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Recommended Citation
Therapeutic Jurisprudence, Prepared for Springer Encyclopedia of Criminology and Criminal Justice (2014) (with Wexler)

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University of Baltimore
Legal Studies Research Paper No. 2014-13

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Springer Link

Gerben Bruinsma
and
David Weisburd
Encyclopedia of Criminology and Criminal Justice
10.1007/978-1-4614-5690-2_203
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Therapeutic Jurisprudence

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Without Abstract

Synonyms

TJ

Overview

Therapeutic jurisprudence, developed in the late 1980s, is a field of inquiry. It is a lens through which to examine the effects of substantive laws, legal rules, legal procedures, and the behavior of legal actors, including judges, lawyers, court personnel, and service providers, on the psychological and emotional well-being of justice system participants, including the legal actors themselves. Therapeutic jurisprudence is a perspective or framework, and its use suggests the need to conduct empirical research to determine whether outcomes resulting from the application of substantive laws, legal rules, and legal procedures and from the behavior of legal actors have therapeutic (helpful) or antitherapeutic (harmful) consequences, both intended and unintended. In addition, therapeutic jurisprudence involves a reform agenda, as it urges that findings from the behavioral and social sciences be used to transform laws, rules, procedures, and the behavior of legal actors in a manner that promotes well-being. This interdisciplinary focus enables therapeutic jurisprudence scholarship and practice to encompass a broad array of subject areas.

From its beginnings as a concept developed in relation to mental health law, therapeutic jurisprudence now enjoys wide and international application in almost every area of the law, including criminal law, family and juvenile law, contract law, tort law, and health law, to name a few. The task of therapeutic jurisprudence in each area of the law is to ensure that therapeutic outcomes can be maximized, while still honoring other justice system values, such as due process. A comparative law approach now is advancing which allows therapeutic practices and approaches from one country's legal system to be assessed in relation to another country, and therapeutic jurisprudence scholarship now exists in many languages.

Although the use of therapeutic jurisprudence principles is best known in the context of problem-solving or solution-focused courts, therapeutic jurisprudence is by no means so limited. The first essay explicating the perspective predates the establishment of problem-solving courts. In addition, from its beginning, principles of therapeutic jurisprudence have been used in general judicial contexts, particularly in criminal cases (Wexler *2005*).

Defining Therapeutic Jurisprudence

David Wexler became interested in the notion of law as therapy and of therapy through law as a result of his work in the area of law and mental health. In the summer of 1987, he wrote a paper in preparation for a National Institute of Mental Health workshop. In that paper, which he presented at the workshop in October 1987, he referred to this

perspective as "juridical psychotherapy." That term, however, did not survive the meeting, and Wexler thereafter began to use "therapeutic jurisprudence" to define this approach. Wexler's first anthology on the subject was published in 1990 (Wexler *1990*).

The late Bruce Winick shared Wexler's interest in mental health law and in the notion of law as therapy. Both were interested in civil commitment, the insanity defense, incompetency to stand trial, and the fact that the mental health system often functioned in a manner that impeded people's recovery (Wexler *2010b* [hereinafter Application to Criminal Justice]). The two men became collaborators and codevelopers of therapeutic jurisprudence doctrine and, in 1991, jointly published a book on the subject (Wexler and Winick *1991*). For the next two decades, until Winick's untimely death in 2010, these two scholars often worked together. With a growing group of other professionals, they brought psychological insights into the development of legal thought, scholarship, practice, and reform.

Now, after Winick's passing, his legacy continues to be felt. Wexler and a large number of colleagues internationally and across a number of disciplines are developing energetically in the therapeutic jurisprudence field.

Since its origins as an academic approach to mental health law, therapeutic jurisprudence has spread to almost every other area of the law, including criminal law, family and juvenile law, tort law, health law, and housing law, among others. The breadth of its application is evident in a 1,000-page anthology published by Wexler and Winick in 1996, *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence*. In addition, multitudes of international scholars and practitioners are engaged in the study and practice of therapeutic jurisprudence, as evidenced by postings on and membership in the International Network on Therapeutic Jurisprudence, a therapeutic jurisprudence listserv, a Facebook page, and several international conferences to date on the subject. Many law school course offerings worldwide focus on therapeutic jurisprudence, as referenced in *TJ Across the Law School Curriculum* (Wexler *2012*). One United States law school has created a family law and family justice system center, the University of Baltimore School of Law Center for Families, Children and the Courts, whose work is grounded in therapeutic jurisprudence.

