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Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients and Communities

Susan L. Brooks

USING THERAPEUTIC JURISPRUDENCE TO BUILD EFFECTIVE RELATIONSHIPS WITH STUDENTS, CLIENTS AND COMMUNITIES

SUSAN L. BROOKS*

This article proposes that clinicians adopt the approach of therapeutic jurisprudence, an interdisciplinary movement focusing on the extent to which the law may enhance or inhibit the well being of those who are affected by it. It then outlines a set of guiding principles, which are core elements drawn from the field of social work, including micro-level and macro-level constructs that relate to building effective relationships with students, clients and communities. The article posits that these core elements comprise a normative framework that can inform the question of how our clinical work can become more "therapeutic." It also provides specific examples taken from the author's own clinical teaching experiences to illustrate this framework. Taken as a whole, the article presents a model that can make meaningful contributions to clinical legal education.

INTRODUCTION

Tanya and Dave were working together as partners in the child and family advocacy clinic I have been teaching for over a decade at Vanderbilt Law School. During the first three weeks of the semester, Tanya came to my office to ask whether she could be reassigned to a different partner. She did not really know Dave, but based upon what she had observed in other classes, she was concerned that their politics were simply "too different" and thought that perhaps they should not work together. Meanwhile, Helen, another clinic student, had a client who frequently called her and always seemed to be in a crisis. Helen was already feeling overwhelmed, especially given her work on the law review and the other responsibilities she was balancing with her clinical work. Yet another student, Robert, was struggling with how best to advocate on behalf of his client, a grandmother who was raising her four grandchildren after the sudden and tragic death of her

daughter, the children's mother. His client was receiving support through the foster care system, but she wanted to figure out a way to raise the children on her own and still receive financial assistance from the state. Robert wanted to know how we could assist this grandmother, given that it appeared that what she really wanted and needed did not exist as a matter of current law and policy in our state.

These examples[1] reflect some of the scenarios that are often faced by clinical law teachers. Although these examples are taken from a family law and child advocacy clinic, parallel examples could easily be found in many other types of clinical programs. Some issues arise at a "micro-level," such as those involving two students, or a student and an individual client. Other issues reflect broader systemic challenges, which I will refer to as "macro-level" issues.[2] Many clinical teachers have developed their own case-by-case approaches to such issues, but it would be helpful if there were a comprehensive framework that could offer more guidance.

The purpose of this article is to present a model that can make meaningful contributions to clinical legal education on many levels. In it, I argue that the approach of therapeutic jurisprudence, illuminated by guiding principles and techniques drawn from the field of social work, offers a framework for resolving the kinds of issues presented in the scenarios described above.[3] Therapeutic jurisprudence promotes the use of knowledge drawn from the social sciences to guide the development of the law. The field of social work supplies this essential knowledge through a set of constructs that have long comprised the "generalist" model of social work practice.[4] This model

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[1] These scenarios reflect composites drawn from actual clients and students.

[2] Specifically, all three of these examples raise micro-level issues; the third example also raises a macro-level issue.

[3] In a recent essay, I introduced some of these ideas from the standpoint of importing core social work elements into clinical legal education. Much of that article was devoted to elucidating the reasons why social work offers both a useful and an appropriate normative framework for therapeutic jurisprudence in the clinical teaching setting. *See* Susan L. Brooks, *Practicing (and Teaching) Therapeutic Jurisprudence: Importing Social Work Principles and Techniques into Clinical Legal Education*, 17 ST. THOMAS L. REV. 513 (2005) [hereinafter Brooks, *Importing Social Work Principles*]. This article addresses these questions in more depth, and applies the concepts to additional clinical teaching examples. I have also summarized therapeutic jurisprudence and core social work elements in earlier works. *See generally* Susan L. Brooks, *A Family Systems Paradigm for Legal Decision Making Affecting Child Custody*, 6 CORNELL J.L. & PUB. POL'Y 1 (1996) [hereinafter Brooks, *Family Systems Paradigm*]; Susan L. Brooks, *Therapeutic Jurisprudence and Preventive Law in Child Welfare Proceedings: A Family Systems Approach*, 5 PSYCHOL. PUB. POL'Y & L. 951 (1999); Susan L. Brooks, *The Case for Adoption Alternatives*, 39 FAM. CT. REV. 43 (2001) [hereinafter Brooks, *Adoption Alternatives*].

[4] The generalist social work model has been described as "encompass[ing] social workers operating effectively within an organizational structure, utilizing their knowledge, professional values, and skills to target change at the individual, group, organizational, or

offers a set of principles and a structure that can inform our work with students and clients both at the "micro" and "macro" levels, and thus can assist us in working more effectively with students, clients, and communities.

The first part of the article focuses on micro-level constructs, meaning that they arise in one-on-one helping relationships. The term "constructs" is used here both to capture principles and concepts, as well as practical skills and techniques. These constructs offer clinicians a handful of useful tools and techniques that can be applied in their day-to-day work with students, and can inform students' work with clients so that students will become more self-reflective practitioners and be more skilled in approaching challenging clients and situations. Many of these constructs will be readily identifiable to clinicians, although the language may be unfamiliar because they are not terms widely used in legal education. Naming these relational dynamics serves several purposes for clinicians and the students they supervise.[5] Identifying these processes "normalizes" them, which makes them seem less intimidating and more manageable to students. Naming the relational dynamic also creates a language for discussing what is taking place in the supervision context, and therefore facilitates both learning and problem-solving.

