Forensic Briefs

Ep 33 Raquel Aldana – Trauma as inclusion in the immigration context

In this episode, Professor Raquel Aldana, a leading scholar on immigration and human rights law, joins us to discuss the deep relationship between trauma and justice. She reflects on how legal systems define, recognize, and sometimes distort trauma—particularly for immigrants and asylum seekers—and how cross-disciplinary collaborations with mental health professionals are transforming that understanding. Together, we explore how law can move beyond exclusion toward inclusion, therapeutic jurisprudence, and the pursuit of truth.

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Dr. Millkey And so, Michelle, who are we talking to today?

Dr. Guyton Well, Alex, I am delighted to introduce you and our listeners to Professor Raquel Aldana. She joined the University of California, Davis in 2017 as the inaugural associate vice chancellor for academic diversity. And she returned to full time teaching in 2020. She is a Harvard Law graduate and began her career as a human rights lawyer with the center for Justice and International Law.

Dr. Guyton Before entering academia in 2000, she has previously taught at the University of Nevada, Las Vegas and McGeorge School of Law, and she was also a Fulbright Scholar in Guatemala to studying transitional justice and victims roles and prosecutions. She is also an elected member of the American Law Institute and the Council on Foreign Relations. Professor Aldana serves on boards including the American Bar Association Rule of Law Initiative, and the U.S. chapter of the Committee of Pan American Judges on Social Justice.

Dr. Guyton Since 2017, she has collaborated with UC Davis psychologists and psychiatrists to study the role of trauma in immigration proceedings. She has a forthcoming article we'll be talking about it in our work with her, during this podcast called Adjudicating Credibility, which explores mental health forensic assessments and immigration adjudication. And also, she

didn't write this in her bio, but in in searching her a little bit, she is also highly decorated.

Dr. Guyton She is the Martin Luther King Junior Professor of Law at UC Davis in their law school, and she has also received the Chancellor's Fellowship for diversity, equity and Inclusion, among many other awards and accolades. Welcome to the podcast, Professor Alka.

Professor Aldana Thank you. It's an honor to join you.

Dr. Guyton It is an honor to have you here. And you have written extensively about international law, immigration, and human and civil rights. And you have also written, which I think was what drew me to your work, about these issues and how they co-mingle with trauma and which is a psychologist, obviously. You know, that's what we often deal with.

Dr. Guyton Can you tell us how you came to your interests and immigration law and that confluence with trauma?

Professor Aldana Yeah, I mean, one motivation was just my professional background as a human rights lawyer and also as an immigration rights lawyer, and the fact that so much of what we do is connected to human trauma. And in many ways, the work that we try to do is about using law to heal, some of that trauma. And so it was obvious that I was always making the connections between one, the presence of trauma.

Professor Aldana But then the possibilities of law, whether in the form of process, like for example, I wrote a lot on the right to truth. Initially when I began my academic career, because I understood how processes could be really important to the healing, legal processes could be really important to the healing. I also saw the incredible limitations of law and process to provide that, and so I was interested in seeing how we might improve those spaces.

Professor Aldana And then when I joined UC Davis, I was very lucky to have connected with a group of scholars who were working, on a project called UC da, which was a collaboration between UC Davis and Arab universities. And as you can imagine, they were very focused on trauma related to displacement within the Middle East region. I was not an expert in those areas, but I was drawn to their conversation because it was very interdisciplinary.

Professor Aldana It involved, psychologist, psychiatrists, anthropologist, sociologist, and, and they were really kind of trying to, bridge a different kind of gap between, which is really the intercultural, or the cross-cultural gaps and understanding about trauma and, and its expression and how it expresses. And so I began to be in the space as the only lawyer making the connections to how little law captures this complexity of trauma expression and how, especially in this immigration space, how poorly we tend to adjudicate trauma.