Some scholars and practitioners have criticized the use of the word "therapeutic" as "too vague" or "too medical sounding." Winick has suggested that anything related to psychological functioning is therapeutic (Johnston *2012*). Others have commented that "jurisprudence" is inappropriate, as they have searched for a comprehensive theory, which they find lacking. Wexler and Winick themselves have encouraged wide scholarly inquiry and debate (Johnston *2012*). Nonetheless, the term therapeutic jurisprudence has survived and is thriving.

Therapeutic jurisprudence is a field of inquiry – a research agenda, so to speak. It has evolved from a focus on mental health law to a mental health approach to the law in general. It has contributed to a deeper understanding of the law. Therapeutic jurisprudence is the study of the role of law as a therapeutic agent by serving as a lens that focuses on the law's impact on an individual's emotional and psychological well-being. Therapeutic jurisprudence looks at the law as a social force that can produce therapeutic (helpful) or antitherapeutic (harmful) consequences. These consequences flow from substantive law, legal rules, and legal procedures (the "legal landscape") and from the behavior (the "practices and techniques") of legal actors, including lawyers, judges, court personnel, and others working within a legal context. Returning to Wexler's original idea of law as therapy, therapeutic jurisprudence sees the law itself as the therapist or healing agent. In the same manner as iatrogenic or harmful consequences exist in medicine, law has the potential to produce psychological harm, which Wexler has referred to as "law-related psychological dysfunction" or "juridical psychopathology" (Wexler *1992*). Therapeutic jurisprudence instructs that we seek to maximize the therapeutic consequences of the law and its intervention and to minimize its antitherapeutic consequences.

As a field of inquiry, the task of therapeutic jurisprudence is to identify relationships between legal arrangements and therapeutic outcomes. In contrast to the traditional legal analogical process, therapeutic jurisprudence research involves applying a body of social science literature to a body of law and determining their interactions. The ultimate goal of the inquiry is to examine these pairings empirically, and the research has the potential to be interdisciplinary by involving law, philosophy, psychiatry, psychology, social work, criminal justice, public health, and other fields. This empirical understanding then can serve as a basis for policy and law reform (Wexler *1992*). In fact, bringing relevant social science research into the legal arena is an important undertaking for therapeutic jurisprudence (Wexler *2001*). According to Wexler, therapeutic jurisprudence is an optimistic and creative perspective, as it tries to identify promising practices from the social sciences and to import those practices into the law. Therapeutic jurisprudence aims to produce tangible, positive change: to promote the well-being of all legal actors, and to improve the justice system so that it is more relevant and helpful for participants and their communities (Goldberg *2005*). Therapeutic jurisprudence seeks to determine whether the law can be made, applied, or practiced in a more therapeutic way (Wexler *2010b* [Application to Criminal Justice]).

One important question when approaching legal problems and issues from this perspective is whether the goals of therapeutic jurisprudence always should prevail. According to Wexler and Winick, therapeutic consequences should not trump other considerations, such as due process, nor is the approach paternalistic or coercive, as it emphasizes the importance of self-determination and autonomy. Abiding by the notion of therapeutic jurisprudence, if all other judicial and legal issues are equal, the law ought to be restructured to accomplish therapeutic outcomes. The difficulty arises when determining what normative values should take priority. Therapeutic jurisprudence does not answer this (Wexler *1992*). It initiates the question and then sharpens and focuses the debate (Wexler *2010b* [Application to Criminal Justice]).

Therapeutic jurisprudence has the added value of identifying some of the more subtle, unintended consequences of substantive law and legal rules (Wexler *2010b* [Application to Criminal Justice]). It also offers a platform from which to ask and raise questions that otherwise might go unaddressed (Wexler *2010b* [Application to Criminal Justice]).