The second part of the article focuses on the macro-level constructs of family systems theory and cultural competence. These theoretical approaches can potentially guide important decisions that must be made on an ongoing basis in operating any clinical program, and may suggest avenues for advocating for clients' needs, not only at the individual level, but also at the community level.

This part of the article calls upon clinicians to consider the guiding principles or theories they rely upon in their clinics, how those perspectives guide their work, and to what extent their work, broadly speaking, serves a therapeutic purpose. This macro-level focus may inspire clinical teachers and students to contemplate expanding their services beyond individual representation toward other forms of community lawyering.

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societal levels." *See* Carolyn Copps Hartley & Carrie J. Petrucci, *Practicing Culturally Competent Therapeutic Jurisprudence: A Collaboration Between Social Work and the Law*, 14 WASH. U. J.L. & POL'Y 133, 140 (2004). *See also* JOHN POULIN, STRENGTHS-BASED GENERALIST PRACTICE 3 (2d ed. 2005); Brooks, *Importing Social Work Principles*, *supra* note 3, at 513.

5 Using the terminology presented here may or may not be helpful with a given student. What is important is being able to assist students and clients by identifying the relational dynamics that may be presenting barriers to achieving a given client's goals and objectives. Once law students recognize these as elements that commonly occur in helping relationships, they will often feel more at ease discussing them.

I. Therapeutic Jurisprudence and Social Work

Therapeutic jurisprudence is an interdisciplinary movement that focuses on the extent to which the law may enhance or inhibit the well-being of those who are affected by it.[6] Therapeutic jurisprudence has been defined as "the study of the role of law as a therapeutic agent,"[7] and "the use of social science to study the extent to which a legal rule or practice promotes the psychological or physical well-being of the people it affects."[8] Accordingly, it examines the therapeutic and anti-therapeutic consequences that flow from legal rules, legal procedures, and the behavior of legal actors.[9] Because therapeutic jurisprudence is merely an approach, it does not favor a particular normative framework.[10] Rather, it simply sets up a line of inquiry, and invites scholars and practitioners to draw upon current social science research and theory as it develops.[11]

For someone educated and experienced in the field of social work, the process of choosing a normative framework to inform the

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[6] *See generally* Practicing Therapeutic Jurisprudence: Law as a Helping Profession (Dennis P. Stolle, David B. Wexler & Bruce J. Winick, eds., 2000); David B. Wexler & Bruce J. Winick, Essays in Therapeutic Jurisprudence (1991); Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence (David B. Wexler & Bruce J. Winick eds., 1996). The website for the International Network on Therapeutic Jurisprudence is located at http://www.law.arizona.edu/depts/upr-intj.

[7] *See, e.g.,* Bruce J. Winick, *The Jurisprudence of Therapeutic Jurisprudence,* 3 Psychol. Pub. Pol'y & L. 184, 185 (1997).

[8] David B. Wexler, *Reflections on the Scope of Therapeutic Jurisprudence,* 1 Psychol. Pub. Pol'y & L. 220, 224 (1995) (quoting Christopher Slobogin, *Therapeutic Jurisprudence: Five Dilemmas to Ponder,* 1 Psychol. Pub. Pol'y & L. 193, 196 (1995)).

[9] Robert G. Madden & Raymie H. Wayne, *Social Work and the Law: A Therapeutic Jurisprudence Perspective,* 48 Soc. Work 338, 339 (2003) (citing Dennis P. Stolle & David B. Wexler, *Therapeutic Jurisprudence and Preventive Law: A Combined Concentration to Invigorate the Everyday Practice of Law,* 39 Ariz. L. Rev. 25, 25-33 (1997)). It is also important to point out that therapeutic jurisprudence does not take the position that therapeutic goals should replace other goals of the law, such as fairness and due process. It simply posits that, all else being equal, the law should aim toward therapeutic goals. *Id.* at 340.

[10] "A normative framework states how things ought to be. It serves as a baseline from which to evaluate the current state of affairs. A normative framework shapes the way people conceptualize problems and the solutions they seek." Robert G. Madden & Raymie H. Wayne, *Constructing a Normative Framework for Therapeutic Jurisprudence Using Social Work Principles as a Model,* 18 Touro L. Rev. 487, 488-89 (2002).

