ALTRUISTS IN THE HOLOCAUST: TEACHING PUBLIC SERVICE VALUES THROUGH A THERAPEUTIC JURISPRUDENCE LENS

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Abstract

My cherished Polish ethnic roots have motivated my exploration of the Holocaust, its lessons, and their effect on me as I teach a children’s legal clinic and also advise students on pro bono and public service projects and careers. I attended the 2004 Global Alliance for Justice Education conference in Krakow, Poland (Krakow Conference), and since then, I have been reflecting on its Holocaust theme of “Using the Example of Lawlessness to Teach Justice.” I am convinced that, in addition to the theme that conference conveyed, there are more lessons to be learned from that horrific era. Holocaust Studies never fail to be current.

I also teach and write in a therapeutic jurisprudence (TJ) vein. Thus my ruminations have centered on applying the TJ techniques of rewinding and reframing to the Krakow Conference in order to focus on the

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flip side amid the tragedy of lawlessness. There was tremendous altruism at work then that led many individuals to become helpers, even rescuers, of those whom the Nazis would choose to eliminate. What were the characteristics of these saviors? What led them to “do good”?  

Although few global events match the weightiness of the Holocaust, and the Holocaust altruists’ sacrifices exceed most contemporary altruists’ behavior, the research shows that the motivations of the millennial generation of law students mirror in many ways the motivations of the rescuers. These findings are particularly true with regard to a social/moral conscience, the desire to do good deeds, individualism, anti-authoritarianism, and most influentially, a wish to emulate their parents and teachers. Consciously or unconsciously, each member of the millennial generation of law students has his or her unique culture, nurtured by parents, teachers, peers, or their inner selves. If my research about the Holocaust rescuers can bring my students to a greater awareness and analysis of their own cultures, then together we can come to a better understanding of the roots of their public service motivations and consequently better serve clients and society. This article traces my journey to better teach and model public service values through exploring my own cultural roots more deeply so that “teacher know thyself” might become “young lawyer know thyself.”
INTRODUCTION

_Sprawuj się. (Be good. Do good)._ I grew up hearing this phrase. It was my father’s frequent instruction to me, delivered in Polish, his parents’ native language, as he strived to instill in me my cultural heritage and my family’s values. All of my grandparents had emigrated to America from Poland in the early 1900’s as teenagers. They arrived through Ellis Island. Two grandmothers and a grandfather were quickly delivered by train to Amsterdam, N.Y., where factory work awaited them. Another grandparent found work in the Pennsylvania coal mines, later moving to Amsterdam. My parents were, therefore, first-generation Americans, whose initial language was Polish.

That phrase, “sprawuj się,” resounds with me in many contexts, but particularly as I endeavor to reflect about my motivations to teach clinically
in a Child and Family Litigation Clinic and to mentor law students in public service.\(^1\) For several years now, I have been pondering a conference in which I participated in July 2004 in Krakow, Poland, (“Krakow Conference”) that was sponsored by the Global Alliance for Justice Education Committee (“GAJE”) of the American Association of Law Schools’ Clinical Education Committee, and was themed “Using the Experience of Lawlessness to Teach Justice.”\(^2\) The topic of the conference centered around the Holocaust in and around Krakow, Poland, during World War II, particularly as it was manifested in the annihilation of multitudes in the concentration camps of Auschwitz and Auschwitz-Birkenau (Auschwitz).\(^3\) Auschwitz is the most familiar site of what has been referred to as the Central and Eastern European bloodlands. To many, “… Auschwitz stands for the Holocaust, and the Holocaust for the evil of a

\(^1\) I am the faculty advisor to the very active Public Action Law Society (PALS). Among PALS’ many accomplishments in the past two years has been its leadership to create a mandatory pro bono graduation requirement beginning in Fall 2012; an Alternative Spring Break Project in 2010, which sent 15 students to South Florida to process applications for temporary protected status for Haitian nationals finding themselves in Miami after an earthquake struck their homeland; an Alternative Spring Break Conference in 2011 in which 37 law students from around the country engaged in pro bono service projects in Memphis, and an Alternative Spring Break Conference in 2012 in which 62 law students from around the country will provide pro bono representation and also draft legislation.