Therapeutic Jurisprudence and Problem-Solving Courts

In August 2000, both the Conference of Chief Justices and the Conference of State Court Administrators endorsed the concept of problem-solving courts and the application of therapeutic jurisprudence by these courts (Wexler *2001*). The resolution adopted by both groups focused on methods founded in therapeutic jurisprudence, including the following: the integration of treatment services with legal case processing, ongoing judicial intervention during the case, close monitoring of and responsiveness to a party's behavior, multidisciplinary involvement in a case, and collaboration with community and government organizations (Wexler *2001*). The therapeutic purpose of these courts was found in their intent to promote positive behavioral change on the part of the participants (Wexler and King *2010*).

Problem-solving courts, such as drug treatment courts, domestic violence courts, prostitution courts, mental health courts, and reentry courts, to name a few, exemplify therapeutic jurisprudence as applied or therapeutic jurisprudence in action. These courts, which now operate internationally, create reciprocal accountability among the judge, the parties, and the services providers that differs markedly from the traditional adversarial roles (Dorf and Fagan *2003*). Problem-solving courts seek to identify and address on an individual basis a legal problem's underlying issues or causes of the criminal behavior, such as substance abuse, family violence, and mental illness, thereby promoting positive behavioral, psychological, and emotional change in court participants – all therapeutic outcomes. By focusing on the reasons for offending and by consciously attending to them, a problem-solving approach strives to decrease recidivism and to impede the revolving door of the criminal justice system.

The first scholars to connect therapeutic jurisprudence to problem-solving courts were Peggy Hora and William Schma, along with John Rosenthal, who posited that therapeutic jurisprudence formed the explicit framework for drug treatment courts, which began to operate in 1989 (Hora et al. *1999*). Building on their work, most, if not all, problem-solving courts now routinely are associated, implicitly or explicitly, with therapeutic jurisprudence.

While not abandoning the place of therapeutic jurisprudence, Michael King has suggested that problem-solving courts be recast as solution-focused courts (King *2011*). King argues that this solution-focused approach relies less on the court's ability to solve a problem than on an individual's self-efficacy and own ability to initiate and sustain positive behavioral change (King *2011*). The judge functions as a facilitator of change rather than as the problem-solver, thereby empowering the participant (King *2011*). King suggests that this approach also should guide lawyers and other professionals involved in problem-solving courts. He states that the focus on self-determination and intrinsic motivation is more consistent with therapeutic jurisprudence than is the potentially more coercive, paternalistic approach of a problem-solving court (King *2011*). Therapeutic jurisprudence acknowledges that the individual must confront and solve her own problems (Wexler and King *2010*). King also cautions, however, that therapeutic jurisprudence does not place the focus on the individual above all other justice system values, including the integrity of the justice system (King *2011*).

Adopting a therapeutic, problem-solving, or solution-focused approach to legal problems does not mean that judges and lawyers function as therapists or social workers. Instead, it requires that legal actors consciously consider the problems that may have precipitated the criminal behavior and how to effectively address those concerns. Legal actors need to recognize their potential to function as change agents and to acknowledge the impact that their behavior can have on the participants (Goldberg *2005*). Through a non-adversarial, team-based approach to an individual's legal problems, the focus of problem-solving or solution-focused courts is on offender compliance with treatment and rehabilitation (Goldberg *2005*). To be truly meaningful and therapeutic in these settings, all legal actors' interactions with participants must be characterized by empathy, respect, active listening, a positive focus, non-coercion, non-paternalism, and clarity (Goldberg *2005*). In support of these notions, Goldberg

provides wonderful examples of behaviors under each of these characteristics in the document she edited for the Canadian National Judicial Institute (Goldberg *2005*).

Many problem-solving or solution-focused courts require signed contracts with the offender that outline goals and conditions, along with appropriate rewards and sanctions. In order to maximize the therapeutic outcomes from these contracts, they should adhere to the following guidelines: involve the offender, identify high-risk situations, require the offender to take responsibility for his actions, set specific goals, enumerate specific rewards and sanctions, encourage the participation of family and community members, treat the offender with dignity and respect, and schedule regular review hearings with judicial supervision (Goldberg *2005*). Again, Goldberg offers examples of how to accomplish each of these considerations (Goldberg *2005*).

