use their authority in order to carry out their existing roles for the purpose of doing (what they see as) good. In the words of the professional quoted in the title, we explore how several forms of expertise make it possible for prostitution diversion programs (PDPs) to “take the tough ones.” In the first section, we outline the theoretical frameworks derived from Gil Eyal’s sociology of expertise and Thomas Haskell’s evolution of moral sensibility. We then use data from our studies of three emerging and existing PDPs as a case study to illustrate how criminal justice actors use primary, secondary, and tertiary expertise in multi-agency working groups.

## **I. THEORETICAL FRAMING: WHO GETS JURISDICTION OVER THE “FUSS”?**

An established area of sociology has documented the utility for professional groups, such as doctors, lawyers, or nurses, of claiming and defending their “jurisdiction” over a social problem or particular solution (Abbott, 1988).

Laying claim to authority over a particular problem to the exclusion of others is part of what marks the boundaries of a profession: think, for example, of the medicalization of childbirth and the shift from midwives to doctors and hospital-based births. Jostling for jurisdiction is not always unidirectional and settled nor is it a clear-cut battle between lay and expert (Rabeharisoa & Callon, 2004). For example, as the problem of criminality has been varyingly defined in psychiatric terms, the disciplines of psychiatry and psychology have at times embraced and rejected “ownership” of the crime problem and of particular kinds of criminals (Leon, 2011b).<sup>1</sup> Paraprofessionals with specific roles like risk assessment have also emerged within the larger umbrella of “psych” experts (Leon, 2011a). Such professionals have specific practical training but typically are not accorded professional status nor do they have the same kind of broad academic training.

Critical and empirical legal scholars<sup>2</sup> document the contrast between the law’s orientation to addressing a specific case to be decided on its presenting facts, and the reality that most problems that lead to appearances in the legal system are embedded in a larger and more complicated context of social relationships and individual experiences (e.g., McCann, 2006; Merry, 1990). Fuller (1978) famously theorizes the way the traditional model of adjudication prefers monocentric problems. But in practice, courts and professionals within the adversarial system frequently address the “fuss” (Sander, 1976) rather than restrict themselves to narrow legal

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1. See Leon 2011a for a historical view of the role of psych experts in the construction of the sex offender and the rise of a cottage industry of psych para-professionals embedded in criminal justice institutions over the course of the twentieth century.

2. See also Bourdieu 1987. The legal profession presents a uniquely salient case for understanding the relationship between how problems are defined, who owns them, and what kinds of solutions follow. For example, Bourdieu calls for demystification through attention to the meaning-making approaches that characterize the legal system. Legal terms and modes of analysis mark the boundaries of a “field,” which Bourdieu argues cannot be narrowly defined within the bounds of a profession but which is characterized by the habitual, patterned ways of understanding, judging, and acting (pp. 805–812). Entry into the juridical field implies the tacit acceptance of the field’s fundamental principle, a tautology which requires that, within the field, conflicts can only be resolved *juridically*—that is, according to the rules and conventions of the field itself (p. 831). Bourdieu’s sociological attention to what the law is actually doing helps draw our attention to why problem-solving courts tend toward a limited set of solutions that fall within the purview of the criminal justice system, as we will discuss though our case study (see also Figure 1 and related discussion below).

decisions. Feeley has written about a variety of attempts to institutionalize informal problem-solving approaches from neighborhood courts in the 1970s to the problem-solving courts that have proliferated in part due to the standardization and promotion provided by groups like the Center for Court Innovation (Tomasich and Feeley, 1982; Feeley, 2013). Given this reality, and the continuing proliferation of specialized courts, this Symposium expands Sander's (1976) theory of the "multi-door courthouse" as a means to fit the response to the fuss. "Multi-door justice" includes the many ways that people enter and move through the criminal justice system (Gal & Dancig-Rosenberg, in press), which have moved far beyond the bounds of the courthouse into multiple fora, including therapeutic realms.

In the variety of programs under the umbrella of multi-door criminal justice (Gal & Dancig-Rosenberg, in press), entry is always through the criminal justice system. Even for the few programs that begin at point-of-arrest, the options to entry are overwhelmingly predicated on arrest and offered as an alternative to being charged. In the problem-solving justice movement and beyond, many scholars and advocates have critiqued use of criminal justice mechanisms to address social problems. Critics of the formalization of problem-solving approaches question whether a formal system designed to protect the rights of the accused through due process can be "stretched" without harmful compromises (Leon, 2007). Empirical research has documented a variety of concerns with the practice of specialized courts such as drug courts, mental health courts, and prostitution diversion programs (Global Health Justice Partnership, 2018; Nolan, 2009; Orr et al., 2009; Tiger, 2013). In the United States, it is apparent that the predominant orientation to many social problems will continue to locate solutions within criminal justice, even as variation persists between those whose problems count as "criminal" and those whose problems are deemed "medical" (see, for example, the medicalization of White opioid addiction as well as the long-running racial disparity in the prosecution of different forms of cocaine [Beckett, Nyrop, & Pfingst, 2006; Hansen & Netherland, 2016]). In this article, we use PDPs as a case study of one kind of problem-solving justice that fits under the multi-door justice movement. Drawing from original empirical research, we focus on the motivation and impact of claiming street-based sex workers and their polycentric problems as the proper jurisdiction of the variety of criminal justice professionals involved in these programs. Further, we demonstrate the importance of expertise in multi-door justice in its ability to "take the tough ones."

## A. From Professions to Expertise

Recent theorizing points out that by focusing on *professions* and their jurisdictional struggles, we leave unexamined how a particular social problem is constructed. As Eyal describes: “the focus in this approach [as being] on who has control and of what kind over a task” (2013, p. 864). Eyal argues for the development of a complementary sociology of expertise that focuses on the specific context that allows a network of actors to define and claim a problem and hones in on the possibilities offered by a conception of “expertise”:

But there is more to the term “expertise” than just a wider scope. It derives from the Latin root *experiri*, “to try,” and typically means knowhow, the capacity to get a task accomplished better and faster because one is more experienced, “tried” (I; Williams 1976). . . . Let me suggest, therefore, another advantage of the term “expertise”: it permits us to make an analytical distinction between experts and expertise; between, on the one hand, the actors who make claims to jurisdiction over a task by “professing” . . . [and] on the other hand, the sheer capacity to accomplish this task better and faster. (p. 869)

Although we maintain an interest in the actors in problem-solving courts, our data demonstrate that “expertise” is the more salient concept for understanding why problem-solving courts become a location for handling the “fuss” presented by complicated offenders whose needs are beyond the traditional adjudicative frame. While such courts do not claim to be “faster,”<sup>3</sup> professionals in our case study describe their interest in a more holistic and lasting impact on offenders. Problem-solving justice also relies on the “knowhow” and “experience” that characterizes the kinds of actors who choose to work in specialized courts.<sup>4</sup> As we further explore in our case study, the network<sup>5</sup> that makes these courts possible includes what we

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3. It is important to note here that speed is one of several important factors driving alternative criminal justice responses. For example, Coscas-Williams and Alberstein (in this *NCLR* Issue) show that France and Italy’s criminal justice processing changes are adopted, at least in part, in response to European Union directives to make criminal processes faster to counter the injustice of drawn-out criminal justice procedures.

4. Bourdieu describes this as the symbolic capital of the juridical field (1987, p. 812).

5. Eyal also draws on Foucault and his followers’ analyses of networks and apparatuses: “[W]hile a history of the formation of jurisdictions analyzes the yoking together of differences into a boundary, a history of expertise analyzes the assembly of complementarities into an apparatus (*dispositif*) that produces, reproduces, and disseminates expert statements and

identify as the emerging “seepage” of specific orientations and subject-matter knowledge around trauma and sex trafficking, analogous to the kinds of super due process that Steiker and Steiker (2019) suggest may extend beyond capital punishment law.

## **B. Problem-solving Justice and the Emergence of New Recipe Knowledge**

Historian Thomas Haskell (1998a) describes the evolution of societal moral responsibility in ways that are useful for our understanding of the rise of problem-solving justice in the current era. Haskell argues that awakening of moral sensitivities—the idea that something is ethically amiss—is necessary but alone is insufficient for societal change. Such stirrings may motivate some individual reformers, but more widespread change relies on shifting notions of cause and effect. By this Haskell means that in order for people to feel responsible for making change, they must consider themselves able to do so. Such ability is predicated on having the tools to successfully bring about desired change. Haskell uses Douglas Gasking’s concept of “recipe knowledge” to describe both the tools and the art of application:

Not science but plain *recipe* knowledge, or technique in its most inclusive sense, is the wellspring of causal thinking. “A statement about the cause of something,” wrote Gasking, “is very closely connected with a recipe for producing it or preventing it.” . . . What makes recipe knowledge important for the historian trying to understand the rise of humanitarianism is that neither causal perception nor feelings of moral responsibility can exist in the absence of appropriate recipes. (p. 254)

When the power to change something is coupled with the idea of responsibility, people begin to view consequences of oppressive institutions such as slavery as morally reprehensible rather than unfortunate but inevitable.

