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Should Public Policy Center on Society’s Well-Being?



David Yamada

Should public policy adopt core values of well-being, human dignity, and compassion? Should it embrace outcomes that are therapeutic versus those that are anti-therapeutic? Should it reject measures that are based largely on economic productivity, with little to no regard as to how wealth and resources are distributed and deployed?

These questions may seem somewhat pie-in-the-sky to those of us living in the United States right now. After all, in this year alone, we have been struggling with a toxic and corrupt national leadership, a divisive debate over race and policing, and a devastated economy fueled by a deadly pandemic that, at this writing, has claimed nearly 200,000 lives.

But, at least for a few minutes, let us traverse an ocean to visit New Zealand, which has witnessed some remarkable lessons in moral and political leadership. And let us return to May 2019, when New Zealand’s coalition government, led by their remarkable prime minister, Jacinda Ardern, proposed an annual national budget titled “The Wellbeing Budget.” Via a thick 144-page budget proposal, the government asserted that the well-being of its citizens should be the nation’s top policy priority. The budget identified six major focal points:

- “Taking Mental Health Seriously”
- “Improving Child Wellbeing”
- “Supporting [Indigenous] Māori and Pasifika Aspirations”
- “Building a Productive Nation”
- “Transforming the Economy”
- “Investing in New Zealand”

The New Zealand budget was more than simply a rebranded collection of traditional liberal policy positions. Rather, in both theme and substance, it transcended a lot of the common rhetoric framed around budget politics and instead focused directly on people. The New Zealand budget document explained well-being this way:

“Wellbeing is when people are able to lead fulfilling lives with purpose, balance and meaning to them. Giving more New Zealanders capabilities to enjoy good wellbeing requires tackling the long-term challenges we face as a country, like the mental health crisis, child poverty and domestic violence. It means improving the state of our environment, the strength of our communities and the performance of our economy.

Sustainable economic growth is an important contributor, but many factors determine people’s wellbeing. Just because a country is doing well economically does not mean all of its people are. This has been the case for New Zealand. Too many people have been left behind or left out. The Wellbeing Budget endeavours to give more New Zealanders the ability to share in the benefits of a strong and growing economy.

We now know that we cannot meaningfully address complex problems like child poverty, inequality and climate change through traditional ways of working. Making the best choices for current and future generations requires looking beyond economic growth on its own and considering social, environmental and economic implications together.

A lot of folks made note of New Zealand’s new approach to setting budget priorities. The tone of the *New York Times* was representative:

“It’s being called the next big move by a New Zealand government seen by progressives around the world as a beacon in increasingly populist times: a national budget whose spending is dictated by what best encourages the “well-being” of citizens.

... “This budget is a game-changing event,” said Richard Layard, a professor at the London School of Economics who is an expert on life satisfaction across populations.

New Zealand is not the only country that is starting to rethink whether blunt economic measurements like gross domestic product are the best gauge of a nation’s success. But, Dr. Layard said, there has been “no other major country that has so explicitly adopted well-being as its objective.”

Is this budget a “game-changing event,” to quote Dr. Layard? Or, at the very least, does it shine a strong light in the right direction? As we in the US approach an election that we hope will enable us to reclaim a sense of decency for our nation, it would behoove us to be thinking in such dramatic, evolutionary terms. It’s not just about replacing Trump. It’s also about imagining the possibilities without him.