The integration of therapeutic jurisprudence into the design and operation of problem-solving or solution-focused courts is paramount. It reminds us that all legal actors must operate from and embody an ethic of care, recognizing that the law truly is a helping and healing profession (Wexler and Winick *2003*).

Therapeutic Jurisprudence and Related Doctrines

In the study, practice, development, and reform of the law and legal processes, therapeutic jurisprudence has become partnered with many other doctrines, which has served to enhance the power and relevance of the perspective.

One of the first such pairings was the collaboration between therapeutic jurisprudence and preventive law. The development of a preventive law approach preceded that of therapeutic jurisprudence by many years. Preventive law encouraged lawyers to try to identify potential legal problems early and to address those problems before they developed into true legal issues. It advocated that lawyers anticipate and attend to "legal soft spots," including both "trouble spots," or attempts to avoid legal problems, and "opportunity spots," or areas upon which to focus in order to achieve desired outcomes (Wexler *2010a* [hereinafter From Theory to Practice]). Applied to the practice setting, preventive law emphasized the importance of "periodic legal checkups," analogous to regular medical checkups, and the use of the "rewind" technique, or replaying a situation back and determining what could have been done differently to avoid any legal problems encountered (Wexler *1999*). Wexler and Winick joined Dennis Stolle, who first suggested the therapeutic jurisprudence/preventive law partnership, to create the alliance (Stolle *1996*). According to them, preventive law offered law office practices, including client counseling approaches, and a framework within which to apply the law therapeutically. Therapeutic jurisprudence expanded preventive law's focus on "legal soft spots" to "psycholegal soft spots and strategies," suggesting and justifying that attorneys, judges, and other legal actors consciously address the psychological and emotional issues often accompanying both civil and criminal legal problems (Wexler *2010a* [From Theory to Practice]). Therapeutic jurisprudence also enhanced the notion and actions of lawyers as counselors (Wexler *1999*).

Another powerful partnership occurred in the family law context, where therapeutic jurisprudence was joined with Urie Bronfenbrenner's research paradigm from the social sciences called the ecology of human development (Babb *1997*). This ecological approach to family legal issues and to family justice system reform offered a method to promote consideration of the interaction among individuals, institutions, and the social environment; to assist with a more complete identification of problems; and to contribute to the development of more comprehensive, effective solutions. The ultimate aim of this approach was identified as strengthening the connections among these interactions, institutions, and influences to improve families', children's, and communities' functioning. In order to reform the family justice system, Barbara Babb advocated applying a therapeutic and ecological framework to restructure family law decision-making forums into unified family courts (Babb *1998*). She suggested that these courts, if designed and implemented according to her blueprint, could improve families' and children's lives by identifying and addressing holistically all the related legal and nonlegal issues contributing to the underlying family legal problems (Babb *1998*).

In a similar vein, Susan Brooks and Robert Madden linked therapeutic jurisprudence with a social science doctrine often applied in the social work context and known as family systems theory (Brooks and Madden *2010*). The authors examined the use of a holistic approach to the practice of law through the application of this conceptual framework, similar to the ecological approach described above, and designated by them as "relationship-centered lawyering" (Brooks and Madden *2010*). Their paradigm was not limited to the family law context, however, but was applicable to most areas of the law.

Procedural justice, or the focus on legal proceedings and processes themselves rather than exclusively on decisions or findings, also has complemented therapeutic jurisprudence. As Susan Goldberg has noted, for example, therapeutic outcomes for individuals depend largely on their sense of feeling fairly treated, of being accorded respect, of being able to understand the proceedings, and of being heard during the legal process (Goldberg *2005*).

Goldberg also emphasizes that people who are satisfied with legal proceedings are more willing to comply with courts' decisions and, in turn, have greater trust and confidence in the justice system (Goldberg *2005*). As Wexler and Michael King suggest, in the criminal law context, procedural justice must be coupled with some principles and techniques of therapeutic jurisprudence in order to decrease recidivism (Wexler and King *2010*).