Applying Haskell’s insights to problem-solving justice, we can ask: How do traditional criminal justice responses come to be seen by broader society as morally problematic and subject to reform? Although criminal justice

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performances. Put differently, if we follow the event of expert statement or performance to the conditions and mechanisms involved in its formulation, replication, and dissemination, we end up with a view of expertise neither as an attribution nor as a substantive skill but as a network connecting together not only the putative experts but also other actors, including clients and patients, devices and instruments, concepts, and institutional and spatial arrangements” (Eyal, 2013, pp. 872–873).

systems are often the target of visionary reformers, it is not often that system change occurs. Problem-solving justice and the related notions of therapeutic justice, while they may only reach a relatively small portion of those who are criminal-justice involved, have become a national movement in the United States (Nolan, 2001; National Institute of Justice, 2018<sup>6</sup>) that has also taken root worldwide (Nolan, 2009). The reforms that it has wrought have only become possible with the tools of therapeutic knowledge and expertise, most importantly psychological understandings of trauma as both a cause of offending and a target for amelioration. These tools include treatments that are scientifically proven (i.e., evidence-based) to be effective in managing behaviors that are considered harmful or risky to society, such as violence or addiction. Once we come to know and believe that criminal justice responses that target trauma for intervention are effective, it becomes possible to imagine that they provide a more just response than (purely) retributive or incapacitative tools.

Perhaps no less important than recipe knowledge, expertise may converge with the creation of opportunities and incentives for actors to employ it. Such opportunities may also structure the forms that expertise takes. For example, the availability of federal funding for problem-solving courts, and the availability of technical expertise offered through the Center for Court Innovation (Bureau of Justice Assistance, n.d.; Center for Court Innovation, 2019), might make problem-solving courts a preferred option over other alternative criminal justice responses. Similarly, the availability of money and training may drive a response to prostitution that is shaped by trafficking discourse and refers to existing or well-funded services designed for victims of trafficking. Finally, uptake of reform can be influenced by the compatibility with the interests of powerful stakeholders. McCoy (2003) describes the advent of drug courts as a vital tool that allowed the bench to reassert judicial authority when the mandatory sentencing that was a hallmark of the war on drugs curtailed judges' discretion. The power and prestige of each member is enhanced by the collaboration of a team of experts, and this opens them up to other knowledge/expertise and role crossover (Castellano, 2011; 2017).

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6. The most recently available National Institute of Justice (2018) inventory of courts from 2015 shows 1,310 specialized courts, of which 30 were prostitution courts. This does not include domestic violence courts, for which no count was provided, or the most prevalent problem-solving court, drug courts, of which there are 3,142.

Self-interest may also be compatible with altruism (Haskell, 1998b). For example, the growing expense and lack of success of traditional methods that have caused the U.S. criminal justice system to collapse under its own weight through mass incarceration may be strong motivation to seek alternatives (Aviram, 2015; OECD, 2016). Self-interest can also be motivated by the desire of criminal justice professionals to counter dissonance between their personal or professional moralities or sensibilities and their prescribed roles (Whittle, 2017). We argue (Leon & Shdaimah, under review) that prostitution diversion programs allow criminal justice stakeholders an opportunity to respond within their existing professional roles to what they see as unjust or ineffective practices within systems that they generally see themselves as unable to change.

Therapeutic jurisprudence, developed by David Wexler and Bruce Winick (1991), was the first concept to systematically draw attention to the impact of law and legal actors on individuals' psychic well-being. They argued that policymakers and legal actors could (and should) identify and minimize the anti-therapeutic and maximize the therapeutic potential of legal encounters. Therapeutic jurisprudence helped to spawn and shore up problem-solving courts. As Robert Wolf (2007) lays out in the Center for Court Innovation's Best Practices publication, "Principles of Problem-Solving Justice," funded by the U.S. federal government Bureau of Justice Assistance:

The goal [of problem-solving courts], in many cases, is to reduce the use of incarceration, which is both an expensive and arguably ineffective intervention, particularly for low-level and non-violent offenders.

To facilitate individualized justice, some problem-solving initiatives invite service providers to share space in the courthouse or at a centralized service center. Such "one-stop shops" make it easier for offenders to get the help they need. The Seattle Community Court, for example, has an on-site clinic staffed by community-based organizations that address offenders' problems, including mental illness, substance abuse, and homelessness. (Wolf, 2007, p. 7)

Problem-solving justice invited mental health practitioners into the criminal justice arena as part of the team. It has also provided legal actors with therapeutic tools. In his retrospective "Two Decades of Therapeutic Justice," David Wexler describes "the role of lawyers and judges as therapeutic agents" (2014, p. 17). Others have documented a blurring of

boundaries in which criminal justice actors deploy therapeutic language and tools to categorize offenders (Castellano, 2011; Corrigan & Shdaimah, 2016). Similarly, researchers like Jill McCorkel (2013; see also Shdaimah & Leon, 2015) have shown how offenders use these same tools to garner resources and navigate the criminal justice system.

## II. METHODS

This case study draws together data from our independent studies. Shdaimah conducted a comparative ethnography between 2011 and 2014 of two newly formed court-affiliated PDPs examining a pre-plea program that diverted respondents from the court process in Baltimore, the Specialized Prostitution Diversion Program (SPD), and a post-plea problem-solving court in Philadelphia, Project Dawn Court (PDC). Leon conducted a needs assessment in the pseudonymous Peterson County<sup>7</sup> with criminal justice stakeholders, including service providers and sex workers, to explore the feasibility of creating a court-affiliated PDP. We describe these studies in greater detail elsewhere (e.g., Leon & Shdaimah, 2012). For this article, we draw on a subset of interviews with PDP work group members in all three studies ( $N = 45$ ), 6 from the SPD, 13 from the PDC, and 26 from Peterson County. Respondents were drawn from all professional roles and included judges (6), public defenders (5), prosecutors (3), outside service providers (community-based providers, counselors, advocates) (10), program personnel (probation and pretrial officers, treatment assessors, prison warden, program social workers) (12), and police (9).<sup>8</sup>

All respondents in the existing PDPs had volunteered to work with their respective programs as part of their regular workload, with the exception of the program coordinators at both sites who were hired specifically for that task. As we document elsewhere (Leon & Shdaimah, under review) most respondents, including those in Peterson County, were passionate about

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7. This study's protocol for the protection of human subjects in research prohibits the identification of the program and region.

8. With the exception of one pre-trial agent, social worker, and prosecutor, these respondents represented all of the professional program stakeholders who participated in the diversion program up to that time. In other words, the PDC and SPD samples matched the population rather than a targeted selection, with only three respondents declining to be interviewed, largely due to logistics or time constraints.

working with women engaged in prostitution due to their perception—often based on prior work experience—that women who engaged in prostitution were a marginalized group needing assistance. The overwhelming majority of our respondents were women, due to a belief that program participants often suffered abuse from men, and would be less likely to be retraumatized by and more willing to open up and accept assistance from other women.

Interviews in the existing programs, which lasted 60–90 minutes, were transcribed verbatim. Some of the interviews and focus groups in Peterson County were not recorded due to respondent preference; one interviewer asked questions, while another recorded notes; with a few of the police officers, questions were provided and answers were returned by email. To protect confidentiality, respondents are referred to using pseudonyms, most of which they chose; Peterson County pseudonyms were assigned.

SPD and PDC interviews focused on respondents' motivations for participating in the diversion programs and what they believed facilitated and hindered their work with program participants and their own goals for the program. They were also asked about their work with other professional stakeholders. Peterson County interviews and focus groups centered on participants' knowledge of street-based sex workers, existing programs, and desirable interventions.<sup>9</sup> Exploration of these questions responds to Eyal's call for "an ethnographic analysis of expert work practices" (2013, p. 873).

Following a process similar to the one outlined by Richards and Hempill (2018), the authors independently open-coded a sample of three stakeholder interviews. We then met to compare and revise our separate coding schemes through discussion and consensus. We independently applied the consensus coding scheme to one interview. Following this application, we again refined the coding scheme based on discussion and consensus. We used the revised coding scheme to code the remaining interviews. Codes were derived from a priori knowledge (i.e., sensitizing concepts) and were emergent from the data (Glaser & Strauss, 1967). We used a number of

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9. Leon also interviewed street-based sex workers in the community and conducted a prison survey, but these data are not included here. The overall needs assessment made recommendations based on all of the data, which included calls for housing, legal assistance for child custody, and peer support services, among others. The overall recommendation was against a court-based program, but the team chose to create a program, which was short-lived.

techniques to ensure study rigor (Padgett, 2017). These included peer debriefing, memoing, and triangulation of data sources. We also employed negative case analysis, actively searching for examples that might contradict or shed light on our initial interpretation. Finally, team coding adds rigor by bringing multiple perspectives to interpretation of the data. To this end, the authors engaged a third coder during the final phase of coding to independently examine a subset of the codes.

To allow our readers to determine analytical generalizability (Kvale & Brinkmann, 2009), we provide contextual information on the study sites and quote extensively from our respondents. We also situate our findings within the growing literature on PDPs and problem-solving courts more generally.

