

Involuntary Hospitalization And Bias Against Marginalized Groups

HENRY T. LYNCH

NORTHWESTERN UNIVERSITY

Similar to groups traditionally thought of as marginalized, such as ethnic groups, non-binary people, and women, purportedly mentally ill people are subjected to structural oppression. Despite being more likely to be victims of violence than perpetrators, we tend to think of mental patients as violent deviants, similar to the way black boys are consistently misidentified as being older and overall in possession of superhuman or subhuman traits. Already marginalized groups are disproportionately marginalized further by mental health care stigma and predatory insurance-seeking by health care providers. The administrative discretion psychiatric and law enforcement professionals are given to deal with mental patients or people suspected of having mental problems is effectively a license to incarcerate anyone at any time with no due process and no uniformly applied repercussions in place to deter abuses of power, and people incarcerated by law enforcement officials often cannot afford an attorney. The result is a sometimes-predatory system in which predatory professionals mask their coercive collection of people's insurance money by saying they are helping. Both the language we use—"cuckoo," "not all there," etc.--to talk about mental illness and the current structure of mental health care contribute to this further marginalization of the already marginal.

Stigma in Mental Health

How many times have you called--or heard someone called--"crazy?" It is so commonplace it often becomes disconnected from the actual group it references. This population group, the purportedly mentally ill, consistently referenced in day-to-day life more than any other population group, is currently subject to involuntary hospitalization, at any point, without a trial. A citizen needs only to call emergency workers and all but nominal rights are stripped away from the allegedly mentally ill person. In addition to lack of sufficient judicial oversight in the way people are involuntarily hospitalized, the facts of who is involuntarily hospitalized point to a systemic bias against already marginalized groups; mental patients are overwhelmingly poor, unemployed, and on welfare, and nonwhite males are more likely to be involuntarily hospitalized than white males [1][2]. City governments go too far in giving police and emergency responders unrestrained administrative discretion to break into a home without a warrant to take a purportedly mentally ill person against their will to a hospital under the pretext of potential harm. When such lack of restraint of the power to involuntarily commit someone is coupled with bias against people who have been previously hospitalized, socio-economic status, and race, then a potentially dangerous situation becomes a grave one.

Law Enforcement Officers' Administrative Discretion

There are strong similarities between the problem of militarized police departments and the treatment of the allegedly mentally ill. Much like the problem of the militarization of the police, as seen in the rise of "overwhelming paramilitary force," mild domestic disturbances have the potential to result in mandatory hospital stays of at least a few days when police are involved [3]. As an article covering police reactions to protesters at the 2009 G-20 summit said, "note that no one needed to

have broken actual laws to get arrested. The potential to break a law was more than enough. That standard was essentially a license for the police to arrest anyone, anywhere in the city, at any time, for any reason" [3](p. 12-13). For purportedly mentally ill people this describes their day-to-day life. Hospitalization can happen to anyone, anywhere, at any time, without any physical evidence of a reason. Neither first responders nor diagnoses can predict future acts of violence. Therefore, we cannot rely on psychiatric evaluations as the basis for incarcerating people.

Due Process

In addition to militarized police, unfairly withholding due process of law has also served as a mechanism of discrimination against purportedly mentally ill people. "Due process" is meant to protect against unfair proceedings involving restrictions of liberty in criminal courts, yet due process is virtually ignored in mental health courts. The growing body of mental health court documents is not available to the public, as releasing those documents would violate doctor patient confidentiality, among other rights; however, in a Utah district court case called A.E. and R.R. v. Mitchell, the court found no right-to-refuse treatment to exist [13]. In criminal court proceedings, defendants are jailed prior to their court date only they are a risk to themselves or to others. Otherwise, defendants are free to go until their court date. Courts are only involved in involuntary hospitalizations when a hospital decides to petition a judge for involuntary commitment after the mandatory "observation period." In California the observation period is 72 hours and can last weeks in other states. During this observation period hospitals collect insurance money with impunity, under no obligation to let the allegedly mentally ill person leave. Incidentally, this incentive of insurance money has gone as far as to lead hospitals to hire bounty hunters to round up people to fill hospital beds [4]. Furthermore, while people are involuntarily hospitalized,

people to fill hospital beds [4]. Furthermore, while people are involuntarily hospitalized, hospitals will often pressure patients to sign in voluntarily under the threat of petitioning a judge for a longer-term commitment [1]. If city officials are to comply with the U.S. Constitution's clauses about the right of citizens to due process of law, then the allegedly mentally ill ought to stand trial in a court before they can be hospitalized involuntarily.

The Misuse of Psychiatry in Courts of Law

There are certainly people who need to be separated from society, but this practice should be reserved for people who are proven to be violent. Mental health courts currently take the advice of physicians on almost every occasion. In practice, this fact means physicians have authority to incarcerate anyone. There is no one to check the physician, as judges are not medically trained. Mental illnesses are not visible on brain scans or through lab tests. This lack of tangible evidence leaves open the possibility of psychiatrists incarcerating people for superficial reasons such as the way someone presents themselves, the color of their skin, or their socio-economic status. Examples of psychiatrists using their power to oppress marginalized groups are widespread. In one such example, a study shows African Americans are more than three times as likely as whites to receive a schizophrenia diagnosis, and drapetomania was a diagnosis given to slaves as an explanation for why they tried to flee captivity [5][6]. These examples show how psychiatry is subjective and should have no place in a court of law, except perhaps as one piece of evidence among many other factors, and even then their opinion should not be viewed as more special or important than any subjective opinion. On the other hand, if there were verifiable proof of wrongdoing—a written statement of intent to commit an act of violence or witnesses who heard someone's intent to commit an act of violence—as is the requirement in courts of law, then there would be a basis for conviction visible to psychiatrists and lay people alike, lessening the potential for power abuse.