Professor Aldana So this started me on this journey of trying to collaborate across disciplines, and also to bridge gaps between the Academy and practice. So immediately we, convened a group of lawyers, and mental health practitioners in the same room as a way of also starting this conversation beyond the Academy.

Dr. Millkey When people use the word trauma, I think it can mean many different things to many different people. As a psychologist, I use it in one way. I sense that as a human rights attorney, you use it in a way that probably shares some overlap on the Venn diagram, but isn't the perfect circle. Could you tell me what you mean when you talk about trauma, please?

Professor Aldana Now, that's a great question. We wrote a piece, a titled Trauma as Inclusion, and we began with this project of trying to define what trauma is. And I think it's fair to say that there isn't really a universal, understanding of trauma and that there's still kind of a conversation about how trauma might be defined. But one of the things that I think is important to highlight is that there is a Western conception of trauma that tends to focus on single events that are very, significant stressors of something that is huge, that happens that is usually very violent, usually either very physical or very disruptive versus something that is ongoing and chronic and

Professor Aldana collective. Right. So I think one of the tensions in thinking about trauma is this way of thinking of it as a singular event versus something that is chronic, endemic and collective. So for me, one of the ways that I have to think about trauma is also the way that laws law has tried to capture what trauma means.

Professor Aldana And so I'll give you an example of this. One is in the asylum space, there is a definition of persecution that attempts to capture what trauma means in this framework of persecution. And one of the things that we have grappled in law, and I find that it's too limiting a definition, but it very much centers on like, do we think about trauma as something physical?

Professor Aldana Do we move beyond physical violence to other forms of violence, and then do we want to think about trauma as something that happens in a single event, or do we want to think about endemic poverty, or the denial of health care, to populations that without it could die? Aids medication as an example of that, as trauma.

Professor Aldana So I think that these are tensions, absolutely, that are still being debated. And I don't think that it's unique to the psychology, you know, the psychology field and the psychology field, I think struggles also to think about how do we create definitions that medicalized trauma, right, that seem to resolve these tensions. And when we do that, I think we tend to narrow in ways that are helpful because we have to screen or we have to prioritize resources.

Professor Aldana Right. This project of, trying to narrow is in some ways a not so much the creation of a hierarchy of trauma that may be trying to create something that allows us to think about prioritization or to try to think about resources or even try to think about treatments. Right. And I that I understand, but I just want to acknowledge that both within law and medicine, there is this tension between that project and what gets left out.

Professor Aldana You know, that is, I think, a broader, project of anthropologists and sociologists who do who see trauma very differently than lawyers or, or medical professionals.

Dr. Guyton I hear in that also a struggle that we've had with in the mental health profession, with understanding trauma as this singular event that occurs, you know, often initially conceptualized as a wartime event, but then understanding of the effects of chronic abuse or neglect in childhood, for example. Right. And, and I see kind of a parallel in what you're seeing here is that you know, we've had to expand our definition of what trauma is, and it still is kind of within this physical realm of, you know, that someone has spent physically or sexually abused or neglected as a child.

Dr. Guyton And we know that that has significant impacts on a person in terms of the, you know, many aspects of their life functioning, you know, as a as a youth, but also later in life. But then in reading, you know, what your trauma as inclusion paper brought to mind that it's then that there's still an individualistic conceptualization of trauma.

Dr. Guyton Right. And and I really appreciated you and your colleagues highlighting that trauma can also be collective, that it can happen on a systems level, and each person might be impacted somewhat differently. But at the same

time, it is this large stressor that may be life threatening as you're describing it. And then I think about, well, how does that impact what we know about trauma?

Dr. Guyton If all of our research about trauma has been about sort of these, you know, wartime events or abuse or, you know, these other sort of adverse events that we that we routinely accept as being criterion events for PTSD. What do we know then about how people who are subject to, you know, long term poverty, denial of health care, right.

Dr. Guyton These things that you're talking about as a society. Right. And how does that look? And can we recognize that? And is that something that you and your colleagues have found? Is that available? And do we do we know things about how people are impacted by those sociocultural events?