### A. Court Context

In this section, we provide basic contextual information for the diversion program work group members, summarized in Table I. First, we note the standard criminal justice treatment of prostitution cases in order to better understand to what each program provides an alternative; since prostitution is regulated at the state level, these vary with location. We then provide a brief description of the program or, in the case of Peterson County, for whom the intended program is designed. Readers should note that we report on the state of prostitution arrests and processing and the diversion programs as they were during the time of our research.

At the time of our study, Baltimore's Specialized Prostitution Diversion<sup>10</sup> program admitted anyone arrested for prostitution in Baltimore City. Prostitution in the state of Maryland is a misdemeanor punishable by up to one year of incarceration and/or \$500 in fines; people are rarely given these maximum penalties, and due to extremely low incomes and difficulty posting bail, many receive sentences of "time served" and probation. Unlike many prostitution diversion programs, Baltimore's SPD was open to people of any gender, and the program enrolled a significant minority of transwomen (11%) and a small percentage of cisgender men (1%); the remainder were cisgender women (Bailey-Kloch, Shdaimah, & Osteen, 2015). These

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10. The program was renamed as the Specialized Pretrial Program when, due to low numbers, it expanded to include people arrested for other charges, but whose history or intake indicated that they had engaged in prostitution that was in some way related to their charges. The new name was also deemed preferable due to the stigma associated with prostitution.

**Table 1. Study context: Three prostitution diversion programs**

<i>Participant Gender</i>	<i>Existing Legal Penalties</i>	<i>Program Duration</i>	<i>Pleading Requirement</i>	<i>Program Arena</i>	<i>Program Content</i>	<i>Outcomes</i>
<b>Program: Specialized Prostitution Diversion Program (SPD)</b>						
Any	Up to 1 year and/or \$500 in fines	90 days	Pre-plea	Social work and pretrial offices at the courthouse; outside programs	Individualized	Success: null processing; can request expungement. Failure: return to plea stage.
<b>Program: Project Dawn Court (PDC)</b>						
Cisgender women	Up to 5 years and/or \$10,000 in fines for first degree misdemeanor (3 offenses)	Minimum one year (four phases)	<i>Nolo contendere</i> *	Court and probation offices; outside programs	Individualized with requirement of sexual trauma therapy	Success: case dismissed with prejudice; can request expungement after one year if no evidence of drug use or prostitution. Failure: guilty verdict entered and sentencing.
<b>Program: Peterson County (reflects perceived consensus in planning)</b>						
Primarily women	Varied responses**	90 days	Guilty plea	Courts and probation offices	Individualized with common services such as trauma focus and sexual abuse therapy	Success: null processing. Failure: guilty plea accepted.

\* The Colloquy signed by participants specifies that participants give up all rights to a trial and appeal.

\*\* This was not specified and cannot be inferred since many different charges and penalties were in use.

percentages were reflective of the prostitution docket. Excluded were individuals who were incarcerated or on probation at the time of their initial hearing due to logistical conflicts. Eligible defendants were offered the program at court hearings during the plea stage. Those who opted in to the program were provided with a hearing date 90 days hence. Those who successfully completed the program were met with congratulations and a dismissal of their charges on the new hearing date and could, with financial assistance from the program, request to have these expunged. Successful completion was generally considered to be engagement (or re-engagement) with program social workers and a pre-trial agent, even when participants occasionally breached program requirements. Unsuccessful program participants returned to the plea stage, thus forfeiting none of their procedural or substantive rights for having tried the program and failed. In the intervening 90 days, program participants were assessed by trained paraprofessionals for mental health concerns and drug and alcohol use, and by social workers to determine what services they would like to receive during their time in the program. There were no set required services beyond usually weekly meetings with program social workers and weekly check-ins with a pre-trial agent. Required services were otherwise tailored to meet the needs and preferences of program participants within the constraints of what was available. Services often included mental health and addiction treatment, and help securing health insurance and health services and identification. Although there was great need for housing and employment, these services were often difficult to secure (Shdaimah & Bailey-Kloch, 2014).

Philadelphia's Project Dawn Court, which continues to function largely as it did during the study period,<sup>11</sup> was designed for people who had at least three prostitution arrests; three or more prostitution arrests are considered a first degree misdemeanor in the state of Pennsylvania, punishable by up to five years in prison and/or \$10,000 in fines. During the time of the study, many of these cases resulted in incarceration and fines, but defendants rarely receive the maximum penalty. Court-based challenges to prostitution were generally futile, as cases rested solely on police officers' arrest records and testimony, and according to study respondents who addressed this issue, those who contested such charges were rarely believed when their stories conflict (Baylson, 2017). The PDC accepted only cisgender women

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11. See Philadelphia, Office of the District Attorney, Diversion Unit, <https://www.phila.gov/districtattorney/diversion/Pages/default.aspx>

and the majority of potential enrollees were offered the program while incarcerated and awaiting trial. Those who opted for the program were required to enter a *nolo contendere* plea, meaning that they did not contest the underlying facts of the prosecution. This is essentially a guilty plea, but conviction and sentencing were held in abeyance during program participation. The year-long program was comprised of four phases. Breaches of program requirements resulted in a restart of the phase in which the breach occurred, as well as a series of graduated sanctions, as is common in problem-solving courts (National Drug Court Resource Center, 2017). Participants generally remained in the program between one and two years unless they were terminated earlier. As in the SPD, PDC program participants were assessed for appropriate programming, which similarly often revolved around mental and physical health concerns, drug treatment, and temporary or transitional housing. Over the course of the program, focus could shift to assistance with employment and, in many cases, help reconnecting with family members. Program participants were also required to contact the program probation officer usually on a weekly basis and attend monthly PDC court hearings. The main exception to receipt of tailored services was that all program participants were required to undergo treatment for sexual trauma. This treatment consisted of required individual meetings, and over time, the court often required that participants also attend group meetings. Trauma treatment was required regardless of whether program participants saw themselves as having experienced sexual trauma. Those who completed the program successfully had their charges dismissed with prejudice (meaning that they cannot be brought again), and if they remained free of prostitution or other charges for a year after completion, they could request to have their charges expunged. Those who failed were convicted and sentenced on the basis of their *nolo contendere* pleas.

The data from Peterson County is derived from the planning process for a possible new PDP and focuses on the interests and motivations of justice system and community stakeholders for intervention. Justice professionals and some community members reported that street-based sex work was visible in some neighborhoods, known to police, and viewed by court professionals as an intractable problem since the same small group of people<sup>12</sup> cycled through the courts and jails. At the time of the study, no one

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12. The perception was that street-based sex workers were mostly ciswomen, although two transgender women participated in interviews, and police reported knowing of one

was incarcerated with a primary charge of prostitution, which is a felony charge carrying a one-year sentence. Police reported that the informal practice was to charge with related misdemeanors like disorderly conduct as well as more obscure offenses like failure to walk with a light on a public thoroughfare. Street-based sex workers interviewed for the needs assessment confirmed that a prostitution charge itself was rarely, if ever, given, but that repeated convictions for related offenses created a stigmatizing portrait that law enforcement and court professionals recognized as prostitution. One concern relayed in the final report was the possibility of net-widening: Leon advised against re-introducing the practice of charging people with prostitution as the mechanism for opening the door to a specialized diversion program.<sup>13</sup> The primary recommendations of the needs assessment called for resources for short- and long-term housing assistance, access to legal services for record expungement and child custody issues, and the central role of peer support in any new or expanded programming.<sup>14</sup>

### III. CASE STUDY: PROSTITUTION DIVERSION

#### A. Primary, Secondary, and Tertiary Expertise

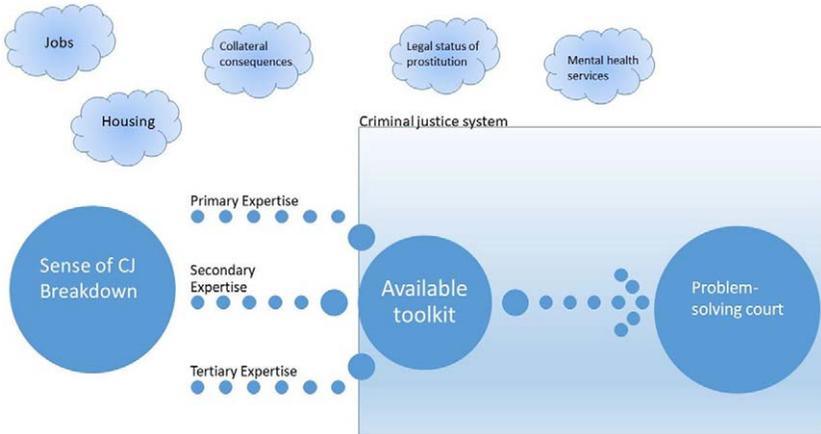
In the following description of prostitution diversion as a case study of multi-door justice, we examine the salience of expertise. We argue that in order, first, to be open to problem-solving justice, and then to function in ways approaching the ideal team promoted by its mainstream proponents, such as the Center for Court Innovation and the Bureau of Justice Assistance, criminal justice professionals need to be amenable to expertise. To the extent that they are amenable to expertise that they can marshal (i.e., gaining recipe knowledge), this allows them to take responsibility for initiating, implementing, and championing alternative criminal justice practices as a common-sense moral imperative. We see in our data that expertise is layered; we describe these layers as primary, secondary, and

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trans street-based sex worker; police also reported the problem of boys engaged in prostitution at the major highway rest-stop and at motels near the major highway, but did not indicate that this was their jurisdiction except for occasionally when federal money enabled coordinated multi-agency joint operations.