[11] Scholars and practitioners promoting therapeutic jurisprudence have relied upon an array of different social science-based theoretical frameworks to guide their investigations. Until now, therapeutic jurisprudence has neither embraced nor rejected any particular theoretical approach. Despite my general enthusiasm for therapeutic jurisprudence, I find this aspect to be problematic. Because therapeutic jurisprudence does not prescribe a particular normative framework, there is a genuine danger that many misguided ideas and programs will be passed off as "therapeutic." This vulnerability of therapeutic jurisprudence is precisely the reason I have promoted the adoption of core social work elements as offering a normative framework, based upon the timeworn and proven effectiveness of these approaches in achieving positive outcomes for individuals, families, and communities.

understanding of what is therapeutic is an easy one. From the outset of my career as a clinical law teacher, I have naturally relied upon the body of knowledge I learned as a social worker. Other teachers and scholars likewise have proposed that these generalist social work principles and values offer a normative framework for therapeutic jurisprudence.[12] This body of knowledge incorporates a fairly cohesive set of ideas, such as client self-determination and cultural competence, which have already been embraced by clinicians. These ideas are compatible with the "client centered" approach that has become so fundamental to clinical legal education.[13] But social work principles also include an important theoretical approach — known as an "ecological" or a "systems" orientation[14] — that is unfamiliar to most clinicians and lawyers.

In either case, clinicians stand to gain a tremendous amount from looking outside of our own discipline and drawing upon the richness of the body of literature that has been developed in the social work field to help describe a wide range of issues, from the dynamics of "planned change"[15] relationships to how individuals function within families and the larger community. A useful way to understand the social work perspective is the distinction I have made above, which has also been drawn in the therapeutic jurisprudence literature, be-

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[12] Madden & Wayne, *supra* note 10. *See also* Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J. 775, 788-806 (1997) (discussing the "ecology of human development theory" articulated by prominent social work scholar Professor Uri Bronfenbrenner, and its relationship to therapeutic jurisprudence and family law).

[13] *See* DAVID A. BINDER, PAUL BERGMAN, SUSAN C. PRICE & PAUL R. TREMBLAY, LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH (2d ed. 2004). By highlighting social work constructs that are useful in the context of clinical legal education, I do not mean to suggest that the two professions are virtually the same or to suggest that they should be the same. There are definite differences between the role of lawyers and the role of social workers in some contexts. Nevertheless, there are also many similarities between the professions and, more importantly for purposes of this paper, the legal profession can learn much from many of the constructs that have been developed or adopted by the field of social work.

[14] Madden & Wayne, *supra* note 10. *See generally* Brooks, *Adoption Alternatives*, *supra* note 3, at 47.

[15] Current terminology in the social work field speaks of "planned change" relationships. Planned change is "the development and implementation of a strategy for improving or altering 'some specific condition, pattern of behavior, or set of circumstances that affects social functioning,'" KAREN K. KIRST-ASHMAN & GRAFTON H. HULL, JR., UNDERSTANDING GENERALIST PRACTICE 26 (4th ed. 2004) (citation omitted). Planned change is a process whereby a social worker engages a client; assesses issues, strengths, and problems; establishes a plan of action; implements the plan, evaluates its effects; terminates the process; and follows up to monitor the client's ongoing status. *Id.* Another term to describe this type of professional relationship is "problem-solving," which relates to the same set of processes. *Id.* The term "problem" has become disfavored as the social work field has increasingly emphasized client strengths.

tween micro-level analysis and macro-level analysis.[16]

II.   Micro-Level Analysis

A.   Micro-Level Constructs

The micro-level constructs that underlie the "practice" of therapeutic jurisprudence reflect fundamental elements of planned change relationships which have been embraced by the social work profession.[17] I have found many of these constructs to be useful in processing information with students that arises out of their clinical work. Several constructs, such as transference and counter-transference, have already been adopted by clinicians. It is easy to see why clinicians have adopted these constructs because clinicians' reactions to students and students' reactions to clients (or vice versa) can profoundly influence the quality of these working relationships, and paying attention to these constructs can potentially improve clients' outcomes. Again, having a common language facilitates a discussion that can assist in the resolution of whatever challenges arise in the helping relationship.

The first set of constructs relate to modeling, which can assist us in understanding how our communication can affect our students, and how that communication can, in turn, affect their clients. Social workers are taught that one measure of a successful relationship with a client is whether the client over time, begins to observe the ways the social worker interacts with her, and then mirrors those interactions with others.[18] For example, a client who has a difficult time dealing with angry feelings in general has outbursts during interactions with the social worker. The social worker talks calmly and quietly to the client during these outbursts and, in doing so, demonstrates that angry feelings can be expressed and worked through in a calm, controlled manner. As the helping relationship progresses, the client has fewer outbursts, and begins to express anger in a calmer manner as well.

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[16] *See* Wexler, *supra* note 8, at, 225-26, 229-36. David Wexler, one of the founders of the therapeutic jurisprudence movement, has drawn a useful distinction between micro-analytic and macro-analytic approaches to therapeutic jurisprudence. A micro-analytic approach focuses on particular rules, procedures, and roles, as compared with a macro-analytic approach, which looks at broader considerations, such as entire areas of law. *Id.* at 226, 229-36. Wexler acknowledges that much of the therapeutic jurisprudence scholarship has been micro-analytic in focus, consistent with the interests and expertise of legal scholars. This essay examines clinical teaching from both micro-analytic and macro-analytic perspectives.

[17] The chosen examples are constructs that have stood out as useful in my experience as a clinical teacher, and are by no means an exhaustive list.

[18] *See* Beulah R. Compton, Burt Galaway & Barry R. Cournoyer, Social Work Processes 247-48 (7th ed. 2005) *See also* Kirst-Ashman & Hull, *supra* note 15, at 103-04.

