

CREATING A THERAPEUTIC JUSTICE CULTURE

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I. Introduction

1 Singapore’s growing embrace of “TJ” in family law and justice is exciting. TJ is a convenient nickname for the now commonly used term “therapeutic justice”. Thankfully, it is also a nickname for the more academic and tongue-twisting term of “therapeutic jurisprudence” – a term that need not be *spoken* by practitioners and judges, but which needs to be *remembered* when employing search engines to access the massive amount of important literature in the field.

2 For example, the principal TJ resources (listserv, Blog, Facebook group) are referred to and collected on the website of the International Society for Therapeutic Jurisprudence.¹ But importantly, that website also houses the impressive cumulative “TJ Bibliography”. The bibliography is open to all without cost, is user-friendly, and can be easily searched by author, subject, keywords, even by jurisdiction and language (TJ work is now in 16 languages!). A growing number of the entries (especially recent ones) have links that give immediate full-text access to the relevant articles.

1 <<https://intltj.com>> (accessed 9 February 2021).

II. What is therapeutic justice?

3 TJ is a perspective that regards the law itself as a potential therapeutic (or anti-therapeutic) agent. It operates on the assumption that, regardless of whether one knows or likes it, “the law” often produces consequences that are positive or negative on psychological well-being. Instead of ignoring those potential impacts – which was often the traditional approach in legal education – TJ asks that practitioners be cognisant of them and try to reduce the negative and increase the positive, so long as this can be done without trampling on other values the law holds dear, such as due process and the integrity of the fact-finding process. TJ tries to avoid paternalism and to bring an “ethic of care” and an emphasis on psychological well-being into both the *law* and its *administration*. Obviously, then, TJ looks at the law in *action*, not merely the law in the books.

4 Under the TJ framework, “the law” consists of legal rules (statutes, regulations), legal procedures (trials, hearings), and, importantly, the roles of legal actors (*ie*, the behaviour of lawyers, judges, therapists and others operating within the legal ambit).

5 Remaining true to the original formulation, there has nonetheless developed a somewhat richer vocabulary of the TJ mission: for example, the *rules* and *procedures* are often combined and called the “legal structure”, or “hardware”, or “bottles”. And that conceptualisation is now typically known as the “Therapeutic Design of the Law” (“TDL”).

6 Similarly, the *roles* of legal actors (or the “practices and techniques”) are sometimes called the “liquid” or the “wine”, or the “software”. And that conceptualisation is now typically known as the “Therapeutic Application of the Law” (“TAL”).

7 In Singapore, it seems the current preferable terminology regards TDL as “hardware” and TAL as “software”.²

2 Justice Debbie Ong, “Family Justice Courts Workplan 2020: Today is a New Day” (21 May 2020) <https://www.familyjusticecourts.gov.sg/docs/default-source/news-and-events/2020_pj_address_workplan.pdf> (accessed 15 January 2021).

III. Origin of therapeutic justice in mental health law

8 The author conceptualised and named TJ at a 1987 law and mental health meeting, sponsored by the (US) National Institute of Mental Health. But the author's work in mental health law had begun long before that – in a seminar he taught at the University of Arizona during the 1970–1971 academic year.

9 The author and his students conducted a study of mental health law state-wide, and, in addition to carefully studying the pertinent legislation and case law, had an important – and highly unusual at that time – observational component: they visited the state hospital, sat in on mental health involuntary commitment hearings, interviewed judges, hospital personnel, and the like.

10 Many interesting and curious incidents were observed. One particularly striking case was that of a mild-mannered state hospital patient who, unlike the other residents of his unit, was not permitted to wander around the fenced hospital grounds. The reason: he was an *involuntary, court-committed patient* and, as such, lacked “ground privileges”. But *why* was he an involuntary patient? In fact, he realised he had mental health issues and was very willing to go to the state hospital. But he was poor, lived in a remote part of the state, and could not afford to travel to the state hospital. By law, travel at public expense was available only by *court order*, as part of an involuntary judicial commitment. That was the method used in his home community to facilitate his arrival at the distant state hospital. Shockingly, the *law* created the stigmatised and clinically undeserved “involuntary” security status of this patient! Mental health law was supposedly designed to help non-dangerous persons with mental illness. But here was an anti-therapeutic statutory provision in living colour – one that in some (geographical and economic) situations in reality preferred involuntary to voluntary status.

11 During the course of the seminar, the author and his students came across a number of problematic rules and procedures, and these were catalogued, together with more standard and conventional legal analysis and constitutional commentary. In the many years following, the author continued

to publish in mental health law; some topics of which, on hindsight, were “implicit” TJ pieces, while other papers were more standard doctrinal and constitutional comments.

12 However, it was in preparing his paper on law and therapy for the law and mental health meeting in 1987 that the author realised that his real interest was not in “Law *and* Therapy”, but rather in “Law *as* Therapy”. And that was the “TJ lightbulb” that led to his TJ paper.³

IV. Therapeutic justice’s movement across the legal spectrum

13 TJ, then, had its origins in mental health law. And once TJ was conceptualised, it began to travel rather rapidly across the legal spectrum: many law professors saw the relevance of the TJ framework (and goals) not merely to the area of mental health law, but to other areas – many other areas – as well.