13. The parameters and function of the short-lived “trafficking” court that eventually resulted are unknown.

14. It does not appear that any new resources were allocated to address these needs.

**Figure 1.** Expertise and the available toolkit in problem-solving justice

tertiary. In Figure 1, we illustrate the development of problem-solving court models as growing out of a sense of criminal justice (CJ) breakdown.

As we will describe here in further detail, criminal justice personnel have a sense that the current system does not work and may be unjust (at least in some cases). Though a number of solutions may be floating around (such as the ones we have depicted in the cloud shapes), the advent of certain forms of expertise funnels this sense of dissatisfaction in particular ways. Primary expertise is located within the bounds of a specific profession. In the case of problem-solving justice, such expertise is both substantive (drawn from psych and therapeutic knowledges) and forensic (i.e., technical assistance, model court templates, and guidelines). These forms of primary expertise exist together with secondary expertise.

Secondary expertise is the most significant for understanding expertise in problem-solving justice. Secondary expertise is more accessible, and includes key concepts, insights, and techniques borrowed from (and often conveyed by) primary experts. For example, counselors who treat clients who have experienced loss may seek a brief training module in grief counseling—this kind of short, easily digestible training is promoted through the requirements of continuing education in many fields. In problem-solving justice, members of a team will seek specialized training to assist their work, such as substance abuse training for drug court, psych concepts and interventions for mental health court, and, in the case of prostitution diversion programs, the preceding may be covered as well as trauma and/or

sex trafficking awareness and training. Secondary expertise also includes the benefits of substantial professional experience, which is an important feature of the problem-solving justice model generally.<sup>15</sup> Thus, secondary expertise is made possible because of the kinds of networks to which Eyal draws attention; it includes both the experience and the know-how that Eyal and Haskell (drawing on Gasking) emphasize. In other work we have characterized some of the secondary expertise in PDPs as “treatment adjacent” (Leon & Shdaimah, under review). It may also result from what we call horizontal seepage (i.e., across roles): exposure to the primary expertise of team members, for example when a judge absorbs ways of thinking from the social worker or pretrial professional on the team.

Tertiary expertise is the widely available—often bastardized—knowledge that originated with primary experts but has since become part of the dominant culture, providing ways of thinking available to many (Swidler, 2013). For example, Illouz has argued that American culture has become a therapeutic culture through the wide promulgation of concepts from therapy and the rise of self-help movements (2008). Primary experts may promote this popularization, or they may bemoan it as an encroachment on their territory because of its dilution of the complex specialized knowledge or for its impacts. In our case, trauma and sex trafficking are concepts that have made their way into the mainstream, through convergences of primary experts and social movements (Lobasz, 2019). Trafficking in particular has become widely known due to NGOs that have targeted college students as well as other public education efforts like posters and billboards. A substantial subset of scholarly experts in sex work critique the way trafficking discourse has impacted policy and practice (Kinney, 2017; Tseris, 2018). Our data suggest that tertiary expertise in trauma and sex trafficking may serve as important predicates for interest in problem-solving justice (Shdaimah & Wiechelt, 2012).

In subsequent sections, we describe the way these three forms of expertise are evident in how professionals in prostitution diversion explain their motivations, roles, and the tools they use in service of problem-solving justice. The available toolkit (see Figure 1) draws from all forms of expertise to converge on particular solutions that are driven by expert understanding

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15. As a Baltimore social worker explains, “I’ve been hanging around this thing for a very long time” (Brigit Larkin). Later in her interview, she emphasizes “I’ve learned a lot, I’ve learned a lot.”

of the problem. Although there may be other solutions, criminal justice professionals will not draw on them unless they are readily available. What professionals perceive as available solutions may be limited by virtue of their roles within the criminal justice system and their assessment as to whether the particular solutions are feasible. For example, programs draw primarily on existing community resources, rather than developing new ones. Similarly, programs focus on the program participant as the primary target of change, using the tools of coercion already at their disposal to encourage treatment. On the other hand, they are less likely to work for affordable housing or living-wage employment, factors over which they likely have less control or understanding.

**B. Motivations: “They’re decent women; they have just had bad circumstances”**

The quote below shows the array of options that Judge Hartwell felt were available to her as a judge, which included probation and incarceration. She explains that she welcomed the different treatment courts because they allowed her to follow through on her own intuition and recommendations from probation officers in appropriate cases.

A lot of the women were on my probation; some for years. Some I had to send to jail for short periods of time and then we put them back on probation. Some recidivised<sup>16</sup> then would get probation; some would recidivise and I’d give them incarceration. So it just depends. And it depended on what the probation officer said, what the women said. If the women were narcotic addicts, I always try to get people treatment; ‘cause I believe in treatment as opposed to incarceration for things that you can get treatment for. Which is different than, you know, you’re not gonna give a murderer community service or treatment because it’s over. But for some cases I believe you should try to go for the mental health court . . . I believe you should have a Project Dawn’s court . . . you have to have diversionary court for the people . . . and so you just have to get a further, a deeper understanding of what makes people tick. And talking to ‘em helps you understand who they are. They have stuff going on just like you and I do.

Judge Hartwell described her beliefs about the importance of problem-solving courts for certain types of cases (not murder, for example). These

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16. Judge Hartwell uses the word “recidivise” instead of “recidivate,” which is a colloquial term commonly used among front-line criminal justice professionals.

are cases that she characterizes as amenable to treatment, like women who “were narcotic addicts.” Judge Hartwell sees diversion programs as providing the necessary resources to justify the belief that given the right therapeutic tools and working group guidance, “something is going to turn around.” This is based upon her understanding that women who are engaged in criminalized sex work are basically good people who have not been given a chance to develop and grow. As she explains:

They’re decent women; they have just had bad circumstances . . . They are as nice as they can be, but they are just messed up . . . I don’t know what your background is, but I was raised in a two-parent household; both parents college-educated. So I know what matching sheets and towels look like. But I can’t imagine getting it for the first time at 30 years old.

The determination of the multi-agency court team that there is “hope” and that “something is going to turn around” is based upon their belief that they have the the primary and secondary expertise and the ability to facilitate this process.

Miss Anita Martin, a Baltimore pretrial agent, determines what tools the court program has available and how they can fit the needs of particular program participants. When participants struggle, she troubleshoots with other team members to see if they can adjust programming, but only within the parameters of existing options.

Some of the extensions [to the time in the program] will come in with those who fail or are failing the program. We’ve got one coming in . . . the last time that we talked, there was just a gut feeling that told me, okay, maybe we need to switch. . . . You’re not ready to talk. You’re talking more to me than you’re talking to the social worker; that’s telling me you’re not comfortable talking to this one and maybe we need to switch it up. So Monday . . . I might go up there and say “would you like talking to another social worker? Take another chance at this?”

Like other program staff, Miss Anita Martin believes that program participants are grateful to be offered diversion programs. Her belief that participants prefer not to engage in sex work motivates her to work hard on their behalf; her secondary expertise, that is her experience expressed in terms of a “gut feeling,” enables her successes with participants. She feels particularly “sorry for” transgender participants who want jobs: “One of them told me, ‘I hate what I do! But I don’t have any money. I feel dirty when I have to do it.’ ‘Okay, let’s get you a job, let’s get you a job.’”

Multi-agency team members' belief that they can help people whom they believe are just like them, but who have not been given the chance to reach their potential, opens them up to the possibility that traditional criminal justice practices are unfair or unjust. In Haskell's framework, this is the beginning of moral sensibility. Criminal justice-involved individuals come to be seen just like other people who can successfully be improved through the use of empathy, treatment, and the guidance of criminal justice stakeholders and their community-based allies. The presumption that women arrested for prostitution cannot possibly have chosen such work helps to shore up the conviction that trauma is the root cause behind this offending. This presumption is often grounded in the uncritical layperson's understanding of filtered research (tertiary expertise).

### C. "[T]here's something deeper . . . than they just wanna be a ho": Trauma and Intelligibility

[M]ost prostitutes have had hideous trauma from really early age. And we have meetings where we talk to psychiatrists . . . she taught me things that I didn't know, because most people don't know what goes into making a woman a prostitute. I didn't realize that most women had been raped before they hit 10 or 9 years old, most times by mother's boyfriends. A lot of times by relatives, other relatives . . .

So I learned that. I just, some of it is brand new. And so when I looked at the women with the information, of course I saw a different piece of their narrative; you know I really did. Just because then it became more than just a prostitution case; it became something that needs to be looked at a little deeper. (Judge Hartwell, Philadelphia)<sup>17</sup>

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17. Within this discussion, Judge Hartwell also marvels about the impacts of the effects of involvement on street-based sex work by referencing the photo comparisons of first arrest and later arrest, popularized first as an educational tool for demonstrating the impact of drug use, like methamphetamine (see Garriott, 2011):

JUDGE HARTWELL: It just was just too much to process, the whole thing, and just how deterioration, she showed a picture of people, like a group, I think 16 women, how they looked on their first arrest photo.