Implicit Bias and Language

Involuntary commitment has become commonplace just like racial bias in society is commonplace. In order to overcome the problem of involuntary commitment, it must be opposed in the same way. Oppression must be routed out of ourselves for true revolutionary change to take place [7]. While the stigma of mental illness is present at all levels of society, from people locked in mental institutions to people lightly called “crazy,” the individual is where the battle must be won. At the tame end of the spectrum, we use the word “crazy” to write people off. Just like police have a subconscious tendency to think of black people as sub- and superhuman, so too do we tend to ignore the humanity of the purportedly mentally ill [8]. There is the perception that the purportedly mentally ill are dangerous, when in reality the purportedly mentally ill are far more likely to be the victims of violence than the perpetrator [9]. At the extreme end of the spectrum the purportedly mentally ill have their liberties taken away right in our midst, that is, they are involuntarily hospitalized.

At the individual level the language we use could be changed—instead of “wacko” or “psycho” we could refer to people

as “distressed” or “in crisis.” Words such as “wacko” and “psycho” dehumanized and thus open the doors to large-scale systemic abuse. Furthermore, we could stop referring to people as “mentally ill” altogether, since the term “mental illness” is metaphorically referring to behavior deemed undesirable to society and does not refer to an actual biological disease visible with a brain scan or lab test. If police understood this fact they might be less inclined to bring someone to a hospital when there is a domestic disturbance and instead provide counseling or enforce laws regarding unacceptable behavior as needed. These names for the purportedly mentally ill also lead to those with an intersecting marginal identity to be further marginalized. Society is rife with implicit bias, and police are especially prone to act out implicit bias in detrimental ways due to the administrative discretion their position allows them and the disproportionate concentration of people—relative to the general population—in law enforcement who value the maintenance of hierarchical group superiority in their

interactions with others, also known as Social Dominance Orientation (SDO) [8]. SDO combines with administrative discretion and bias against the purportedly mentally ill, people of lower socio-economic status, and racial minorities to result in involuntary hospitalization just because someone called authorities about someone purportedly mentally ill. Empathy in our language is a protection against unwittingly creating a system structured to abuse and infringe on human rights.

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Equipping Law Enforcement Officers to Deal with the Distressed

A solution to oppression at the structural level is having police trained to deal with domestic situations involving purportedly mentally ill people without using force to bring them to a hospital. Police officers are trained to seize control of a situation when they think they might be dealing with someone armed or behaving erratically, often through stern, shouted commands. Shouting at someone and threatening to use force are not constructive ways to de-escalate situations with people in crisis. One in four people killed in officer-involved shootings are purportedly mentally ill [10]. We are clearly in dire need of Crisis Intervention Teams to de-escalate situations with the purportedly mentally ill. However, only fifteen percent of law enforcement agencies have crisis intervention training [11]. De-escalating situations could open up situations to an alternative to forced hospitalization. From a de-escalated situation non-coercive assertive community treatment programs could be put in place, programs that do everything it takes to keep people in the community and living independently, including helping people with housing, finances, and everyday problems in living. Programs like assertive community treatment pay for themselves by keeping people out of hospitals [12].

Behavior exists that poses a problem to society, but a fourfold solution should be applied to address it. First of all, we need to have transparency as to what is acceptable behavior and what is not. Having decisions about what is deemed acceptable behavior by society's standards concentrated in a single decider—be it emergency responders or psychiatrists—leads to chaos in the system as different deciders have different opinions about what is acceptable. Secondly, we

need for the legal system to stop using psychiatry as its underground, unofficial arm. If there are no public agreements on norms about behavior, no one can be held accountable for their actions, which is how the current system of psychiatry exists. Psychiatrists judge behaviors and either rule them acceptable or unacceptable based on their not widely circulated diagnostic manual, condemning people via diagnoses but not really holding them accountable because their behavior is then described as a disease. We need to officially enact laws pertaining to what behavior is unacceptable, which is the third part of the solution. These laws could then be enforced by police officers instead of giving police officers unrestrained administrative discretion to take people to hospitals, eliminating the acting out of bias against already marginalized groups such as African Americans and Latino Americans. Fourthly, we need to make these laws known. Legal education cannot be limited to lawyers if positive change is to occur.

Conclusion and Opportunities for Further Research

The misguided attempt of psychiatry and first responders to predict future harm, the disregard for the allegedly mentally ill's right to due process of law, and the subjectivity of psychiatry point to the necessity of abolishing the practice of incarceration for supposedly medical reasons. In order to end stigma at the structural level, that is, in courts, and at the level of day-to-day interactions, a revolution in thought must take place at the individual level and we must compassionately empathize with the allegedly mentally ill [7]. Sympathy leads to the medicalization—and further entrenchment—of oppression; empathy is needed to lead us out. Future research could investigate the use of counseling to de-escalate situations when police are called to deal with someone who is purportedly mentally ill. Non-coercive assertive community treatment could be examined as the alternative to involuntary hospitalization. Finally, there has been research about the positive effect descriptive representation has on minority racial groups, but there could be further research done into the effects of descriptive representation for the allegedly mentally ill.

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