In the criminal law area, restorative justice often is paired with therapeutic jurisprudence. Restorative justice aims to hold offenders accountable and, at the same time, attempts to address the needs of crime victims and the community at large, as the offense is characterized as harm done to both (Goldberg *2005*). Generally, the offender, the victim, and the community engage in an active dialogue to identify a resolution that allows offenders to apologize, make amends, pay restitution, and give back to the community (Goldberg *2005*). The aim of this approach, then, is conflict resolution that promotes a healing or therapeutic outcome on the part of all participants, including rehabilitation of the offender and strengthening of the community (Goldberg *2005*).

Wexler and King also note that in the criminal law area, therapeutic jurisprudence has adopted a "tripartite" framework (Wexler and King *2010*). Under this framework, they urge attention to (1) the pertinent legal landscape or a jurisdiction's substantive law, rules, and procedures; (2) the treatments and services available to defendants, and (3) the possible practices and techniques that the array of legal actors (judges, lawyers, court personnel, therapists) can employ (Wexler and King *2010*). Each of these three areas may be either therapeutic jurisprudence-friendly or therapeutic jurisprudence-unfriendly, with the aim being to enhance their affinity to therapeutic jurisprudence (Wexler and King *2010*).

Susan Daicoff has included therapeutic jurisprudence as one of the vectors of her legal framework, the comprehensive law movement (Daicoff *2000*). This approach to the law is intended to be more holistic and humane.

Critiques of Therapeutic Jurisprudence

Over the years, there have been a number of critiques of therapeutic jurisprudence, well-summarized by Australian barrister and academic Ian Freckelton (*2008*). Some commentators have questioned whether therapeutic jurisprudence is truly a new approach or whether it is just "old wine in a new bottle" (Freckelton *2008*). Similarly, others have argued that the concept of "therapeutic" is problematic and is not distinct enough to differentiate itself from current mental disability law (Arrigo *2004*, Petrila *1993*, Slobogin). Additional critiques are that therapeutic jurisprudence is covertly paternalistic through involuntary or mandated treatment and that therapeutic jurisprudence attempts to balance many values that are at odds with one another, giving it unclear applicability to judicial decision-making (Slobogin *1995*).

Bruce Arrigo argues that therapeutic jurisprudence is too conservative, in that it views the public as homogenous, without recognizing individual and group differences (Freckelton *2008*). Samuel Brakel has characterized therapeutic jurisprudence as redundant and not helpful to understand the interface between law and human behavior (Brakel *2007*). Brakel also has argued that therapeutic jurisprudence intrudes upon civil liberties by resisting mandated inpatient treatment, therapeutic jurisprudence places some offenders at a disadvantage, as some mental illnesses might be resolved through treatment during brief hospitalization (Brakel *2007*).

Freckelton responds to each of these critiques. Generally, however, he notes that many are based on a perspective that "therapeutic jurisprudence has purported to be what it does not claim to be – a coherent body of scholarship with a unified focus that proffers coherent and straightforward answers to complex issues in law and practice" (Freckelton *2008*, p. 591). Instead, proponents such as Winick and Wexler merely have claimed that therapeutic jurisprudence can provide a new perspective on the law and that a legal system where therapeutic consequences factor into law and policy when appropriate is preferable to a system in which they do not.

Perhaps the strongest frontal attack on therapeutic jurisprudence and lawyering in the criminal context comes from Mae Quinn. Quinn argues that therapeutic jurisprudence principles should not extend to criminal defense practice – essentially making defense attorneys "rehabilitative change agents" – because doing so undermines the core traditional value of zealous representation. Quinn points to a lack of data showing that traditional criminal defense lawyering has antitherapeutic consequences as evidence that good defense lawyers already effectively take client needs into account in plea-bargaining and defending their clients.

Wexler has responded to Quinn that a defense lawyer who takes therapeutic jurisprudence into account would still exercise due diligence in investigating all possible offenses but would incorporate therapeutic jurisprudence principles as an "add-on." Wexler views therapeutic jurisprudence lawyers as holistic, using psychologically sensitive practice techniques. If, as Quinn maintains, this is simply good lawyering, therapeutic jurisprudence may add a conceptual scheme to examine these practices and to consider other areas of application (Wexler *2008*).