INTERVIEWER: Oh, I've seen those, yeah.

JUDGE HARTWELL: And how they looked at the end; just how it beats you down.

Training on the impact of sex trafficking now includes these kinds of comparison photos meant to dramatize the horror and degradation (Hill, 2014; Leon & Shdaimah, 2017).

Prior to exposure to trauma awareness, some PDP professionals lacked a framework for understanding PDP participants. As Judge Hartwell explains above, prostitution and child sexual abuse become both linked and explicable through the trauma lens provided by psychiatrists (primary expertise).

Many respondents commented on the exceptionally awful circumstances that may be commonplace in the lives of PDP participants. For example:

[T]heir parents were damaged goods . . . I could never understand a parent that prostitutes a child, but that is what happens. But that's what they do to get the drugs. If their parents are on drugs and they can't get it, then that's what they do. They utilize their kids to get the drugs. (Miss Anita Martin, Baltimore)

In this way PDP professionals combine knowledge of how substance abuse can remove inhibitions to what might otherwise be inconceivable, with knowledge of the parents as also “damaged goods.” This indicates the significance of specific knowledge content. It also shows what we call secondary expertise, evident here in the repeated interactions with defendants in a context that gave them a depth of understanding of their backgrounds.

Such expertise often leads professionals to explain behaviors to themselves and others through knowledge informed by trainings and encounters with therapeutic personnel that combines with their own sensibilities about what enables people who are essentially like themselves to engage in behavior that they find it hard to imagine. For example, Baltimore prosecutor Margo imagines—likely influenced by her generalized knowledge of trauma—that a certain amount of psychological distancing is necessary for sex work: “[T]here must be such a disconnect for the people involved in prostitution that they can disconnect their mind from what they're about to do.” From here, she makes the connection with what she believes is the underlying psychology of sex work: “a lot of it, we do think there is a lot of trauma associated with many people, that there was some form of psychological trauma in their background.”

#### **D. Trauma and the Available Toolkit**

The secondary expertise of trauma creates path dependency; as governmentality scholars would point out, trauma is selected as a crucial *problem*,

and this selection then leads to particular *solutions*.<sup>18</sup> As prosecutor Margo explains, “In terms of the trauma that a lot of them have suffered through, that enabled them to do that, it’s different<sup>19</sup> [from other defendants] in terms of trying to help them.” This trauma lens provides a way to respond: professionals can recognize trauma, and (at times) provide therapeutic responses for behavior or attitudes that they might previously have interpreted as noncompliant and therefore responded to punitively. Elsewhere we have discussed what happens when experience with actual participants does not follow the templates of trauma behavior that PDP professionals deem appropriate based on recipe knowledge derived from secondary and tertiary expertise (Corrigan & Shdaimah, 2016; Shdaimah & Leon, 2015; see also Tseris, 2018).

Although PDP professionals cultivate and mobilize secondary expertise in substance abuse and trauma, and although the problem-solving court model encourages some blurring of roles, some of our respondents are careful to state their limits: “I would like very much to do some preliminary work with those who are interested and who have a history of trauma in terms of doing some education on trauma—not therapy, I tell everybody ‘I’m not your therapist!—I may be a therapist but I’m not *your* therapist’” (Brigit, Baltimore social worker). Similarly, judges in our sample emphasize the importance of psych experts in sharing their subject matter knowledge as well as in providing the counseling they are specifically trained to provide. While secondary expertise is necessary, primary expertise is also crucial and indicates that role seepage, as we discuss below, is not the same as role substitution; i.e., there is a clear need for psych experts. As Gerrie, a Baltimore social worker, shared: “Not that I’m a trauma expert by any means.”

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18. E.g., Rose 1990. See Simon 2007, who argues that by selecting crime as *the* problem of American governance, policymakers have thus responded to a wide range of social problems, including housing and education, with crime- and punishment-oriented solutions.

19. In a follow up, she again emphasizes the “difference” salient here: “A lot of it is because the women are so raw on many levels—emotionally, physically, mentally. That’s where the rawness comes from. It’s different than many other crimes in that regard.” Similarly, Lily, Philadelphia program coordinator, also explains, “This is a different population than just drug users. They have a dual issue, and you can’t just think it’s drugs because then you’re wrong. It’s also the sexual trauma, it’s also the lifestyle, it’s also the economic finality that they feel. And there was, you know you felt, I probably felt that there was a refusal to understand those issues.”

As noted above, for prostitution diversion program professionals, the trauma label indicates the need for therapy that directly addresses experiences like sexual abuse. In the following description of a PDP participant, we see that this path dependency signals a narrow conception of who will be best served by existing services in diversion programs.

[S]he was really offended that every time she went to counseling, it was always “you’re hiding something, why won’t you tell us about your sexual abuse?” Well, in her mind, “Have you ever thought that I’m doing this because I like to have sex or that I’m a drug addict?” And then she was intelligent enough to say that “well, even if it was sexual abuses, maybe there is this group of people that it doesn’t help to just rehash it. That’s where I come from. I’m grown. I need to man-up (in essence) and say that’s not the reason I’m doing this. That I have made a conscious decision and need to do something. And if my kids are important enough to me, then I’m going to do it regardless.” And I don’t think we were prepared, or the experts [the therapists] were prepared for someone like that with an extremely strong personality who was just like “No . . . help me get a job, help me get an education, help me get off drugs—and then we’ll go back and I’ll try to work through those issues.” And I understood their position that she will never, that it will always keep coming back to that, but I don’t think anybody—the psychologists or even us at one point—were ready to deal with that type of person—very strong personality. (Judge Richards, Philadelphia)

The judge’s language choices, with the repeated depiction of the participant’s personality as “strong” and “offended,” indicate the puzzlement and misfit created by a participant who does not docilely agree that sexual abuse counseling is what she needs.<sup>20</sup> Judge Richards does not go so far as to criticize the participant, and in fact exhibits empathy for her rather than explicit judgment, indicating that she supported the participant even when the experts insisted that to break the cycle, she would have to address what they identified as the root of her problem. A participant who asserts her own agency by insisting on intrinsic motivation for change and asking for help to address structural disadvantage is not as easily handled by the PDP as those who are open to therapy.<sup>21</sup> Indeed, Philadelphia’s requirement of

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20. Diane, the Philadelphia therapist, is direct about her view, echoing what the judge says here about the assumptions of the psych experts: “First of all, [it] is the underlying assumption [that] everybody went through trauma. And yes, I think that’s a correct assumption, and I think it’s pretty much a true assumption.”

21. According to Judge Richards, this participant did not graduate.

sexual trauma therapy, when misaligned with participants' ideas of what *they* have experienced and need, often brings tensions about the PDP out in open court. In all cases that we witnessed, participant requests not to be enrolled in sexual trauma treatment<sup>22</sup> were refused.

But part of the desire for specialized programming comes from recognition that there are challenging cases not adequately handled elsewhere, as we indicate in our article title.

They're more difficult problems, more deeply ingrained problems, and it's nice to see a program that's gonna say, "Alright, we'll take the tough ones and we'll try to work with it." So there's a lot of good that has come from that. (Simon, Baltimore public defender)

PDPs are needed because traditional approaches that assume monocentric problems have failed. But this also creates a bind, in terms of who should be included and what can realistically be accomplished.

If you target that type of low-level offender, someone's going to come around and cut your budget like nobody's business and say, "What are you, nuts?! Give these people probation for like a tenth of what you're spending." . . . To prevent that from happening, we targeted those who cost the system a lot of money 'cause they're in jail. But even then we've had a hard time because Philadelphia's so budget-strapped that we get [responses like]: "Oh yeah, she's approved for inpatient 28 days." 28 days!? [to treat] a lifetime of abuse, decades of addiction. But you can straighten it all out in 28 days, can't you, sweetheart?" (Jan, Philadelphia public defender)

Prostitution diversion programs are still located within a system of limited resources, so PDP professionals' efforts to take on polycentric problems are challenged by severely limited resources. Such constraints raise questions about whether PDPs are really equipped to tackle "root causes" despite the fact that this is an underlying rationale for this form of multi-door justice.

For the PDP team to function well, all professionals need a shared understanding. Thus, secondary expertise is facilitated through training that sensitizes them to the role of trauma, sexual abuse, and substance

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22. Requests to forgo sexual trauma therapy were made for a number of reasons, including participants' assertions that they had not in fact experienced sexual trauma, that they did not want to engage in therapy around these sensitive issues at that time, or that they found the form of therapy counterproductive to their own healing (this complaint was more often levied at group therapy requirements than individual meetings).

abuse in the experiences and actions of program participants.<sup>23</sup> Philadelphia coordinator Maya explains, “Our team is very aware of what these women bring with them as far as trauma.” Philadelphia public defender Alice similarly notes this training as a key feature: “Everybody has been to quite a bit of training.” When discussing the possibilities for a new PDP, a professional from a Peterson County community-based non-profit argued that

it makes more sense to lean toward better linking [with] existing services. Don’t want to reinvent the wheel; plus, by collaborating, we can take advantage of existing providers’ expertise. Focus on partnerships. Consider cross-training; for example, provide training to lawyers on how to screen and refer, and how to be sensitive to issues surrounding sex work. (Ilana)

Fostering expertise, through what the problem-solving justice model refers to as “cross-training”, enables collaboration as well as efficiency.