14 There has been important work in family law *per se*,⁴ on the anti-therapeutic impact of adversarial child custody litigation,⁵ child protection,⁶ youth courts,⁷ guardianship,⁸ mental disability,⁹ trusts and estates,¹⁰ wills,¹¹ in mediation,¹² employment¹³ and, of course, crime.¹⁴

3 David B Wexler, “Mental Health Law and the Seeds of Therapeutic Jurisprudence” in *The Roots of Modern Psychology and Law: A Narrative History* (Thomas Grisso & Stanley L Brodsky eds) (Oxford University Press, 2018) <<https://ssrn.com/abstract=3129093>> (accessed 15 January 2021).

4 The next several references will be available, without charge or membership, through the TJ Bibliography on the International Society for Therapeutic Jurisprudence website at <<https://www.intltj.com>> (accessed 15 January 2021). There are now specific tabs for Bibliography and Blog, and there is also a Contact Us tab for the TJ listserv. For the family law reference, see Biblio: keyword: Babb.

5 Biblio: keyword: Janet Weinstein.

6 Biblio: keyword: Shelley Kierstead.

7 Biblio: keyword: Dana Segev.

8 Biblio: keyword: Jennifer Wright. See also keyword: Guardianship.

9 Biblio: keyword: Michael Perlin.

10 Biblio: keyword: Michael Perlin trusts and estates.

11 Biblio: keyword: Wills.

12 Biblio: keyword: Mediation.

13 Biblio: keyword: David Yamada. See also keyword: Employment.

14 Biblio: keyword: David Wexler new wine. See also keyword: Crime.

15 Many of the above-mentioned areas fall within or close to a number of the categories of interest to the *SAL Practitioner*. Indeed, there is an ongoing impressive effort to “mainstream” TJ – to expand its reach well beyond mental health law, where it began, and “problem-solving” (or “solution-focused”) courts where it has traditionally been best known.

V. Conclusion: A community to create a therapeutic justice culture

16 Perhaps the most important point about TJ is that TJ is by and large a “method” – a method of thinking about the law. It is much richer than a body of knowledge to be memorised and then applied. Instead, it allows lawyers, judges and others to grasp a conceptual framework and to begin to use and contribute to it. Once grasped, areas in need of TJ infusion will more easily reveal themselves. Many will find that they are already using some TJ techniques without having a label for it. But when it has a label, a conceptual framework, a vocabulary, and a literature, those actors will see TJ opportunities in a more powerful and plentiful way.

17 TJ can also be easily taught in law school. Ideally, of course, there could be a full-blown introductory course, and a TJ component in specific substantive areas, such as family law and criminal law. But, in recognition of the difficulty of capturing time for new courses in a law school curriculum, TJ can be introduced in a brief and basic manner – in a class session or two, ideally in an obligatory first-year class such as legal profession, or legal writing and analysis. As preparation, the students would, before class, watch an 18-minute video and read two short TJ introductory essays.

18 That preparation would give students a grasp on how to look at and think about TDL and its relationship to TAL. They would see how the law could apply in court contexts but also in other areas. And they would see how TJ can and should also be part of “office counselling” – looking at how the role of TJ-sensitive lawyers can and should be expanded to offer “zealous counselling” to clients considering matters such as testamentary

documents, will contests, advanced directives, bankruptcy, and many other areas. Legal activity may sometimes not pose serious legal issues but may nonetheless badly ruffle feathers in a family and carry some heavy emotional “bag and baggage”. TJ sensitivity can alert lawyers to what are called in the literature “psycholegal soft spots and strategies” to reduce or eliminate them.

19 The author’s hope is that the suggested brief and basic introduction would “stick” with the students and allow them to bring the TJ perspective to their other classes, to their clinical work, and to their later practice.¹⁵

20 In closing, it should be emphasised that TJ is an ongoing and dynamic field and it behooves interested readers to become part of the TJ community and to join the International Society for Therapeutic Jurisprudence. There, one will find information on the TJ listserv, Blog, TJ Facebook group, and of course the Bibliography. Moreover, on the member-only TJ Forum tab, there can be found a General Discussion forum, a forum for TJ articles, TJ videos, a recent forum of TJ cases (which includes two from Singapore),¹⁶ and a number of geographical chapters (North America, Oceania, France, Puerto Rico, Japan, Israel, Ireland, the UK, Nepal, Ibero-America, India, and – in formation – South Africa). These chapters have sponsored live and, lately, online conferences and presentations of great value. A Singapore chapter would be a most welcome addition to the list! And needless to say, the author would be happy to be in touch by e-mail with anyone interested in exploring in greater detail the various matters covered here.¹⁷

15 See David B Wexler, “A Proposal for Basic and Brief TJ Education: Promoting Academic, Ethical, and Vocational Objectives” (2020) *Arizona Legal Studies* (Discussion Paper No 20-02) <<https://ssrn.com/abstract=3523226>> (accessed 15 January 2021) (and see especially the sources noted in notes 8, 9 and 22).

16 *Praveen s/o Krishnan v Public Prosecutor* [2018] 3 SLR 1300; *VDZ v VEA* [2020] 2 SLR 858.

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