More importantly, the client also begins to deal with angry feelings differently in her interactions with others in her family and community.

Similarly, as clinical teachers, we can think about modeling on several levels. First, we must be aware that students may mirror what they observe in our interactions with them in their own interactions with clients and others. Second, we can teach students to become aware that their clients may mirror what the clients observe of the students' way of interacting. The more we and our students are aware that modeling is taking place, the more we can challenge ourselves and our students to be intentional in the ways we model.

Another useful set of interrelated constructs are boundaries and limit-setting.[19] A planned change relationship must be understood as having boundaries, both in terms of the definition of the issues to be addressed and the nature and goals of the relationship. Early in the relationship, the definition of the issues and the goals of the relationship are established through a negotiation or "contracting" process between the helping professional and the client.[20] In this process, the professional may have to set limits with the client to clarify exactly what issues can and cannot be addressed in the course of the representation.

For instance, it is not uncommon that a client wants to know personal information about a social worker, or wants the social worker to assist the client with matters that are unrelated to their original understanding of the work they were going to do together. Clients may seek help with issues that are outside the social worker's expertise, or try to place the social worker in a different role, such as that of a family member. In these instances, the social worker must decide how and to what extent to set limits with the client and to assert professional boundaries. This process often requires talking with the client about the concerns underlying the request. The conversation can address the reasons the client wants to know personal information, and can include questions about whether any circumstances in the client's life have led the client to want the social worker to take on a new role.

The same awareness of boundaries and limit setting can be useful for law students who are learning to be legal practitioners and developing a sense of their professional selves. Students often struggle with establishing clear boundaries and with setting limits, partly because they are eager to be helpful and to succeed, and partly because the legal culture tends to promote the notion that a lawyer should always

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[19] *See* COMPTON ET AL., *supra* note 18, at 25-27, 244.

[20] *See* COMPTON ET AL., *supra* note 18, at 222-23; KIRST-ASHMAN & HULL, *supra* note 15, at 35-36, 192-99.

be available to his or her client.[21] Encouraging students to be self-reflective about these issues will serve them well throughout their professional careers.

A third useful set of interrelated constructs are transference and counter-transference. These constructs, drawn from the psychoanalytic literature, have been discussed by other clinicians writing from a therapeutic jurisprudence perspective.[22] Transference has been described as the irrational attribution of characteristics to another person, and typically involves a response to that person in terms of these attributes.[23] In a professional relationship, it involves a client "transferring" feelings from one relationship (usually a primary relationship such as with the client's mother or father) to the professional relationship. Counter-transference occurs in the reverse, when the professional reacts to the client along similar lines.

In the social work context, a common type of transference occurs when a client becomes enamored with the social worker in a way that does not fit the nature of the professional relationship. Transference can also be observed in situations in which the client's response to a simple statement or question by the social worker seems intensely emotional or "out of whack" in some manner. Similarly, counter-transference would be typified by a social worker who feels a strong affinity or a strong dislike for a particular client. Such feelings may unintentionally interfere with the planned change relationship because the clinician may allow those feelings negatively to affect her interactions with the client, unless she is mindful of those feelings.

Social work also offers a set of constructs that pertain to the four phases or stages of a planned change relationship: engagement, assessment, intervention and evaluation.[24] Considering planned change rela-

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[21] The notions of boundaries and limit-setting are areas where further attention is definitely warranted, not just in terms of how we teach students in the legal clinic, but also in terms of the future of the legal profession. It is a well-known fact that our profession is plagued by a high incidence of substance abuse and depression among practicing lawyers. This may be an area where we can benefit a great deal from what the field of social work offers. Social workers are educated and closely supervised on the issues of limit setting and boundaries, while there generally seems to be little or no discussion of these issues in law schools. Instead, law students are taught about the duty of zealous advocacy. While recognizing that the lawyer's ethical duties sometimes place different obligations on lawyers with respect to when, where, and how they can set limits and establish boundaries, the point is that these are concerns that deserve reflection and conscious decision making.

[22] *See, e.g.*, Marjorie A. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLIN. L. REV. 259, 262-65 (1999).

[23] *See id.*

[24] *See* COMPTON ET AL., *supra* note 18, at 66-80. The phases can be subdivided into seven processes, including: (1) preparing, (2) beginning, (3) exploring, (4) assessing, (5) contracting, (6) working and evaluating, and (7) ending. *Id.* at 67 (*citing* B.R. COURNOYER, THE SOCIAL WORK SKILLS WORKBOOK 1 (4th ed. 2005)).

tionships in terms of phases offers a structure within which to understand the important tasks that need to be accomplished, and to ensure that the helping professional gives each task its due. In the clinical context, law students can learn that even in the short time frame of a one-semester clinic they can aspire to work through all the phases of a relationship with their clients.[25] Each of the phases reflects discrete tasks, although there are some tasks that are common to more than one phase. Rather than discussing each phase in detail, the following discussion highlights a few salient aspects of each phase that are relevant to the lawyer-client relationship in the clinical context.

The concept of engagement is important throughout the relationship, but it defines the first phase. Clinicians often talk about this concept in terms of developing rapport with clients, but rapport is only one aspect of engagement. Engagement of clients involves a broader set of skills, including reflective listening, empathy, and diagnostic skills.