Judges in our sample expressed deference to the secondary expertise of other team members like the lawyers and probation officers, as well as to the primary expertise of counselors:

See, I would get the recommendation from the probation officer. And whatever they wanted to do, whatever the DA and public defender said was the appropriate thing, I just went with that . . . It takes a lot for me to go outside of the box, even though I live outside of the box generally. But in this context I had to go with what they recommended because they knew the women more intimately than I did. (Judge Hartwell, Philadelphia)

Judge Richards similarly indicated that

I wouldn’t always go with what the probation officer said, but the vast majority of the time I would because this person has more contact, she has more of a relationship, she has talked to the caregivers or the social workers or the treatment facility, and she is one dealing with these people, dealing with the women, almost on a daily basis.

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23. Maya was also the only respondent who drew explicit attention to the impact of vicarious trauma on the professionals as well: “Our last meeting had to talk about vicarious trauma. It’s really hard some days to leave one session and go right into the next one, and really taking time to process what I’ve heard has been very important. I’m still shocked at what people can do to other people.” Diane put this strain in terms of “transference”: “It does get to you after; I do start feeling some level of transfer. I didn’t for a very long time, and I do now; I feel like some level of transference. So you really have to work through it” (Philadelphia therapist).

While judges have their own know-how and experience, as well as more contact with participants than they would typically have with defendants in their courtrooms, problem-solving justice teams enable some of the members of the team to know participants “more intimately,” which judges recognize as useful. Judge Hartwell, who in her role as judge might not ordinarily go “outside of the box,” defers to the secondary expertise of her team members in the PDP. Other PDP professionals also commented on the way judges can learn through their involvement in the PDP that “there’s something deeper inside this person other than they just wanna be a ho” (Ronny, Philadelphia probation officer).

Some diversion program professionals complain that those outside the program cannot understand participants, leading to criticism for their empathy:

I definitely worry. And sometimes it’s hard to even talk to anybody about that, [who] isn’t here because they don’t get it, they don’t. They’re like, “Well, so she screwed up again. Doesn’t she deserve to go to jail or to pay the price?” I’m like, “No, cause you just don’t understand ADD [Attention Deficit Disorder]. You don’t get . . . they weren’t dealt the cards that you were; they don’t have the skills that you have, the resources that you have.” (Gerrie, Baltimore social worker)

The shared understanding that develops in PDPs is another appealing aspect of the work.<sup>24</sup> It is not only specific expertise about a diagnosis like ADD, but also the recognition of participants as situated within a larger structure of disadvantage that stems from the more holistic view of participants made possible by PDPs.

We also find that training or cross-training only goes so far; at times it appears that team members revert to their traditional role orientations, as Alice explains in an exchange between herself (a public defender) and the prosecutor about whether to accept a new participant:

It’s the first time she had been sober enough to sit down and think about it. And I was like, “Jack, she’s ready, she’s great.” And he was like, “Yeah [said hesitantly], well, I get that she’s interested now that she’s in jail, but I’m gonna revoke her acceptance.” And I was like, “Fuck; what’s your problem?”

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24. In other work, we describe the stigmatizing perspective other professionals outside the PDP may exhibit when teasing PDP professionals about their work in “whore court” (Leon & Shdaimah, under review).

Like why?” And he’s like, “I don’t think she’s serious, you know, it’s awfully convenient; she’s only interested cause she’s in jail.” . . .

I’m like “Jack, have you ever known people to do drugs?” Like when people are out on the street using at a crazy rate, the whole, they’re not gonna sit down and pull themselves out of their addiction and go in and see their PO and . . . The point of this life is they are sublimating trauma—there’s no end in sight.

Alice combines her expertise gleaned from psych professionals with her experience with clients in order to argue that the potential participant’s prior lack of interest or apparent readiness for change was “sublimating trauma,” as opposed to a sign that she is not a good risk for the PDP. Alice is clearly frustrated with Jack, the prosecutor on the team, for failing to share this perspective, which is an important reminder of the continuing influence of adversarial roles even within the team context promoted by problem-solving justice.

### E. A New Approach?

Trauma is not just a past experience from childhood or connected to abuse on the streets. Alice explained, “The criminal justice systems, particularly at the local level, can really re-victimize people who are very traumatized”; PDP professionals are aware that trauma results from the system itself. When asked about ideal services, Lily (Philadelphia program coordinator) said, “I wish that each of the drug and alcohol and sexual therapy programs that they have to go to were trauma informed.”<sup>25</sup> Respondents frequently cited the need for all services to be “trauma informed”: not only specific counseling is needed, but also a broader orientation to service provision that approaches participants with sensitivity and awareness of the possible effects of trauma on their needs and on their participation in programming.

Although varying in specific content, PDP professionals explained their realizations that a new approach was needed. As a police corporal indicates:

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25. Maya (Philadelphia coordinator) also said, “Very few programs, I would say, in our immediate area, are trauma informed or even wanna touch that can of worms, because it can be such a deep, deep process and a longstanding process. And that’s often more than most diversionary programs kind of get into.”

I have been advised on numerous occasions that they are going to keep doing what they are doing. I think they initially start for reasons of drugs and/or mental illness. I think that diversion may help if contacted early on, but many of them, the majority, have been prostituting for a long time and seem to have no desire to change. I have frequently offered to dismiss charges (or to recommend it) if the prostitute could get into a rehab program or “stay out of trouble and not be on the street.” It is rare (almost never) that they take me up on the offer. (Corporal David, Peterson County)

Corporal David refers to expertise (“I have been advised”) and to his own experience that street-based sex workers “seem to have no desire to change,” and that offers to dismiss charges in exchange for treatment participation are “almost never” accepted. Although Corporal David locates the problem in the individual, to others it is obvious that the traditional tools are inadequate:

I think there was one particular case that made me really made say, “Hey, we need more than this.” It’s when an individual came and I couldn’t understand why no one else saw that this person had mental health issues, off the bat. Because this individual sat at my desk, and I think maybe ten minutes, fifteen minutes the most, I knew there was something wrong here and that I was not equipped to deal with this. And as the interview went on, and they were talking to other people that weren’t there, I was like, “Okay, what do I need to do to end this right now because I am not equipped to deal with this.” (Miss Anita Martin, Baltimore pretrial agent)

As Miss Anita Martin indicates, some participants have glaringly obvious needs, such as severe mental illness. She questions why “no one else saw” what was wrong, indicating that previous criminal justice professionals in contact with the participant either did not even spend the “maybe ten minutes” needed to get this information, or perhaps that they did not believe it was within their purview to address. But given her orientation and her role within the PDP, Miss Anita Martin could both recognize the needs and acknowledge that she is “not equipped” to handle them, thus calling for a specialist with primary expertise.

As we have written elsewhere, PDP professionals exhibit compassion for participants (Leon & Shdaimah, under review), and this itself is viewed as an important tool:

I also think that if anybody cares, that it’s enough to make a difference with this population. I don’t think we have to be the greatest geniuses in the

world. I think the simple fact that we give hugs for people who want them, and we treat people with respect, and we really do care [laugh] about what happens to them. I think it makes a huge difference . . . It doesn't take a whole lot. (Brigit, Baltimore social worker)

While expertise matters—"I don't think we have to be the greatest geniuses"—human compassion ("hugs") can matter more.

Professionals also celebrate the combination of peer support with the consistent attention from the same team of professionals:

I love the aspect that the girls have one probation officer, they have one judge that they routinely go in front of the same judge, they have the same public defender, a lot of them go to the same treatment at the same time. And with that peer group leaning on each other and seeing each other succeed, I think makes the program special: that the girls can see it. There are times when girls aren't doing well, and the other ladies in the court will yell out, "C'mon, you can do this." (Ronny, Philadelphia probation officer)

While expertise may reside in the professionals, it also resides in the peers who are sharing the journey and can understand each other with a deeper connection (Shdaimah & Leon, 2016).

As is common to other forms of problem-solving justice, this personal element and the conveyance of respect is seen as a uniquely valuable component:

It's the first time where they see their name on something that says, "You did well, good job." And to hear the kind words and to have the recognition from the judge, I've seen many of my clients break down and start crying. I have seen many clients who were very meek and timid and didn't have much to say, actually take the opportunity to start talking. And I think that's really nice, because you don't see it in any other type of diversionary completion. (Simon, Baltimore public defender)<sup>26</sup>

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26. Margo, the Baltimore prosecutor, describes it similarly, describing how she closes out the case in a ceremony in court: "We are very pleased, Your Honor, to nolle pros the charges against the persons standing before you. They have all successfully completed their program. And as an acknowledgment of their great success we would like to provide them with a Certificate of Acknowledgment and some roses.' . . . And more often than not, spontaneous applause will break out in the courtroom from the people that are waiting for their own cases to be called. It depends upon the judge; sometimes he'll say, 'Would you like to say anything?' If the judge doesn't, then I'll say, 'Would you like to say anything?' And some people will, some people won't; some start crying. It's very emotional for many of

For some participants, this individualized acknowledgement, which contrasts sharply with the stigma often conveyed in traditional criminal justice, provides space for assertiveness and sharing. After recounting a number of exciting developments in a participant's life, Brigit shares,

She came in last Thursday and . . . I said, "My gosh, you look so good today. You look like you're going to work or something." She said, "I am going for my third interview with Northrop Grumman. . . . I went for an employment test there because I wanted to be a switchboard operator if I could be." And I said, "Well that sounds pretty cool." And she said, "Nope; even cooler than that. I took the test and they told me they thought I was too smart to do that and they wanted me in the office." And she cried, she said, "Nobody's ever told me I was too smart to do something."