\(^3\) These two camps are located in close geographic proximity to each other; for simplicity I will refer to them collectively as “Auschwitz.”
Thus, Krakow Conference organizers referred to these sites as places of “maximum injustice” and a “total disaster of human rights.”

This law conference, attended primarily by clinical law professors from around the world, dwelled on the fact that it was the legal profession that provided support to the system created by the Third Reich and gave it the legitimacy to establish work/death camps, not only at Auschwitz, but throughout Europe. The annihilation of millions of human beings, many of whom were Jewish or Jewish sympathizers, was given a legal imprimatur by practicing attorneys. The conference thus explored what happens when the legal system starts serving what can be described only as injustice. The agenda also enabled conferees to comprehend the extent to which the rights and dignity of some people were violated by other people. Finally, it stimulated us to attempt to define a concept of justice in opposition to that symbolized by Auschwitz. This is a profound and soul-wrenching theme.

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5 GAJE Report, supra note 2, at 16.
6 Id. Professor Hans Guggenheim estimates those exterminated at Auschwitz alone to range from 1.1 million to 1.5 million Jews, 70,000 to 75,000 Poles, more than 20,000 Gypsies, 15,000 Soviet prisoners of war, and some 10,000 to 15,000 prisoners of other nationalities. Hans Guggenheim, Lecture to GAJE at Auschwitz, (July 22, 2004), (transcript available at http://cyber.law.harvard.edu/blogs/gems/glawyer/HansGuggenheimlecturetoGAJE.pdf).
and certainly one that deserves the attention of clinical law teachers globally. 8

Given my beloved Polish heritage, I find that the experience of lawlessness on Polish soil resonates with me for several reasons. It leads me, first, to a better understand myself as a cultural being. 9 Next it serves as a tool for bringing out and making explicit the social justice values 10 that my students hold or aspire to gain. Finally it is especially applicable in a

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8 Holocaust studies have not lost their impact even though World War II ended more than 65 years ago. A plethora of research sites can be located, including the United States Holocaust Museum’s Center for Advanced Holocaust Studies, http://www.ushmm.org; the Jewish Virtual Library, http://www.jewishvirtuallibrary.org; the Oxford Journals, http://hgs.oxfordjournals.org; the University of Minnesota Center for Holocaust and Genocide Studies, http://chgs.umn.edu; and Yad Vashem, The Holocaust Martyrs’ and Heroes’ Authority, http://www1.yadvashem.org. There are, of course, other global manifestations of genocide and profound lawlessness. University of San Diego Professor of Law, Roy L. Brooks, cites twenty-one post World War II examples of human injustices, including the My Lai Massacre, the Khmer Rouge Reign of Terror, the Tiananmen Square Massacre, the Rwanda Genocide, and the Massacre in Bosnia. WHEN SORRY ISN’T ENOUGH: THE CONTROVERSY OVER APOLOGIES AND REPARATIONS FOR HUMAN IN JUSTICE 511–513 (Roy L. Brooks ed., 1999) [hereinafter WHEN SORRY ISN’T ENOUGH].

9 JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS 298 (3d International Ed. 2007) (positing that all lawyering is a cross-cultural endeavor).