As noted above, therapeutic jurisprudence has been criticized for going too far or doing too much. But lawyer/commentator/journalist Mark Satin has criticized therapeutic jurisprudence for not going far enough. Satin argues that therapeutic jurisprudence should be viewed as the basis for an alternative approach to justice, rather than as a lens relative to the existing legal system (Satin *2008*).

Future Directions for Therapeutic Jurisprudence and Conclusion

A focus on therapeutic jurisprudence encourages creative thinking in all areas of the law, including practicing, judging, administration, teaching, policymaking, scholarship, and reform, among others. As Wexler indicates, we are called upon to search for promising developments and practices in the behavioral and social sciences, including psychology, psychiatry, criminology, and social work, even if these practices appear to have nothing to do with the law (Wexler *2010b* [Application to Criminal Justice]). The task is to determine if any of these promising developments can be introduced into some aspect of or undertaking involving the law (Wexler *2010b* [Application to Criminal Justice]).

In the general criminal law context, therapeutic jurisprudence principles have been applied to the granting of probation – especially to the process of crafting probation conditions with which the probationer is likely to comply (Wexler *2008*).

Therapeutic jurisprudence also is used in the correctional system, such as in encouraging confined persons to adopt a perspective consistent with a law-abiding future (Wexler *2006*) and to the context of parole release (Wexler *2011a* [Retooling Reintegration]). A recent article on cognitive interviewing has applied the therapeutic jurisprudence perspective to police investigations (Fisher and Geiselman *2010*).

A daily opportunity that has the potential to incorporate therapeutic jurisprudence is at judges' sentencing of criminal defendants who are convicted of some offense. At sentencing, by the way the judge interacts with the defendant, the judge has the opportunity to assist the defendant to confront the wrongdoing and to begin to change behavior (Goldberg *2005*). This may include making some type of amends to both the victim and the community. In other words, judges can adopt a problem-solving approach to sentencing based upon restorative justice principles.

Judges can perform another important function relative to therapeutic jurisprudence. Once they have grasped the importance of therapeutic jurisprudence to the justice process and to the work of the courts, judges can draft or assist with the drafting of justice system mission statements that explicitly account for therapeutic jurisprudence (Wexler and King *2010*). An example of one such mission statement exists for the Family Divisions of the Maryland judiciary, which has adopted and codified a therapeutic, holistic, ecological approach to family law decision-making (Babb and Kuhn *2003*).

One promising practice Wexler details is a "reentry moot court" for incarcerated individuals who are about to participate in the parole process (Wexler *2010b* [Application to Criminal Justice]). Through this reentry moot court, the prisoner would participate in a rehearsal of his parole board appearance before a group of incarcerated peers and at least one trained facilitator. This group would assist the prisoner to identify important issues regarding his release and reentry. In addition, the reentry moot court could be useful to the other prisoners as a means to assist them to prepare for their own parole hearings (Wexler *2010b* [Application to Criminal Justice]). Practices that could be included in the reentry moot court include restorative circles, modified restorative circles, and relapse prevention programs discussed below.

Hawaii currently offers two "circle" programs for incarcerated individuals. In the restorative circle, the incarcerated person plans for reentry by meeting with loved ones and prison representatives. Together, they create a detailed reentry plan to assist with the inmate's return to society (Wexler *2011a* [hereinafter Retooling Reintegration]). By involving loved ones, this model is a pure restorative justice model. In the modified restorative circle, loved ones are absent, and trained facilitators work with inmates to detail their reentry plans (Wexler *2011a* [Retooling Reintegration]). Both programs have had therapeutic effects on inmates' attitudes, including enhancing their feelings of optimism, hope, and readiness to return to society (Wexler *2011b*).

Relapse prevention planning, or RPP, is a practice that examines an individual's past behavior in an effort to determine how that individual can move forward in life without further harmful results or effects (Wexler *2011a* [Retooling Reintegration]). These programs appear to achieve positive results, such that policymakers are becoming more receptive to incorporating them into the prison setting (Wexler *2011a* [Retooling Reintegration]).