If law students understand that their initial goal involves this holistic approach to engagement, they are more likely to see that there is more to entering into the attorney-client relationship than merely developing rapport. But by thinking of engagement as the first phase, we need to guard against the tendency of law students to want to compartmentalize this aspect of the relationship, rather than appreciating that while these skills are especially critical in the beginning, they must be integrated and put into practice throughout the course of working with the client. For instance, a student might think, "Well, I'll start the interview by chatting with the client about the weather and trying to make her comfortable. Then I'll try to move to the 'real purpose,' which is to gather the important legal facts so that we can begin to build our case." Instead, the student needs to understand that engaging the client is important in its own right and is also a means of gathering pertinent information beyond a narrow definition of legal facts. If the student fails to understand this principle, it is possible that the client will not engage and will not return for the second appointment. Given that the client may have few alternatives, the client may return, but the quality of the relationship may be fundamentally compromised.

Another key aspect of the engagement as well as the assessment

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25 In this part of the paper, the focus is on individual clients, but the same is true if the client is an entity, such as a community group. Additionally, I have paid specific attention to the context of a one-semester clinic because this time frame presents particular challenges in terms of helping students to appreciate the importance of attending to all phases of the professional relationship.

and intervention phases is the client's "readiness for change." Social workers are taught to expect that, even very early in the relationship with a client, the client may seem to waiver or express reticence to continue working on the issues that spurred the client to seek help. Social workers are trained to understand that it is human nature to resist change, or at least to resist the work that it takes to make significant changes.[26]

Readiness for change is a useful concept in the clinical teaching context. Students often experience frustration and a personal sense of failure when a client who seemingly was desperate to obtain legal help cancels several appointments or is hard to reach. I have found that helping students understand the idea of readiness for change gives them one possible explanation for a client's disengagement, and helps them to maintain a professional approach to their work, rather than personalizing what has occurred. Sometimes it is difficult to tell if a client is resisting change, or if some other factor is at play. For example, if a client fails to show up for a second appointment, that failure may actually be attributable to a number of factors. One possibility is that the student has failed to engage the client effectively. Another possibility is that the client is demonstrating a lack of readiness for change. Typically, clients contact a legal clinic when they are in a crisis or feeling some immediate legal pressure. Once they come in and discuss their issues, several things may happen. They may feel some immediate relief simply by telling someone else their story. They may also realize rather quickly, although perhaps not consciously, that resolving their legal dilemma is going to involve more change on their part than they expected or are now ready to make.[27]

Another concept that is useful in understanding the lawyer-client relationship is what social workers call "partialization."[28] This is another concept that can be as useful in helping clinical teachers work with their students as it is in helping students work with clients. The act of partializing breaks down a complex set of issues into simpler parts. Partialization is a tool for helping a client who feels overwhelmed to figure out where to begin. The social worker will guide the client to try to focus on just one small thing at a time, and to try to accomplish something with respect to that small thing, rather than try-

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[26] "Readiness for change" is a concept that is useful not only in the beginning phase, but also in the assessment and intervention phases of the relationship, when much of the work actually takes place. *See* KIRST-ASHMAN & HULL, *supra* note 15, at 152. For a detailed discussion of the assessment and intervention phases, *see* COMPTON ET AL., *supra* note 18, at 194-258.

[27] A client's failure to keep an appointment may also be completely unrelated to the client's readiness for change, and may be due to a flat tire, illness or some other cause.

[28] *See* COMPTON ET AL., *supra* note 18, at 176-77, 218-19.

ing to tackle the whole bundle of issues. This concept can be equally useful in supervising students, who at times may also feel overwhelmed not only by their clients' issues, but also by the demands of their roles as students and as student attorneys.

The following example demonstrates how these constructs can complement one another and work in concert — in this instance partialization and modeling. A student stops by your office in a panic. She has just received an urgent call from a client in a crisis. The student and the client both feel immobilized by the situation. Your task as a supervisor is to begin by getting the student to partialize—to break down the situation into simpler parts and to think through what might be a first step, rather than trying to resolve the entire crisis. Your method of processing this information with the student represents a model that the student can then translate into an interaction with the client, with the hope of assisting the client to do exactly the same thing — to begin to figure out a first step rather than a solution for the entire crisis. In this way, both the student and the client learn important problem solving tools.

Finally, it is important for clinicians and students to pay attention to the process of ending the relationship with the client.[29] This is especially the case when a clinic operates on a fourteen or fifteen-week basis, because students must move through the various phases of relationships with clients in a relatively short time, and face the prospect of ending the relationship not long after it has begun. Quite often the client's case will still be ongoing when the student leaves, and the client will have to work through ending with one student and then engaging with a new student. Moreover, many of our clients have experienced very traumatic endings of other important relationships as a result of abandonment or rejection of another sort. For those clients, ending the professional relationship can be especially difficult. By paying attention to the termination phase, we and our students can transform the ending into a constructive process for students and clients.