10 Jane Aiken comments that “justice” has no absolute meaning because it is grounded in context, but at a minimum it encompasses an inquiry as to whether the proposed action will support and increase human dignity. Jane H. Aiken, Provocateurs for Justice, 7 CLINICAL L. REV. 287, 296 (2001). Aiken further explains that justice encompasses power, wealth, well-being, affection, and respect. Crediting Lee Anne Bell, she explains that “social justice” includes a vision of society in which the distribution of resources is equitable and in which all members are physically and psychologically safe and secure, in which individuals are self-determining and interdependent, and in which all actors have a sense of their own agency, as well as a sense of social responsibility toward and with others and society as a whole. Id. at note 23 (citing Lee Anne Bell, Theoretical Foundations for Social Justice Education, in TEACHING FOR DIVERSITY AND SOCIAL JUSTICE (Maurianne Adams et al., eds., 1977)). Others recognize that the meaning of “justice” can be refined to include differing conceptions such as distributive justice or corrective social justice. Courtenay W. Daum & Eric Ishiwata, From the Myth of Formal Equality to the Politics of Social Justice: Race and the Legal Attack on Native Entitlements, 44 LAW & SOC’Y REV. 843 (2010).
clinical or public interest law setting\textsuperscript{11} where cross-cultural competence is a skill that effective lawyers must embrace.\textsuperscript{12}

There is, however, another chronicle that emerges from the Holocaust experience, in addition to lawlessness, that is particularly inviting to the current generation of so-called “millennial” law students.\textsuperscript{13} That story is that there were thousands of “helpers,” indeed “rescuers” or “saviors,” in many countries, who preserved lives during the Holocaust. I submit that their motivations, characteristics, and experiences are equally powerful lessons in fostering social justice values and the importance of public service to law students embarking upon their legal careers. The millennial generation of law students, after all, is not a stranger to the concept of professional service, having grown up in an era of community involvement starting in high school and continuing into college and beyond. This cohort demonstrates a desire to make a difference in the world, as well


as a desire to learn from and be mentored by older generations.\textsuperscript{14} As this article will explain, the millennial generation, surprisingly, shares some of the characteristics of the Holocaust rescuers of World War II.

The imperative to assist law students, clinically as well as doctrinally, to become multiculturally competent lawyers has become ingrained as a fundamental tenet of legal education.\textsuperscript{15} In a nutshell, the task of the legal educator is:

“the development of a culturally competent self-aware lawyer who is conscious of her own biases and values without favoring them over another’s; aware of how his own values and biases affect clients from a different cultural group, comfortable with cultural difference; sensitive to circumstances that make it appropriate for a client to change lawyers; and aware of her attitudes, beliefs, and behaviors that might be oppressive. From this base, the lawyer can actively develop an understanding of her client’s culture and skills that enable her to lawyer with multicultural competence.”\textsuperscript{16}

The match that appears in the research between the characteristics of the Holocaust rescuers and the millennial generation’s altruism, though significantly differing in severity and intensity, lends itself to teaching cross-cultural competency and, indeed, to nurturing public service values in

\textsuperscript{14} McClellan, \textit{supra} note 13, at 259–61.

\textsuperscript{15} Bryant, \textit{supra} note 12; Peters, \textit{supra} note 9, at 287–99.

\textsuperscript{16} Weng, \textit{supra} note 12, at 403.
current law students. For me, “sprawuj sie” lies embedded in my culture and is my teaching springboard.

My interest in reflecting upon the Holocaust helpers comes not only from the lessons of my childhood to “be good” and “do good,” but also from my interest in teaching and writing about therapeutic jurisprudence and its many applications.\(^\text{17}\) Therapeutic jurisprudence (“TJ”) is an approach to the law and legal systems that focuses on the law’s impact on emotional life and psychological well-being. It is a perspective that views the law itself, including legal rules, legal procedures, and legal actors, as potentially therapeutic or anti-therapeutic agents.\(^\text{18}\) As its originators Professors Dennis Stole, David Wexler and Bruce Winick point out, TJ is more than scholarly legal study and writing. It is an approach that, when felt by practitioners, improves legal outcomes for clients\(^\text{19}\) and for the legal system.\(^\text{20}\)


\(^{19}\) Wexler I, supra note 18, at 45.