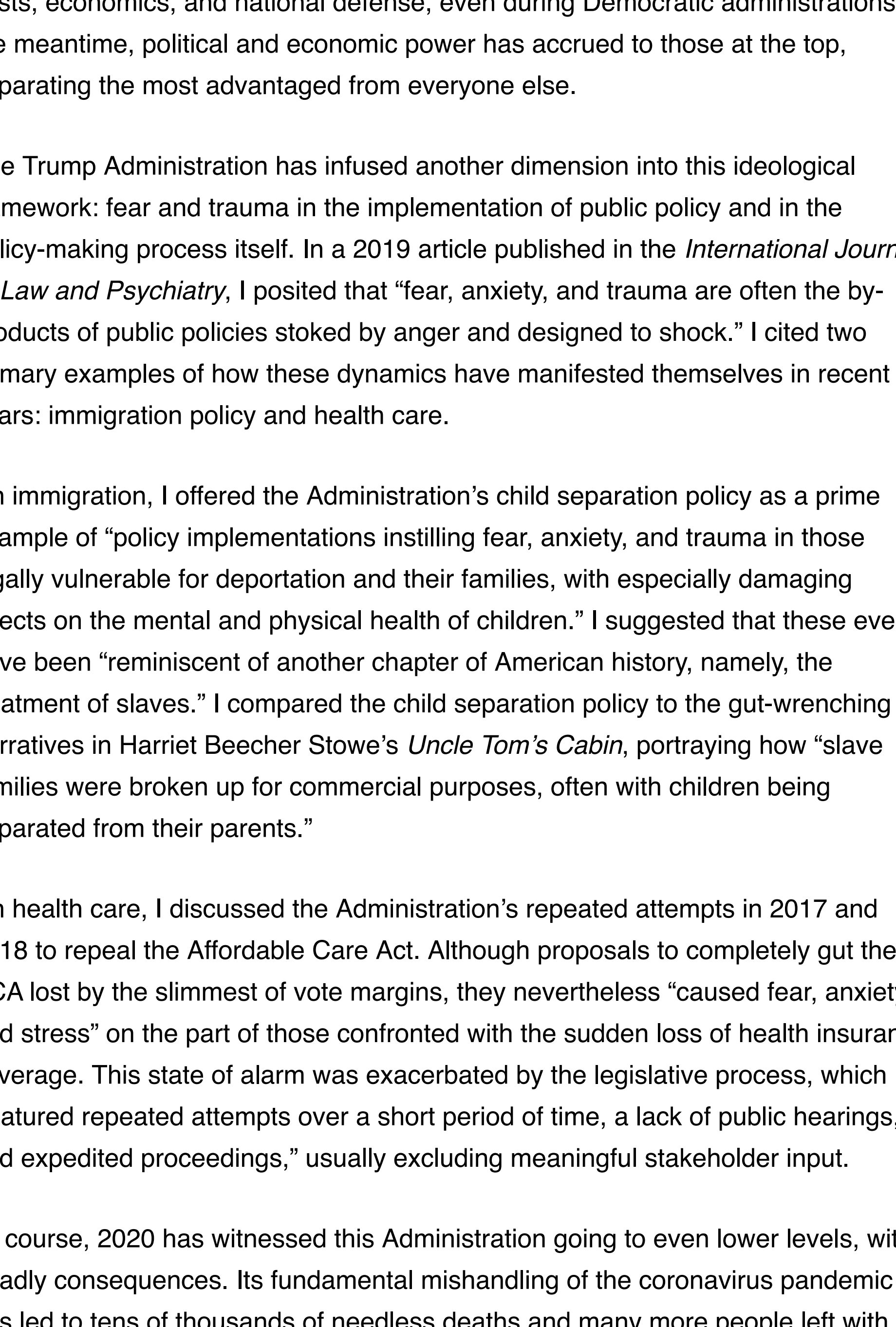


Image from New Zealand Government, The Wellbeing Budget (May 30, 2019)

America’s Contrast: Fear, Anger, and Trauma

America didn’t get here overnight. The 1980 election of President Ronald Reagan marked the beginning of a sustained attack on a more fulsome social safety net that was ushered in by the New Deal during the 1930s. The prevailing neoliberal ideology has held that unfettered free markets, lower tax rates, and less regulation will combine to unleash the forces of freedom and prosperity. Consequently, at the national level, most of our domestic spending debates have been framed around costs, economics, and national defense, even during Democratic administrations. In the meantime, political and economic power has accrued to those at the top, separating the most advantaged from everyone else.

The Trump Administration has infused another dimension into this ideological framework: fear and trauma in the implementation of public policy and in the policy-making process itself. In a 2019 article published in the *International Journal of Law and Psychiatry*, I posited that “fear, anxiety, and trauma are often the by-products of public policies stoked by anger and designed to shock.” I cited two primary examples of how these dynamics have manifested themselves in recent years: immigration policy and health care.

On immigration, I offered the Administration’s child separation policy as a prime example of “policy implementations instilling fear, anxiety, and trauma in those legally vulnerable for deportation and their families, with especially damaging effects on the mental and physical health of children.” I suggested that these events have been “reminiscent of another chapter of American history, namely, the treatment of slaves.” I compared the child separation policy to the gut-wrenching narratives in Harriet Beecher Stowe’s *Uncle Tom’s Cabin*, portraying how “slave families were broken up for commercial purposes, often with children being separated from their parents.”

On health care, I discussed the Administration’s repeated attempts in 2017 and 2018 to repeal the Affordable Care Act. Although proposals to completely gut the ACA lost by the slimmest of vote margins, they nevertheless “caused fear, anxiety, and stress” on the part of those confronted with the sudden loss of health insurance coverage. This state of alarm was exacerbated by the legislative process, which “featured repeated attempts over a short period of time, a lack of public hearings, and expedited proceedings,” usually excluding meaningful stakeholder input.