In contrast to the predominant messages about her worth, Brigit and the participant both celebrate the way this participant is now told she's "too smart" and more capable than even she herself expected. This kind of empowerment can translate into successes beyond the program as well, as Brigit shares later in the same interview, speaking about the PDP's benefits more broadly: "It's a real ego builder that maybe gives them a different perspective on themselves that they can use as a tool moving forward. I don't think that would happen otherwise." This probably comes closest to actually achieving the rehabilitative purpose of punishment, which ostensibly drives many criminal justice system interventions, but which is rarely discussed outside the juvenile or problem-solving context.

Individualization and flexibility are key features of problem-solving justice. In our case study, professionals may be inspired to provide this in part due to their understanding of the participants as trauma survivors who deserve it.

We had one where the treatment was supposed to go 1.2.3. Well it didn't work for this person. She needed 1.3.2. She wasn't ready for group yet. She needed a little bit more of individual . . . [she said] "I don't want to be in a group talking about my issues. And I really don't want to hear about other people's issues right now, I need to deal with my own issues first. And then maybe I'll be ready . . ." And she told me "I'm just going to be an obstruction. I'm going to be an obstructionist." And she was. But she is not going to complete all the stages as she was told. But why not give

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them. And I think for many of them it's the first thing they've ever completed in their lives, and the first acknowledgment of something."

her a little bit more of this before we put her there. And everybody thought it was a good idea, and it ended up working out. (Judge Richards, Philadelphia)

Judge Richards acknowledged that the potentially “obstructionist” participant knew best about what she needed and was willing to individualize the stages of treatment to make it work for her. This assessment is reminiscent of her similar tolerance for the “strong” participant, discussed above, who she described as offended by referral to therapy to address trauma from sexual abuse. In a similar vein, professionals describe how participants rank their priorities differently at different times.

INTERVIEWER: Do clients typically follow through on referrals made? If so, what makes for a successful referral? If not, what do you think are the barriers to clients following through on referrals?

RENEE: I think a lot of the time it boils down to the client’s priorities at that time, which may change very quickly. We have clients that call or come into the office in distress for whatever feels like is priority to them at that moment. Something else may become priority, and they don’t follow through on the referral. (Renee, Peterson County women’s health nurse)

Unlike Corporal David who links lack of interest in change with lack of follow through on treatment offerings, Renee sees the women in her practice who might participate in a PDP as women with competing priorities. In the traditional justice system, this kind of rational calculation is not consistently attributed to people like street-based sex workers, who are assumed to be in need of rescue rather than as autonomous actors making the best choices they can (Shdaimah & Leon, 2015). Renee’s less typical focus on agency is also evident in how Philadelphia probation officer Ronny describes the value of PDP as a partnership between professionals and participants: “The court brings about a mutual respect for the woman that says, ‘We recognize that there’s something wrong, we’re all here to help work this out and fix this problem if you wanna work with us.’”

While some PDP team members, such as Ronny and Judge Richards, acknowledge the agency of participants, George appreciates the way participants receive corrective “education” as compared with justice as usual:

[Without the PDP] they would probably automatically get 18 months for prostituting. And then some of these clients don’t even really know, well, don’t really understand that it’s a problem, ’cause you hear ’em say that,

“This is my body; I can do what I want.” You hear ’em say that. And they say, “I don’t understand how you can regulate what I’m doing with my body.” So even if you give ’em 18 months probation or you incarcerate ’em, you not educating ’em on the problem, and you’re not really addressing their needs. So of course, this is way better than incarceration. (George, Baltimore paraprofessional assessor)

George explains that the PDP teaches participants that their prostitution is a problem, in opposition to the view some espouse that “This is my body; I can do what I want.” This paternalism is well-intentioned, but it is nonetheless coercive. In Peterson County, when asked about needed services for street-based sex workers, prison administrator Zoe expressed an interest in both trauma services and life skills development. According to Becky, a major mental provider in Peterson county, ideal treatment for sex workers would include “an element of training on risky behaviors, and more training is needed for treatment staff on the Trauma Empowerment Recovery Model (TERM).” Both of these respondents straddle the line between empowering interventions that are client-centered and the need to educate them as if they were not already-informed rational actors, and both allude to concepts gleaned from secondary expertise.

Some prostitution diversion professionals find the contrast with justice as usual so pronounced that no concern is warranted:

There is no downside. I mean, that’s really, if you start from the standpoint that there is no downside and there is no harm in trying, then you’ll see the benefits relatively quickly if you have the proper people in the program and the proper people working the program. And that there’s a clear benefit in terms of cost of incarceration. There is a clear benefit in terms of stopping the cycle of recidivism, and unbelievable personal benefit and satisfaction in seeing the change in the people who come in drug-addicted, hanging on street corners, with attitudes, you know, that can fill this room on a good day, to recognizing that there is a different way. (Judge Kahan, Philadelphia)

In contrast to the “attitudes” often seen in her courtroom, Judge Kahan finds it gratifying to work with the “proper people” who are ready to benefit from the PDP. However, it is not always clear who the “proper people” are. As Alice explains, based on newfound tertiary expertise gained from her work with the PDP and her own reading, even trauma experts are unable to predict who might be responsive to particular interventions.

You know, I was reading David Brooks' book about human psychology . . . *The Social Animal*. Basically, like research as of 2012, is that there's like 70% of people will recover from trauma to, like, a level of functionality; that's pretty functional. And 30% of people just absolutely will, cannot, like are basically essentially broken by trauma. And there's not a lot of predicting who's gonna be that person.

Trauma expertise, like all other forms of recipe knowledge, is both art and science. The expertise may be imprecise, but it is not the only aspect of problem-solving justice that our respondents find compelling; their understanding that defendants are damaged individuals makes them respond not only with behavioral interventions but also with empathy.

1. "We're here to give you hugs and kick your butt."

Police in Peterson County indicated their support for a special program for street-based sex workers as long as it was tied to a coercive component: that a threatened consequence would inspire participation. As Detective Leonard said, "If an individual is arrested for prostitution, treatment should be court ordered just as it is done with drug offenders." Vice Squad Detective Daniels similarly would support treatment,

. . . if it was a condition of bail or arrest. The main goal of the enforcement is to . . . be able to legally remove them from the problem area and deliver them to a facility or service that would actually keep them for 24 hours to attempt to divert them into programs. Probably needs to be a cooperative effort with the advocacy group, courts, and the Department of Corrections.

This combination of coercion and treatment is part of their orientation; cooperation with other agencies (like the Department of Corrections) to "remove them from the problem area" is part of the appeal for them, rather than the "team" approach touted by problem-solving justice. However, in addition to the coercive piece, Police Corporal Hughes also indicated interest in the team approach to problem-solving, but still relying ultimately on the threat of arrest: "Maybe have police work with a social worker—almost like a task force to target prostitution. Or come up with a proposed 'alternative to arrest' pilot program for suspected prostitutes willing to enter and complete—a program that if not completed will result in an arrest." There is little of the "hugs" aspect to diversion in the views espoused by these police officers, who are not part of existing diversion programs, but are respondents to a needs assessment about a possible future

program. However, it is important to note that notwithstanding their stated comments, empathy was evident in their demeanor and in their willingness to entertain the diversion idea in the first place. A few sex workers interviewed for the needs assessment notably commented on the tangible as well as emotional support provided by police in their neighborhoods who knew them well and knew their struggles.

For professionals already involved in specialized programs, this expansion of their power to access information and to coerce compliance is also part of the appeal:

I think Pretrial occasionally having to send out letters saying, “Get in here”—that’s helpful to sort of have, I mean I think there is an element where coercion is actually helpful. . . . “We’re here to give you hugs and kick your butt.” You know, we’re here for both sides of it; like we’re here to support you, but we’re also be kind of pushing you a little bit, maybe that you’re not accustomed to try to succeed with some things. I mean, I think that’s how [Brigit] puts it: “We’re here for hugs and kicking butt.” (Gerrie, Baltimore social worker)

The combination of support and accountability that Gerrie articulates here is often considered a hallmark of diversion programs.

Despite support for treatment, professionals on the team recognize that the actual effect on participants’ utilization of treatment is unclear and will vary by participant:

[W]hen you have a client that volunteers to come into treatment, their motivation is a lot higher; whatever the motivating factor is, they don’t have court. [S]ome of the clients that you may force in treatment, they get in there and they learn something. And they say, “You know what? Imma stay here for a while and continue. . . .” But then you have some guys that go through the motions, just stay there because they got court, and then when they come into court, they give you the finger after they complete court. (George, Baltimore paraprofessional assessor)

George first contrasts the external motivation of court supervision with the unknown motivations of voluntary participants in treatment. He alludes to a potentially different quality of engagement from voluntary clients, although he makes no conclusive statements about the benefits of mandated versus voluntary treatment. George then goes on to talk about his broader experience with participants—“guys that go through the motions”—in other kinds of diversion programs, who may complete the

treatment but then indicate their disparagement as soon as they are released by the court.