Professor Aldana Yeah. I mean, and I apologize that I'm at this moment forgetting the name of the researcher. But we recently had her, her book, a which, we have a book series at UC Davis, and we invited her as a speaker. And her work has focused on being able to trace racism as physiologically right and the effect of racism on the body.

Professor Aldana And her work has really focused on black women, in particular, because she her she began her work looking at mortality rates for black women, during birth and really seeking to understand what what were the factors that were contributing to that mortality rate. And so I do think there is new science. When she came to speak at UC Davis, she she actually this really surprised me.

Professor Aldana She explained to us in her talk that when she first began to write in this areas, she was both kind of accused of being an outlier and and undermined scientifically for her work. But in but more surprising, she actually received a lot of threats because her work was considered to be so controversial and polemic. Because I think that as a scientist, she wasn't really having any policy implications or arguing for any policy implications for her work.

Professor Aldana But, but if you sort of extrapolated the policy implications, I think she was conceiving of acknowledging systemic racism as a root cause for things that should argue for health equity, for example, or for policies that should really focus on redressing these things. So that's one author that comes to mind, is, is someone who has been working on, proving that racism has physiological harms, chronic stress.

Professor Aldana So I know there's been that work. I know there's also been work that traces trauma impacts across generations. And the fact that, you know, there are those issues. And then the final thing I want to bring to the table is the research that is also focused on, looking at my immigrant health and also tracing the health impacts of immigrant communities.

Professor Aldana And it turns out, for example, I was very surprised to hear this, that immigrants in the US, over time, fare worse in health outcomes. And it's a lot related to the ways that they experience the US and the discrimination and the stresses related to discrimination that begin to play out. So even though they come from, nations, that may not be seen as stellar in terms of, access to health care and even quality of health care, they the immigrant communities, when they come here, they actually tend to do worse than they do at home.

Dr. Millkey I feel like this might be a good place to follow up on something you mentioned right at the beginning when Michelle asked you, Professor Aldana, what drew you to this area? One of the things you said that you was that you're interested in law as a means of healing trauma, that really struck me is really just a few days ago, I was talking to an attorney.

Dr. Millkey The very different situation. It was a civil case. And, the attorneys said that it was their perception that often the civil legal process was retraumatizing. And this what you're saying is such a figure, all counterpoint to that and feels feels very germane to what you're saying. Would you mind helping me understand what you mean when you say that law as a means of healing trauma?

Professor Aldana No, I think that's a really legitimate question. And I'll start out by saying that one of the things I learned, as a human rights lawyer, a space in which I often felt frustrated and I thought, oh, what am I doing here? It feels like all the work that we're doing, litigating these human rights cases that involve such awful things, like as I was working on cases of genocide, forced disappearances, extrajudicial executions, torture and by the time the cases that we worked on came to our office, we were litigating at the international level.

Professor Aldana So by the time they came to our office, who in some cases we're talking decades later of victims trying to seek justice. And oftentimes our efforts might result in an apology by, you know, a government and maybe nominal, reparations, and in terms of money and that just seemed like such a Herculean effort. And it felt so frustrating to to continue these, these efforts.

Professor Aldana And sometimes I felt like I don't I don't know that I'm making a difference. But what really changed my mind is, meeting some of the victims. And I recall one mother of a, young men who had been forcibly disappeared in Paraguay and her by the time I met her, her struggle had been two decades long, and it just was mind boggling to me that she one continued to fight and two, that what why it mattered.

Professor Aldana And in conversations with her and other victims, I kept continually kept hearing that for then just the validation by an international tribunal that what they say happened did happen, that the validation itself, which is why I decided to write this early piece on the right to truth right, is that there was a way in which law is a vehicle for the construction of truth that has been denied.

Professor Aldana And so there is not just the accountability piece. I think there is the truth seeking piece. And I understand that truth as a concept can be complicated. But part of the problem in when atrocities happen or when profound trauma happens like this is one the silence to the denial. Three the different versions of of things. And for the most part, it's really about who has the power to tell what truth.