Of course, 2020 has witnessed this Administration going to even lower levels, with deadly consequences. Its fundamental mishandling of the coronavirus pandemic has led to tens of thousands of needless deaths and many more people left with chronic, post-COVID health impairments. (Contrast us, once again, to New Zealand, where decisive and effective public health responses have largely defeated the virus.) In addition, millions of Americans are living on the edge of financial disaster, as the pandemic has exacerbated pre-existing fault lines of inequality and financial insecurity.

As if this weren’t bad enough, the current president’s horrific insensitivity toward issues of race and police violence has deepened divisions across the country. While only the judgment of history can determine when a nation’s civic life has reached its nadir, for many Americans, it feels like we’re looking up from the bottom.

A New Framework for Looking at Law and Public Policy

It is not enough to turn out the White House incumbent and many of his Congressional followers in November. We also need to look at our country’s future through a different lens, one sharpened on our society’s well-being. Among other things, it is way past time to say goodbye to the neoliberal obsessions that have helped to bring us to this place. Political philosopher Michael Sandel, in his 2012 book *What Money Can’t Buy: The Moral Limits of Markets*, posits that we have “we drifted from having a market economy to being a market society.” He calls upon us to closely examine when markets serve the public good and when they do not. Even the market-embracing *Economist* magazine has questioned our preoccupation with economics:

“A CYNIC, says one of Oscar Wilde’s characters, is a man who knows the price of everything and the value of nothing. But, as philosophers have long known, assigning values to things or situations is fraught. Like the cynic, economists often assume that prices are all anyone needs to know. This biases many of their conclusions, and limits their relevance to some of the most serious issues facing humanity.

In the meantime, we are experiencing epidemic levels of depression and anxiety in our society. At times mental health impacts relate directly to public policy, as suggested by a new study linking lower suicide rates with higher minimum wages, reported here by NPR:

“A new study suggests that raising the minimum wage might lower the suicide rate —especially when unemployment is high—and that doing so might have saved tens of thousands of people from dying by suicide in the last quarter-century.

The minimum federal minimum wage is \$7.25 though many states have set it higher. Between 1990 and 2015, raising the minimum wage by \$1 in each state might have saved more than 27,000 lives, according to a report published this week in the *Journal of Epidemiology & Community Health*. An increase of \$2 in each state’s minimum wage could have prevented more than 57,000 suicides.

... Crucially, researchers found that raising the minimum wage appears to reduce the suicide rate more when it’s harder to find a job. In bad times, the same \$1 increase could save more people than it might during good times.

To help us develop frameworks for advancing traditional liberal values with a compassionate, humane, yet practical voice, I propose that the field of *therapeutic jurisprudence* can critically inform our understanding. Founded in 1987 by law professors David Wexler (then at the University of Arizona) and the late Bruce Winick (University of Miami), therapeutic jurisprudence (or “TJ”) is a school of legal theory and practice that examines how laws, public policies, and legal systems can produce therapeutic or anti-therapeutic results. While respecting traditional legal precepts such as precedent and due process, TJ inherently favors outcomes that advance human dignity and well-being.

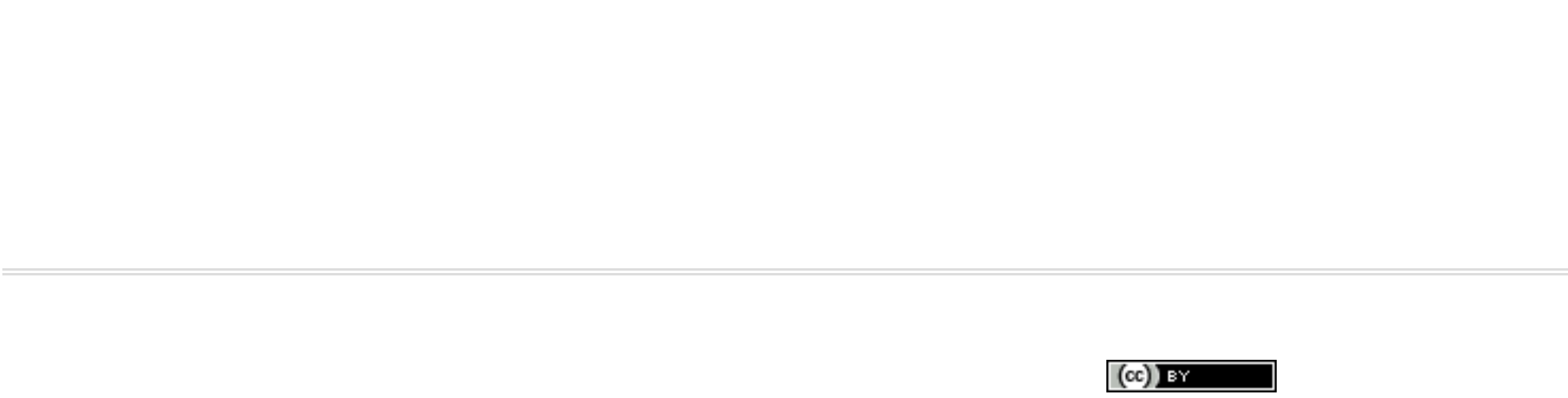
TJ’s original focus was grounded in mental health and mental disability law, criminal law and procedure, and specialized courts that help to divert low-level offenders from entering the criminal justice system. It has since expanded into many other areas of law—including family law, health law, and employment law—as well as various aspects of dispute resolution, the legal profession, and legal education.