\(^{20}\) See generally *RELATIONSHIP-CENTERED LAWYERING*, supra note 18.
The planners of the Krakow Conference admirably enabled clinical teachers to *feel* the horrors of the Holocaust and to use the feelings engendered by a maximally unjust and certainly anti-therapeutic movement to instill social justice values in students. But in doing the research for this article and in discovering my family name Zawisza and my step-grandfather’s family name Piekarski among the annals of the many Holocaust era helpers, I have come to *feel* the flip side: the therapeutic effects of positive responses to lawlessness, which I call “altruism.”

My growing understanding of my cultural roots allows me to teach and mentor differently as a result of writing this article.

Therapeutic jurisprudence has come to embrace a substantive range of concepts and techniques that are available both microanalytically (individual client cases) and macroanalytically (systemic issues). My ruminations here focus on TJ macroanalytically and the application, under that macro lens, of two TJ techniques: rewinding and reframing. Rewinding is technique that encourages an individual to go back in time to the period prior to the occurrence of a critical act or omission that produced a problem and to ask what could have been done at that time to prevent the problem or to consider how a more therapeutic or less severe outcome could

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21 *See infra* p. 25 for definitions of altruism.

22 Wexler II, *supra* note 18, at 26–27. Indeed, Wexler posits that more macroanalytic TJ scholarship is needed and is emerging. *Id.*
have been achieved. Reframing is a technique most often used in the field of mediation in which an individual is encouraged to replace harsh or emotional words with more positive words or to offer possible reinterpretations of an event or an individual’s actions in order to achieve more open-mindedness.

This article rewinds the Krakow Conference theme of Holocaust lawlessness and reframes the negative messages of that conference to focus on the lessons that can be learned from the altruistic behavior of rescuers and helpers. Of necessity, that exercise has led me to better understand my cultural framework and thus to rewind and reframe myself as a clinical teacher and as mentor of public interest students. Professor Leslie Larkin Cooney reminds me that a task of the clinical teacher is to take one’s

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25 Robert A. Baruch Bush & Joseph P. Folger, *The Promise of Mediation* 267–68 (1994). The TJ literature does not often address the “reframing” technique by name although Susan Brooks introduces the term as a social work technique that looks at how a particular behavior might be understood in a broader context that allows the individual to gain greater insight into one’s motivations. Susan Brooks, *Practicing (and Teaching) Therapeutic Jurisprudence: Importing Social Work Principles and Techniques into Clinical Legal Education*, 17 ST. THOMAS L. REV. 513, 529 (2005). Jean Koh Peters labels the concept “parallel universe thinking,” which she describes as a process of brainstorming multiple explanations for a client’s behavior in order to avoid closed-mindedness, or rushing to judgment either about the client’s behavior or the meaning of a certain event. Peters, *supra* Note 9, at 297.

intuitive understanding of TJ tenets, to name them, and to teach them explicitly.27 Professor Carwina Weng applies a similar analysis to the development of cross-cultural competency, which, she argues, includes a self-awareness of how one’s culture shapes one’s attitudes, values, biases, and assumptions about lawyering.28 My reveries in developing this article have followed their paths.

I will begin in Part I by describing more thoroughly the Krakow Conference content and the theme of lawlessness conveyed there. Part II fleshes out the TJ approach to my research and explains the rewinding and reframing techniques. Part III examines the characteristics of altruists in the Holocaust by focusing on several individual helpers and group rescuers and reviews the scholarly research reporting on their traits. In Part IV I apply the rewinding and reframing methodology to the Krakow Conference theme of lawlessness and its flip side, the contributions of the helpers. Part V brings us up to date and compares the characteristics and motivations of Holocaust helpers to similar attributes of millennial generation law students. In this section, I elaborate on the development of cross-cultural competence skills in my students. I also describe how I can bring out public service values among them by using the research on altruistic behavior to reframe

27 Cooney, supra note 23, at 411. She, indeed, describes the process of moving from unconscious incompetence through conscious competence to unconscious competence that I teach my clinical students. W. S. Howell, The Empathic Communicator 20–25 (1982), cited in Peters, supra note 9, at 347.
28 Weng, supra note 12, at 397–98.
and rewind my own thought process and then to develop some practical exercises that can be used in clinic class sessions. I conclude with broader implications for more generalized law teaching from this rewound and reframed TJ lens.