## 2. The Subtext of Sex Trafficking

Although the belief in corrective coercion likely originates from several sources, it relates to the dominant construction of street-based sex workers as vulnerable victims—a perspective challenged by scholars and advocates, as well as by professionals in our sample. Theresa, a Peterson County anti-poverty shelter worker, provided a note of caution about overemphasizing trauma as a lens through which to view all problems:

[Don't] make a bigger deal about prostitution than need be. Practitioners should understand that it often goes hand in hand with substance abuse and mental health issues. If substance abuse and mental health are the issues, let's focus on those issues. A client's past is only relevant insofar as they try to provide support for trauma and issues that are holding up a client's progress going forward (issues that haven't been dealt with).

Theresa was rare among the professionals interviewed for the needs assessment in that she was not enthusiastic about a new program (echoing what many of the street-based sex workers also indicated). Similarly, respondents in a focus group with healthcare professionals wanted to keep the focus on participant's own goals and health needs, saying they would “treat the woman for what she wants . . . [and] honor any woman who chose to do this work,” (Mateo, abuse recovery counselor, Peterson County). Mateo's deliberate invocation of the word “honor” underscores his concern that participants' own choices should drive any assistance that is offered.

Governmentality analysis is again useful here in drawing our attention to the way the specification of problems and solutions will also engender specific kinds of resistance. Similar to the path dependency that results from “trauma” recognition, secondary and tertiary expertise about sex trafficking leads to a prevalent, though often implicit, assumption that a key problem for street-based sex workers is the existence of coercion.<sup>27</sup> Due to the seepage of education efforts made by organizations like Polaris (2019),

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27. This assumption of coercion into sex work is something like Bourdieu's concept of “doxa” within a field: ideas that appear self-evident and widely accepted. In contrast, the belief that trauma therapy is needed is an “orthodoxy” in Bourdieu's terms (1987, p. 812).

coercion into sex work, if not actual trafficking, is viewed as a problem, which then leads to solutions that are *not* client-centered and may be why Mateo and Theresa both emphasized the needs and goals of each participant as the best drivers of any programming.

## CONCLUSION

We have described, as depicted in Figure 1, how professional criminal justice stakeholders understand and adopt primary expertise, and combine it with their own secondary and tertiary personal and professional knowledge. The convergence of these forms of expertise is a form of “administrative knowledge that is always an ‘in-between hybrid epistemological category’ (Valverde, 2009, p. 20) and includes both professional knowledge and common knowledge” (Leser, Pates, & Dölemeyer, 2017; citation in the original). This includes knowledge and intuition about why women sell sex on the streets of major U.S. cities and their experiences of doing so, and how the supposed trauma that compels them can be managed enough to allow them to function. PDP professionals believe that women who sell sex do so as a response to past harms and a lack of social, emotional, and material resources to cope with their trauma. Instead of therapy they turn to drugs, relationships that professionals consider inappropriate, and illegal ways to quickly access money for meeting their basic needs. These specialized program professionals want to improve people’s lives and get them to stop offending, and believe that with therapy and behavior redirection—through a combination of hugs and kicking butt—these same women can transform their behaviors and their lives. To the extent that they can teach each other and outside professionals, these specialized programs create seepage that may reduce solely punitive responses and pave the way for better services. However empathetic this “politics of pity” (Aradau, 2004; as cited in Leser, Pates, & Dölemeyer, 2017), this form of problem-solving justice remains focused on individual and possibly agency change, but does little to address the larger societal forces that are the real root causes of harm and resultant trauma.

If the problem-solving court movement provides a framework for intervention that creates possibilities for a variety of criminal justice stakeholders, trauma and therapeutic jurisprudence are the tools that can be wielded within them. According to Didier Fassin and Richard Rechtman

(2009), the “politics of trauma” is the increasingly common way we make sense of how past individual and collective suffering explain our current actions. By describing a politics of trauma, they do not intend to belittle suffering; indeed they recognize the salient psychological, psychiatric, and historical evidence of great suffering. Instead, they highlight how the framework or tool of trauma provides a common ground through which to understand that suffering and analyze how “social agents—psychiatrists and psychologists, of course, but also accident victims, refugees, lawyers, and activists—make use of the category of trauma and the notion of post-traumatic stress disorder, appropriating, reformulating, or even twisting them” (p. 12). Similar to arguments we have made elsewhere, actors make use of the tools at their disposal—in this case, trauma—to further their personal and professional goals for survival, material resources, authority, and altruism (Corrigan & Shdaimah, 2016; Shdaimah & Leon, 2015).

The use of trauma also shapes the kinds of interventions and expertise that are marshalled in response. Drawing from the field of behavioral health, trauma is most aptly addressed through therapeutic intervention, often at the individual level. In PDPs, trauma is the coin of the realm, with the assumption that any person who engages in prostitution does so as a result of underlying traumas, often from childhood, and/or has experienced trauma in the course of their work. As we noted, in Philadelphia’s Project Dawn Court, sexual trauma treatment is the only treatment that is mandated for all participants.

Following Eyal (2013, pp. 879–880), we apply the sociology of expertise to prostitution diversion programs as part of the larger problem-solving movement. It may be that, much as McCoy argues that the statutory trends that removed judicial discretion made space for problem-solving courts (2003), the widespread de-institutionalization of mental illness in the 1960s and ’70s (Harcourt, 2011) made possible the conditions necessary for problem-solving courts and their emphasis on community treatment.<sup>28</sup> A common refrain in the problem-solving justice movement and from our professionals is the need to address the revolving door of people cycling through the courts, and since the 1970s these people include those who are

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28. Eyal applies his sociology of expertise to the origins of the autism epidemic, and argues that it became possible for autism to be medicalized because of the decreasing use of institutionalization of the mentally retarded and ill (2013, 881).

mentally ill. In problem-solving courts, the client-defendant is at the nexus of the problematization of offending in terms of individual responsibility versus addiction or mental illness, and arguably also of structural disadvantage; the professionals in our case study also express these competing discourses (Leon & Shdaimah, under review). Courts have had the *authority* to intervene in the fuss; the move to problem-solving justice grounded in principles of therapeutic jurisprudence and cross-agency secondary expertise has provided them with the tools to act on this jurisdiction and manage messy polycentric problems. These are preconditions for the use of recipe knowledge. Our data therefore speak to the claiming and jurisdiction—problem-solving courts can do it because the criminal justice system has failed—as well as the predicate arrangements that Eyal emphasizes, through the addition of case managers and the team approach over traditional adversarial roles.

In his contribution to the Symposium, Doug Husak (in press) critiques what he calls “criminal law skepticism,” the view of those who seem to seek wholesale elimination of the criminal justice system due to deeply embedded injustices and inequalities. He provides a list of ten functions of the criminal law system, and wants scholars to consider how society could (if it should) transfer these functions to other systems. We agree that criminal law skepticism—like critical analysis of all kinds—should be grounded in what we understand to be the real-life consequences that impact people and society. It is precisely for this reason that we should ask whether multi-door justice that combines therapeutic techniques, and in some cases makes them contingent upon criminal justice involvement, is the right task for the system and professional stakeholders within it. If it is not a perfect match, we can also ask (as we often do), whether it is better than existing alternatives. Even if this is the case, is it helpful as a stop gap? Or does it prevent us from seeking more appropriate solutions? Here we have argued that criminal justice professionals have seized on the expertise of therapy and the empathy of hugs, combined with the coercion of “kicking butt,” to allow them to follow their moral intuition to address injustices.

Following Eyal’s lead, in this case study of prostitution diversion programs we asked: Why this expertise (therapeutic knowledge) applied to this problem (trauma) by these actors (criminal justice personnel) in this forum (criminal justice system) at this time? In response, we demonstrated that the particular tools of problem-solving courts created from and in light of

the primary, secondary, and tertiary expertise available to criminal justice professionals in the current social, political, and historical context,<sup>29</sup> attempt to address what society sees as problematic behavior by treating “root causes” through therapy for traumatized individuals. Why not, for example, instead try to eliminate the roots causes—such as poverty, lack of affordable housing and living wage employment, and the despair, discrimination, and lack of opportunity that feed into family dysfunction—that give rise to trauma in the first place? This may have more to do with imagined capacities than with the objectively best approaches. Haskell directs our attention to the availability of tools that allow us to tackle what we are able to, in order to assuage our moral dissonance: the current available tools that make troubles (and troublemakers) intelligible are trauma and behavioral health, which can be treated with therapeutic jurisprudence wielded by criminal justice actors with secondary expertise.

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29. By focusing on what is currently salient, we do not deny that there are historical precedents for such interventions. Similar patterns of control in the service of protection as a means of social control or an expression of good intentions, particularly of women and other oppressed groups, have been widely documented (Cohen, 2017; Lilley, Leon, & Bowler, in press; Shdaimah, 2018). These are not contradictory but rather complementary lines of inquiry.

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