Therapeutic jurisprudence principles have informed my work in drafting and advocating for workplace anti-bullying legislation, informally known as the Healthy Workplace Bill, which serves as the template for legal reform efforts across the nation to create a legal claim for severe, targeted psychological abuse at work. In addition, I have invoked TJ in calling for human dignity to be the framing principle for American employment law generally.

More recently, I have harnessed these insights to develop a TJ framework for examining legislation and public policy. In essence, I pose two questions:

- How do existing and proposed laws and regulations promote or undermine the psychological health, well-being, and dignity of policy stakeholders?
- How do legislative and regulatory processes promote or undermine involvement and participation by affected stakeholders?

In sum, therapeutic jurisprudence—despite its unwieldy name—provides us with a practical theory for framing public policy issues in ways that focus on our individual and collective well-being.



January 2021 and Thereafter

Even when the next Democrat occupies the White House, I don’t anticipate that the new Administration’s budget will be framed around well-being, and I certainly don’t expect to hear the term therapeutic jurisprudence tossed around in everyday Washington, DC, parlance. While New Zealand may be ready to propose a national budget around the concept of well-being, I have doubts that the whole of the US is ready for that, at least not yet.

However, we can and should do this beyond the federal level. After all, states and municipalities are important laboratories for innovative approaches to lawmaking, and therapeutic jurisprudence principles can inform them. Surely we can envision a progressive state, city, or town proposing a budget built around a commitment to the well-being and dignity of its denizens.

And at all levels of government, we can encourage and support public policies that advance human dignity for intended stakeholders. We can endorse proposed bills and regulations that are likely to promote therapeutic policy outcomes while questioning and perhaps opposing those that do not. Without apology or embarrassment, we can advocate for smart laws and public policies out of a sense of compassion—freely, boldly, and responsibly. In this *annus horribilis* known as 2020, doesn’t that sound like a splendid change from our current situation?

About the Author

David Yamada is a Professor of Law and Director of the New Workplace Institute at Suffolk University Law School in Boston. He is the current board chair of the Americans for Democratic Action Education Fund, board chair emeritus of the International Society for Therapeutic Jurisprudence, and a board member of the Human Dignity and Humiliation Studies network. His blog, *Minding the Workplace*, may be accessed at <https://newworkplace.wordpress.com>.

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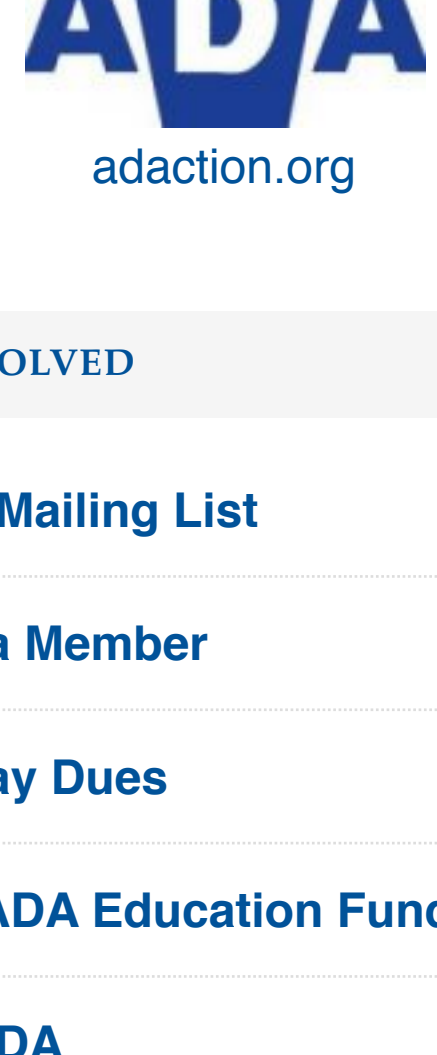
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