I. Krakow Conference Theme: Lawlessness and the Holocaust

As has been mentioned, the Krakow Conference was organized by GAJE, an organization formed in 1996 in conjunction with the Clinical Legal Education Section of the Association of American Law Schools as an alliance of persons committed to achieving justice through legal education, particularly the clinical legal education of law students globally. GAJE also works globally to advance other forms of socially relevant legal education such as the education of practicing lawyers, judges, non-governmental organizations, and the lay public. Since its inception, GAJE has convened six worldwide meetings on justice education: India (1999), South Africa (2001), Poland (2004), Argentina (2006), the Philippines (2008), and Spain (2011). GAJE also cosponsored an International Conference on the Future of Legal Education in New York City in 2008.

An important feature of all GAJE conferences has been the emphasis on social justice problems in the host region. Thus the Philippines conference looked at urban poverty and environmental blight, with

participants visiting an open dumpsite in metropolitan Manila; the South Africa conference focused on the HIV/AIDS pandemic in southern Africa; and the Argentina conference highlighted the “desaparecidos,” leftist dissidents who were arrested, tortured and murdered during the Dirty War. Nowhere, however, was the theme of lawlessness more pronounced than at the Krakow Conference, which was built around a visit to the concentration camps at Auschwitz.

According to a conference organizer, Jagellonian University Professor Frederyk Zoll, the central theme of lawlessness was chosen to illustrate that the Polish camps were places of maximum injustice and a disaster of human rights. In addition, the theme was designed to convey that Nazi lawyers and the Nazi legal system actively supported the extermination of millions of people. To those lawyers and that legal system, the Holocaust was perfectly lawful. To others, those lawyers and the legal system represent complete lawlessness. This theme was carried out primarily through the organizational planning of Dr. Hans

30 Santow & Wachira, supra note 7, at 377.
32 Santow & Wachira, supra note 7, at 377.
33 GAJE Report, supra note 2, at 16. David Fraser, Professor of Law and Social Theory at the University of Nottingham School of Law, develops this theme at great length. Lawyers, judges, and police, he says, acting as they acted then and act now, were responsible for the “exclusion, enslavement, spoliation and death of millions of their fellow human beings.” DAVID FRASER, LAW AFTER AUSCHWITZ: TOWARDS A JURISPRUDENCE OF THE HOLOCAUST 5 (2005).
Professor Guggenheim organized a site visit of clinical law professors to Auschwitz and divided them into six groups, each exploring distinct topics.35

According to Professor Guggenheim, the Holocaust was the world’s first massive genocide, aimed primarily at the Jewish people and secondarily at Gypsies and Poles. Its perpetrators were the German Nazis, who carefully and systematically carried out the annihilation through industrial methods of mass production and assembly line assassination, with ruthless efficiency, all for the purpose of destroying human beings.36 In order for the Nazis to achieve their goals, according to the professor, they created structures that sounded perfectly legal.37 First, a pseudo-scientific
theory of racism was created. This theory emphasized the purity of a so-called Aryan race, i.e., white German non-Jews. Then, in a series of carefully executed steps starting with euthanizing the disabled in Germany, the Nazi leadership set out to eliminate human beings who did not resemble members of that race. In that process, the Nazis learned that ordinary bureaucrats were willing to murder large numbers of innocents because, indeed, such murder was legally authorized. Those expected to carry out such murders followed their leaders in a spirit of rote obedience. In addition, laws were passed to transfer property of Jews to the Nazis in a process described as beautification of the borders. Next, intermarriage between Jews and non-Jews was prohibited. Further, laws were enacted to confine Jews to the ghettos and then to make their escape a public safety hazard that had to be eliminated through murder. Due to the enactment of such laws, the choice of whom to execute, according to the Nazis, was thoroughly legal and accomplished according to due process procedures.38