Students are often not aware that ending a relationship with a client requires more than saying good-bye at their final meeting (or the worse alternative of just disappearing at the end of the semester). They can better understand how to end the relationship if they can appreciate the impact the relationship and their work may have had on their clients, even within a short span of time. Paying attention to the termination phase therefore not only assists clients, it also makes students become more aware of their accomplishments in the clinical

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[29] *See* COMPTON ET AL., *supra* note 18, at 319-25; KIRST-ASHMAN & HULL, *supra* note 15, at 277-87.

program.

For instance, one of my students represented a fourteen-year-old youth over the course of the semester. In the student's mind, the relationship was not terribly strong. The client was reluctant to open up and discuss his feelings, and the student felt as if there had neither been much contact nor a significant connection between them. When I first mentioned the idea that it was important for the student to prepare the client for the end of their relationship, as well as to mark this event in an important way, the student seemed reluctant. Nevertheless, the student went along with my suggestion, and brought food and a Polaroid camera to the last client meeting, so that she and the client could "celebrate the ending" of their attorney-client relationship and the client could have a photo of them to keep. Afterward, the student told me that the client was very emotional at the last meeting, and had thanked the student for working with him. The relationship obviously had been more important to the client than the student initially recognized.

Appreciating the importance of concluding the relationship also emphasizes the unique challenges of clinical teaching, particularly in one-semester clinics. The frequent turnover of students calls upon clinicians to pay particular attention to the phases of the relationship. Just as ending the relationship with the student lawyer was difficult for the fourteen-year-old client, that same client may have as much or perhaps more difficulty engaging with the next student who represents him. It is important for the next student to be aware that the client may be mourning the loss of the previous student at the same time as the new student is trying to engage the client. This is not merely an issue for child or adolescent clients. Many adult clients also find transitions to be very difficult, and struggle with feelings of loss and abandonment based on earlier childhood experiences. These issues often arise in family law clinics, and in other clinics that represent traditionally underserved clients and communities who have experienced abandonment and other types of trauma.

B.   Micro-Level Applications

1.   Tanya and Dave – Modeling and Transference

The usefulness of these micro-level constructs in clinical teaching can be explored by revisiting the first two scenarios in the introduction. In the first scenario involving Tanya and Dave, the two students who were paired together as co-counsel, Tanya raised a concern about whether she would be able to work with Dave, given the differences in their political attitudes. Tanya's unexpected visit to my office provided a rich opportunity for a "teachable moment" utilizing the tech-

nique of modeling to discuss the idea of transference.

In this scenario, a clinical supervisor has an opportunity to interact with Tanya by modeling communication techniques that can translate to Tanya's future interactions with Dave, as well as with her clients,[30] now and in the future. To begin with, the supervisor can focus on Tanya's strengths, and reinforce her decision to share her concern with her supervisor at this early stage. The supervisor also can show empathy and acceptance for Tanya's feelings, even if the supervisor believes that the feelings may be misplaced, or that they may be masking some other underlying concern.

Next, the supervisor can involve Tanya in a process of assessment so that Tanya can better understand the thoughts or feelings underlying the concerns she has expressed. It is possible that Tanya's expressed concerns about Dave reflect issues of transference.[31] One clue that this issue is at play is the fact that Tanya told her supervisor that she does not really know Dave. This information suggests that Tanya may be transferring other feelings onto Dave, and reacting not so much to him, but to her feelings about other important figures in her life that she may have projected onto him. By helping Tanya to work on separating her feelings about Dave from her feelings about other people, the supervisor can model an important aspect of reflective practice, and at the same time, help Tanya maintain a better professional relationship with Dave and with other colleagues and clients.

2. Helen — Transference/Counter-Transference, Partialization and Boundaries

In the second scenario, Helen's experience with the client who persisted in calling her on a frequent basis and who always seemed to be in a crisis raises some issues similar to Tanya's situation, and also offers an opportunity for learning about issues related to partialization and boundaries. Helen may be dealing with a client with transference issues, and Helen may also need to address her own counter-transference. Counter-transference would mean that this particular client engenders negative feelings in Helen that may actually be unrelated to the client, but rather stem from other important relationships in Helen's life. If such counter-transference exists, it is not helpful for Helen to simply try to submerge such negative feelings, or to pretend

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[30] The social work literature often refers to "client systems" rather than clients to reflect the notion that a client may not be an individual. *See, e.g.,* KIRST-ASHMAN & HULL, *supra* note 15, at 11. This is, of course, different than the way the law tends to approach clients, but raises an interesting issue for further exploration if one truly adopts a systems perspective.

[31] It is also possible that Tanya's feelings about Dave do not involve transference, and instead she has simply formed a strong perception of him.

that they don't exist. Rather, it is important for Helen to acknowledge the feelings and to be mindful of them in her interactions with the client so that these negative feeling do not get in the way of Helen's ability to work effectively with the client.

Another aspect of what Helen is experiencing, both in terms of the client's expressed feelings, as well as Helen's feelings, can be understood by introducing the idea of partialization.[32] Helen can use this technique to assist her client, and it can also assist Helen in addressing her own anxiety about the amount of work she faces in and out of the clinic. Helen needs to help the client partialize the client's issues, that is, to break them down into smaller pieces, which may help ease the level of urgency the client seems to feel about her situation. Meanwhile, Helen, too, needs to partialize her own work responsibilities, so that she will not feel so overwhelmed.