Professor Aldana And it's a disempowerment of victims being able to tell their truth. So what happens is that law, at least, is the possibility, it's the promise that there could be a reorganization of power that can allow victims to tell their truth, their version, and ideally, right, because I want to separate truth seeking from justice seeking is that ideally, law could be also a vehicle for the delivery of some form of justice or accountability.

Professor Aldana And, and I want to just emphasize the word promise because I completely agree with you that what I'm describing is aspirational. And I also completely agree that we, as a legal system, have strayed far away from that promise in many, many ways.

Dr. Guyton Wow. I feel like I'm just processing a lot of what what you took in. I don't know what or what you're telling me. And that's just incredibly powerful. And thinking about this one woman's fight for justice for her son for two decades. And I think the process piece of it must be incredibly painful and slow. And I think gets to what you were kind of talking about with some hopelessness of whether it's making a difference.

Dr. Guyton But that potential outcome, of having her truth recognized and her son's truth validated is so powerful that victims are willing to keep going despite

all of that. That's just incredible. And I wonder to, you kind of coming back to the article that you wrote and I want to give a a shout out to your colleagues, that you co-wrote with Patrick Mary, his colleague at Thomas O'Donnell, Alaska.

Dr. Guyton And Carolyn Paris. And this is a 2023 paper you entitled trauma as inclusion. And I, I don't know about you, but when I read that title, I said, what trauma as inclusion. But it's not. Those aren't words I ever put together in my mind before. And I'm wondering how you came to that conceptualization.

Professor Aldana Yeah, that's a great question. I mean, we struggled with, the title a bit, but we landed on trauma as inclusion, in part because we wanted to write a hopeful piece and in part because we wanted to trace a historical evolution that has led us to to a moment in time that has left some open spaces. So we, you know, we wanted to focus on the inclusion of this piece.

Professor Aldana Now, this particular piece is really focused on how it's really focused on the immigration space, and it's really both documenting historically how for a really, really long time, our project, was always to get to rid ourselves of quote unquote brokenness and an acknowledgment that the ways in which medical professionals participated in this process, including on Ellis Island, was to screen out people who were broken and broken meant a lot of things.

Professor Aldana But it was always also funneled through a lens of eugenics and racism. But in general, it was this idea that we don't want the quote unquote lunatics. We don't want the poor, we don't want the people with mental health issues. And and related to that, because I think sometimes of the piece, it gets lost how this is it related to trauma.

Professor Aldana But a lot of times some of some of the people, some of the immigrants who are coming in are people who are leaving, right situations of trauma and many times what was quote unquote detected as, brokenness may have been an expression of trauma. And if we think of chronic poverty right, as trauma, that's really what the medical profession professionals who were, you know, using chalk to mark people as broken, we're really relying on.

Professor Aldana Right, is, is is we don't want these people. We want we want the people who are going to make our nation great. But post-World War II two, there was such a significant moral reckoning, not just within the US but globally.

And we start to see an, an opening in the law and in immigration law, in particular in borders.

Professor Aldana Right. We start to see a small opening, like, if I have a if I have an image, right, it would be a wall, like a really, fortified wall with just a few holes, you know, where the people have somehow been able.

Dr. Guyton To pierce.

Professor Aldana And through those holes, we start to see how brokenness, clinical brokenness can be a basis for a an immigration relief, for the inclusion. So in the article, we remove from the exclusion piece, because we initially our title was trauma. This exclusion trauma is inclusion. And then we said, no, let's just focus on inclusion. Peace. I think we moved towards the space where there has been a recognition that trauma should be a basis for repairing, a basis for legal reparation.

Professor Aldana And that legal reparation, immigration, what we call humanitarian law, immigration. And so we started to see this, this possibility. And so we documented in the piece and we say, this is great. We started to recognize that trauma should just not just be to exclude, but may be a basis for repair. And the problems that we see is that the bad science made its way to immigration law when the eugenic doctors and the, you know, were helping to exclude.