A new type of specialized problem-solving court that shows great promise is a child support collection court operating in Colorado. It is a criminal nonsupport docket where individuals appear who are in contempt of court for failure to pay child support. Instead of being called the nonsupport docket, it is called simply "Problem-Solving

Court" (Griego *2011*). The court team has built a network of services to connect court participants, most of whom are fathers, with substance abuse treatment, free mediation services, vocational rehabilitation, workforce development, GED programs, and fatherhood programs (Griego *2011*). Since the court began operating, the number of participants sentenced to jail has decreased dramatically, and the amount of back child support paid has increased substantially.

In an effort to capture all of the innovative practices incorporating therapeutic jurisprudence that judges and attorneys are employing with increasing frequency, Wexler hopes to develop a body of therapeutic jurisprudence case law (Wexler *2010a* [From Theory to Practice]). Through this process, therapeutic jurisprudence cases could be continuously gathered for distribution, discussion, and revision or rewind, including suggested improvements for future practice. In addition, it would be possible to create a new body of "practical interdisciplinary scholarship," once there is a method to collect these approaches (Wexler *2010a* [From Theory to Practice]).

Wexler also suggests creating continuing education programs on therapeutic jurisprudence for lawyers, judges, and mental health professionals. These programs could include time for input by the group regarding promising therapeutic practices and techniques (Wexler *2010a* [From Theory to Practice]).

While law school clinical programs have begun to include the study and application of therapeutic jurisprudence into both their seminar components and into their practice of law, there exists a rich opportunity for even more programs to incorporate this perspective (Wexler *2010a* [From Theory to Practice]). Law school clinical programs also represent another opportunity for law students and law faculty to write about their experiences, thereby increasing the available literature about therapeutic jurisprudence as applied (Wexler *2010a* [From Theory to Practice]).

Within the law school setting, classes other than clinical programs can continue to include examination of the therapeutic jurisprudence perspective (Wexler *2010a* [From Theory to Practice]). As noted earlier, a bibliography currently exists that lists readings on therapeutic jurisprudence for classes across the broad law school curriculum. To maintain and enhance the momentum to include therapeutic jurisprudence within the law school context, legal academics must continue to produce therapeutic jurisprudence scholarship and to speak about therapeutic jurisprudence at professional conferences.

In fact, one therapeutic jurisprudence scholar has suggested that legal scholarship aroundtherapeutic jurisprudence ought to differ from traditional legal scholarship. He calls for this new scholarship to be shorter, more direct, and more readable, including discussions of law reform issues (Wexler *2010a* [From Theory to Practice]).

Michael King suggests that there is a dearth of research about judging in problem-solving courts (King *2011*). He believes that there is an urgent need for this research and that the research should focus on the nature and process of behavioral change in individuals. According to King, problem-solving courts are too focused on the practice of lawyering and judging. Instead, King argues that these courts ought to be designed based upon a more comprehensive understanding about how change occurs within individuals (King *2011*).

With a similar focus on judging, Wexler suggests that judges who are aware of therapeutic jurisprudence should begin to document appropriate situations or circumstances for its application (Wexler *1999*). This documentation then can be shared with other judges. Since judges create the legal culture in their courtrooms, it stands to reason that if judges begin to care about therapeutic approaches to the law, lawyers appearing before them also are likely to attune to this perspective (Wexler *1999*). Both judges and lawyers should be aware of what Professor Winick has called the "therapeutic moment" (Wexler *1999*).

Wexler also suggests incorporating practices from drug treatment courts, such as graduation ceremonies, judicial praise, and family and friend participation, into ordinary juvenile and criminal cases (Wexler *2001*). While these activities acknowledge a participant's progress, they also may contribute to maintaining the participant on a path of positive behavior change (Wexler *2001*). The judge has the potential to be a tremendous influence on participants due to her stature and authority, and these activities offer a means for the court to offer true support to participants.

Therapeutic jurisprudence is now a well-established field of inquiry with a large international following and an extremely broad scholarship component. In addition, judges, lawyers, court personnel, and services providers all are adopting and applying therapeutic approaches to their roles and behavior. The most noteworthy example is the effusive and continuing proliferation of problem-solving courts. The potential for therapeutic jurisprudence to continue to enhance and improve justice systems internationally is unlimited.

Related Entries

Community Courts

Drug Courts

Mental Health Courts

Problem-Solving Courts

Reentry Courts

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