The concept of boundary setting will also be important here—again on two levels. Helen must establish boundaries with the client concerning how much the client can call her. She will also need to establish boundaries related to her responsibilities on the law review and in the clinic.

III. MACRO-LEVEL ANALYSIS

A. Macro-Level Constructs

At the macro-level, family systems theory and cultural competence represent broad orientations which are best understood as complementary perspectives. Family systems theory is well-established and is widely accepted in the mental health field. Nevertheless, I believe this theory cannot properly be appreciated or applied without also attending to cultural concerns. Cultural competence has been embraced by many professions, including the legal profession. Effective use of cultural competence must however be grounded in a genuine understanding of a particular client's family system.

These constructs provide clinicians with a contextualized understanding of the clients we represent that can guide our work, whether we view ourselves as representing individuals or as lawyering on behalf of broader entities or communities. Depending upon the circumstances and the resources at our disposal, these perspectives may also suggest that we redirect our work at a more systemic level.

As I have stated earlier, beyond the constructs themselves, the

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[32] As I alluded to earlier in suggesting that the clinical supervisor introduce the "idea" of partialization, I am not necessarily advocating the use of this term. The terminology is mainly intended to assist clinicians with identifying both the possible dynamics as well as techniques for responding. *See supra* note 5.

purpose of this discussion is to suggest that we as clinicians need to consider the broader implications of the choices we make about our clients and the direction of our work. By explicating the theoretical underpinnings of my work at a broader level, I hope to spark further consideration of the extent to which our work is truly therapeutic. I believe we cannot genuinely and authentically answer this question if we do not consider the theoretical grounding that may underlie our professional choices.

Family systems theory is a fundamental theme in social work theory and practice.[33] It is sometimes referred to as ecological theory or the ecology of human development.[34] Family systems theory advocates studying the entire family in order to understand the individual members of the family.[35] This theory incorporates a strengths-based, non-judgmental orientation that is based on an understanding of family dynamics and human development. The notion is that the family is a system that functions in many ways that are similar to the natural ecosystem. Whatever one member of a family does in some way affects the larger family dynamic. Thus, the whole is greater than the sum of the parts, and the individual cannot truly be understood outside the context of the family system.[36] The term "family" does not simply refer to the nuclear biological family, but is defined broadly in terms of bonds of intimacy, and therefore can include extended family, as well as neighbors and friends.[37]

Two important constructs in family systems theory are mutual interaction and shared responsibility. Since the family is an interactive and dynamic system, an individual member's behavior can be attributed in some way to the family as a whole. This concept also means that every family member is a key contributor to family life and to improving the family members' functioning.[38]

A family systems approach focuses attention on understanding "what is" in describing the family's current functioning, rather than

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[33] "The theories that ground social work practice are derived from the fields of sociology, psychology, economics, human biology and political science. These disciplines provide social workers with the ability to understand human behavior, development, mental health, family and group dynamics, cultures, and political processes to allow for intervention at whatever system level is warranted by an ecological assessment." Madden & Wayne, *supra* note 10, at 496; National Association of Social Workers (NASW), CODE OF ETHICS (1999), *available at* http://www.socialworkers.org/pubs/code/asp (last visited Sept. 21, 2006).

[34] *See, e.g.*, Babb, *supra* note 12, at 788-90.

[35] For a more detailed description of family systems theory, *see* Brooks, *Family Systems Paradigm*, *supra* note 3, at 4-8.

[36] *See id.* at 5.

[37] *See id.* at 4.

[38] *Id.* at 5.

focusing on "why" the family functions the way that it does.[39] A helping professional who focuses on a family's current functioning will pay close attention to the ways in which the family interacts, so that the helping professional can assess how the individual members of the family contribute to the family as a whole, and how the family dynamic affects each family member. This approach is less judgmental than an approach that seeks to understand why a particular family member behaves in a particular way. A helping professional who seeks to understand why a person behaves as he or she does is more likely to attach blame to that individual. Thus, the focus on current functioning contributes to a non-judgmental approach.

Moreover, a family systems approach emphasizes the identification of a family's strengths rather than its pathology.[40] Family systems theory operates with the philosophy that people have unused or under-used competencies and resources that may be brought forth when constraints are removed.[41] Together with the emphasis on current functioning and the non-judgmental approach, the competency-based emphasis of the family systems model allows professionals to empower the family and to build a positive treatment atmosphere.[42]

Culturally competent services have been defined as "systems, agencies, and practitioners that have the capacity, skills, and knowledge to respond to the unique needs of populations whose cultures are different than that which might be called dominant or mainstream American."[43] Cultural competence requires not simply the recognition of the need for cultural sensitivity, but an ongoing process[44] of implementing that knowledge through specific policies, practices, and attitudes that are responsive to the strengths and interests of a minority culture.

Five elements contribute to a system's ability to be culturally

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[39] *Id.*

[40] Rocco A. Cimmarusti, *Family Preservation Practice Based Upon a Multisystems Approach*, 71 CHILD WELFARE 241, 246 (1992).