Professor Aldana But now that we're trying to include the science and the good, science isn't playing a role in in law. So lawyers are kind of functioning in their own vacuum. And, and even though they mean well, right, they're defining trauma without the input of, of the medical profession. I think in this piece, although it's maybe not obvious, there has been also an evolution of the medical profession away from all the bad ways of thinking about trauma to reimagining trauma in different ways.

Professor Aldana I think the evolution of the medical profession, has happened, but law, has not captured the, the good of the medical profession. Right. And so we all of the evolution and science, what we know today about trauma or what we know today about, for example, how trauma affects memory, or how trauma affects the body, not a none of those things are, being led in to the law.

Professor Aldana And so, we see, we see this gap and, and the problem is that the ways that the law is adjudicating trauma is problematic as a result.

Dr. Millkey Gosh, there's there is a lot to unpack there, both legally and mental health wise. I think perhaps first, you could help us unpack the legal part. You know, that's something that I'll admit, I know next to nothing about what I know. I know from reading the articles that you wrote, that you wrote in preparing to talk to you, can you make explicit the way that, people's experience of trauma can form a legal basis for them being able to come?

Professor Aldana Sure. So initially I talked about, refugee law or asylum law and, concept of persecution as trauma. Right. So it's really that's one example that I think probably your audience is most familiar with. And since, you know, I'm writing about this issue in the immigration space, I'll say also that there's been, through the women's rights movement because I want to give credit, right, to the to the feminists who really advocated because it was really through the Violence Against Women Act that we also start to see, improvements in the treatment of other types of trauma, like victims of crime and specifically victimization of women and domestic violence space or in, in the, in

Professor Aldana the human trafficking space. And that starts to also seep into, expressions of immigration. And so you start to see you visas and TV sets and, other types of visas that start to recognize these kinds of expression, violence, expressions of violence that create some, some, ability to create, of, of an immigration path. Right. And so it's, it's that there's also advocacy for children, and child rights groups that have created instances where there might be specifically, there's a visa called SIJS, or Special Immigrant juvenile status visa, which, recognizes child abuse and abandonment, right, as a way of seeking, immigration relief.

Professor Aldana And then the final thing I'll mention is that, at least historically, even though this has has really been a struggle, we have fought really hard by we meaning immigration lawyers and advocates, because I want to also give so much credit to immigration lawyers who I think are sometimes there's too too much criticism of immigration lawyers without an understanding of how immigration lawyers have also really been a bedrock of over the civil rights movement in the US.

Professor Aldana And they continue to be today. Right. But immigration lawyers fought really hard to recognize what, what I would call immigrant trauma in the space of immigration enforcement. Right. So family separation and detention and what it means to, deport someone who has built stakes in the community. And I think immigration lawyers fought really hard to cabin those experiences as law by claiming that that those experiences implicate liberty

deprivations because they have implications on the right to life and the life, to liberty and the life to and the right to property.

Professor Aldana Because when you deport someone, you are impacting all of those things. And so there was also a recognition, right, that that these states that immigrants have, irrespective of their illegality, their immigration illegality, that that shouldn't mean something in law and that should balance out the necessity of sovereigns to control land borders. And so there's also, in the immigration law, some recognition of this, of this, trauma in terms of law that allows people to fight for their deportation through remedies like cancellation or removal or, you know, or waivers that they can petition for family unification.

Professor Aldana So this is like what we call inclusion and trauma as inclusion, that we try to document in this piece.

Dr. Guyton I appreciate that. And, you know, I came across that, term in your paper, Migrant Trauma. And I appreciate you defining all of those different aspects, of it and, and feel grateful that immigration worker, lawyers did work so hard because we went from sort of this such exclusionary basis. And I think one of the things that you don't mention, kindly, is that the medical professionals who are doing this exclusion, you know, on the basis of racism and eugenics, the markers that they were using are highly imperfect, if not completely invalid.