[41] It is worth noting that within the social work field a "strengths orientation" has developed into a macro-level construct that many would consider to be able to stand on its own. *See* Peter DeJong & Scott D. Miller, *How to Interview for Client Strengths*, 40 SOC. WORK 729 (1995).

[42] Cimmarusti, *supra* note 40, at 246.

[43] Lori Klein, *Doing What's Right: Providing Culturally Competent Reunification Services*, 12 BERKELEY WOMEN'S L.J. 21 (1997) (*quoting* Terry Cross, *Developing a Knowledge Base to Support Cultural Competence*, 14 FAM. RESOURCE COALITION REP. 2, 3-4 (1995-96)). *See also* COMPTON ET AL., *supra* note 18, at 185-91; KIRST-ASHMAN & HULL, *supra* note 15, at 401-31.

[44] *See generally* Sakil Malik & Jorge Velazquez, Jr., *Cultural Competence and the New Americans*, CHILD. VOICE (July/Aug 2002). *See also* Brooks, *Adoption Alternatives*, *supra* note 3, at 48 (citing http://www.air.org/cecp/cultural/Q-integrated.htm, now *available at* http://cecp.air.org/cultural/Q-integrated.htm) (last visited Sept. 21, 2006).

competent.[45] The system should (1) value diversity, (2) have the capacity for cultural self-assessment, (3) be conscious of the dynamics of cultural interaction, (4) institutionalize cultural knowledge, and (5) develop adaptations to service delivery that reflect an understanding of the diversity between and within cultures. In other words, it is not sufficient for institutions or entities merely to give lip service to the idea of valuing diversity. Cultural competence should be measurable in terms of improved outcomes for children and families.[46] Further, these elements should be manifested in every level of the service delivery system.[47]

Cultural competence may be seen as part of a continuum, ranging from cultural destructiveness to cultural proficiency.[48] The full continuum, from most to least competent, includes (1) cultural proficiency, (2) cultural competency, (3) cultural pre-competency, (4) cultural blindness, (5) cultural incapacity, and (6) cultural destructiveness. One commentator notes that, "It has been suggested that, at best, most human service agencies providing services to children and families fall between the [sic] cultural incapacity and cultural blindness on the continuum."[49]

B. Macro-Level Applications

These macro-level constructs offer guidance for the day-to-day work of a clinical program. In operating any clinic, many decisions need to be made, ranging from case selection to fact investigation and strategy. Some of these decisions are driven purely by resources and other practical considerations. But other decisions necessarily involve deeper concerns. For example, a child advocacy or family law clinic guided by family systems theory and cultural competence would approach the representation of children by attending to the contexts of their families and communities. This orientation might mean that the clinic would not accept a case if the representation would be destructive to a family. It might also mean that the students working in the clinic would make sure that their fact gathering process would include a broad understanding of the family system, even if the clinic only represents a single child or parent.

The third scenario presented in the introduction invites consider-

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[45] *Id.* at n.59.

[46] *See* Mark A. King, Anthony Sims & David Osher, *How is Cultural Competence Integrated in Education*, http://cecp.air.org/cecp/cultural/Q_integrated.htm (last visited Sept. 21, 2006).

[47] *Id.*

[48] *Id.*

[49] *Id.* (citing T. Cross, B. Bazron, K. Dennis & M. Isaacs, Towards a Culturally Competent System of Care, Volume I (1989).

ation of the macro-level constructs I have described. A clinical teacher can respond to Robert's concern — about how the clinic can help the grandmother seeking his legal assistance when the current law does not provide what she needs — in a number of ways, depending upon the resources that exist within the clinical program.

One possible response would be to see whether Robert might want to participate in activities directed at the macro-level — such as policy or legislative advocacy — in addition to the individual representation of the client. Robert's concern could spark a discussion within the clinic about whether there might be other ways to approach the client's needs outside of individual representation, with the understanding that the clinic may or may not be in a position to pursue those avenues.[50] Even if the clinic were not directly involved, Robert could perhaps join efforts to re-examine the types of policies that were creating difficulties for his client and other clients in similar situations.

By helping students to consider developing relationships with communities, we can maximize the learning experience of students in the clinical setting. Moreover, to the extent that we recognize that therapeutic jurisprudence can be utilized at the macro-level, and that macro-level social work constructs may offer guidance for social justice efforts, we have additional tools to offer our students to help them shape their understanding of their own potential to bring about social change.[51]

CONCLUSION

This paper began by suggesting that therapeutic jurisprudence, with social work as its normative framework, has a great deal to offer clinical legal education. These micro-level principles and techniques, as well as the macro-level perspectives, represent important contributions to the already rich and varied literature around clinical teaching and practice. By understanding these approaches and by incorporating them into our teaching and our practice, we can enrich the lives of students as well as clients and communities.

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[50] For example, in my clinic students are working together with a broad coalition of caregivers and social service professionals to convene a state-wide summit on kinship care. The students are staffing the work groups that are organizing in advance of the summit to explore best practices around the country related to critical issues affecting kinship families. An earlier summit led to several important pieces of legislation, as well as significant changes in policy and practice in both the public and private sectors.

[51] The macro-level analysis presented here introduces a set of issues beyond the scope of this article that deserve much further exploration and analysis. I intend to pursue these issues in my future work.