Dr. Guyton Right. Just in terms of understanding, somebody's capacity or mental health, just by watching them walk by, in a line, especially when you're talking about a cross-cultural, you know, you know, maybe not even speaking the same language. Kind of interaction. And so it's really it is heartening, I guess, to see the significant changes that have been made in the recognition, of how, trauma is important and can be a basis for, you know, allowing somebody to stay with their family, and maintain themselves in this, community.

Dr. Guyton So I really sort of, you know, I appreciate that. I'm wondering to, you know, you talk also about, people who, have experienced trauma in their native country, sort of people who have experienced war, torture, genocide, you know, all of these sort of really terrible things. How has that been treated over time in the immigration system in the U.S?

Professor Aldana I mean, I think it's been recognized somewhat, but one of the things that, those of us who would like to see an even greater, inclusion, are frustrated over is the narrowness of the inclusion in terms of the legal definitions that

are constructed. So and let me come back to the definition of persecution, because the definition of persecution is still favoring certain things.

Professor Aldana One of the things that it's that it's prioritizing is state persecution. So they still want to see state actors as the perpetrators of trauma. And one of the things that I think many of us who will work in the space are arguing is that it's not keeping up with the reality of our of our, world because the perpetrators of trauma are often private actors.

Professor Aldana And this insistence on state persecutors also fails to recognize sometimes that these private actors, depending on who they are, whether they be corporations or militant groups, that they sometimes are more powerful than the nation states. And so it's the lack of recognition of these power dynamics in the world. And also a consistent so in my mind of wanting to hold corporations, in particular, responsible for things that I think has created a resistance to expanding the definition of persecution beyond state actors.

Professor Aldana The other thing I want to flag is that the definition also continues to focus on these single traumatic events, and not on the collective trauma that we discussed before. And it tends to favor the types of harms that we would in law call civil and political harms versus economic harms. And I think that one of the things that we know is that the growing inequality that we are facing, not just in other parts of the world, but within the US, right.

Professor Aldana And the discontent that that breeds brain in the way that it is expressing itself, I think, should be a wake up call that we can't ignore that trauma. We have to kind of really think about how people whose economic desperation reaches a certain level will begin to function in ways that even destroy democracy. They are in harm's way to, are in a or our unwillingness to, to to see that trauma.

Professor Aldana And then the final thing with respect to that. So one is the problem of state state issue. The second is the limitations of the definition. And the third is that at least in the space of persecution, we insist on the nexus to say that it has to be directed at a particular thing. Like we say, okay, you have to have been harmed because of race or because of of we talk about political opinion, race, religion, nationality.

Professor Aldana And then we have this label of a particular social group. But we left out things like gender, which is sort of weird, and we left out things like, sexual orientation or sexual identity. And so I think, you know, this is all to say that it's a very narrow conception of trauma. And those of us who want to see it

expanded, understand that the biggest reason why we want to narrow it is because of this concern over the floodgates.

Professor Aldana Right? Is there's always this idea that the more we expand and the more we do that, the more there's just going to be too many people trying to come, to the United States. So, we also restrict and I'll end here with we also restrict by creating legal barriers at the borders. And so we, we the term that we use in immigration law is we externalize borders.

Professor Aldana So we construct barriers. So even though all of these inclusion possibilities exist, we don't allow immigrants to access that possible relief by simply shutting down the borders. And so what we see now is that not just the United States, but Europe and a lot of nations that have been the host of immigrants, there has been a shift to externalize borders by simply shutting the door to, to borders, because we don't want to, adjudicate people's trauma anymore.

Professor Aldana I think there is this idea that we have become exhausted by too much trauma.

Dr. Millkey You have been listening to our conversation with Raquel Aldana. To listen to the rest of this podcast, please go to forensicbriefs.com and select one of our subscription options.

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