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38 Guggenheim, supra note 6, at 4–11. Professor Fraser documents the same methodology, explaining that Nazi courts applied standard legal techniques. Fraser, supra note 28, at 35–49. Ethicist and Professor David Luban also comments negatively on the complete legality of the Holocaust as he writes about the so-called “torture lawyers” of Washington, D.C. during the Bush Administration. David Luban, Legal Ethics and Human Dignity 163 (2007).
In his effort to inform our group of global clinical educators, Professor Guggenheim further described the lack of responsive action taken by the United States, Britain, and France to the German policy of annihilation of Jews and others who either could not qualify as members of the so-called Aryan race or who were their sympathizers, and he decried it. He particularly spoke of the United States War Department policy that unilaterally blocked military involvement in the rescue of victims of persecution and the British government’s similar reluctance to help.\(^{39}\)

Moving to the topic of teaching justice, the twin Krakow Conference theme, Professor Guggenheim spoke about teaching young law students about remedies to remove injustice. He concentrated on punishment of those responsible for the crimes and compensation to the victims.\(^{40}\) Through Professor Guggenheim’s facilitation, conference participants engaged in a debriefing session after the site visit. During the debriefing, questions emerged about justice and how to teach it. Questions clearly focused on the theme of lawlessness. Participants urged that clinical law teachers use this example of lawlessness to focus in their teaching on

\(^{39}\) Guggenheim, supra note 6, at 10–11. The American press likewise paid insignificant attention to the Holocaust, and American leaders were labeled “reluctant rescuers.” Deborah Lipstadt, Beyond Belief 197–99 (1986). Similarly, the legal academy stood silent during the violence of the Holocaust. Sarah H. Ludington, The Dogs that Did Not Bark: The Silence of the Legal Academy during World War II, 60 J. LEGAL EDUC. 397 (2011).

\(^{40}\) Guggenheim, supra note 6, at 13. Professor Fraser adds to the list of such remedies and includes pardon and reconciliation, confession and retribution, and amnesty (which he calls a forgetting or an amnesia). Fraser, supra note 28, at 9.
genocide, discrimination, administrative killing, and legal efficiency and proficiency at the expense of moral ethics. Yet another dominant theme raised by the clinical teachers was the indifference of the Polish people and their allies to the suffering of others, their “conspiracy of silence,” and their lack of reaction to an injustice that was going on in their midst.\(^4\)

I came away from the Krakow Conference feeling stunned. The depth of the negative conference messages and the admonition that clinical legal educators have a duty to teach about such pervasive injustice, important though they are, did not strike me as the only valid lessons lawyers can learn from the Holocaust. Those lessons did not reflect my Polish upbringing, my understanding of the Polish culture, and my father’s mantra of “sprawuj się.” I am a Polish Catholic with a Jewish sister-in-law whose mother was born a Jew in Poland, and thus my niece and nephew are cultural Jews. We are not indifferent, uncaring, or compassionless people. I have, of necessity, returned to therapeutic jurisprudential principles, which I will discuss in the next section, to help alleviate my shock and to direct me along a more constructive path.

II. THE THERAPEUTIC JURISPRUDENCE FRAMEWORK

\(^4\) GAJE Report, supra note 2, at 23–24. Similarly to Krakow Conference participants, Professor Fraser laments that the Holocaust is absent from law schools, legal education and from the legal consciousness because academics see it as “not law” and are unwilling to construct a collective memory of the Holocaust as a lawful phenomenon. Thus, he says, we avoid discussions about the roles and functions of lawyers or judges as ethical and morally responsible human beings. FRASER, supra note 28, at 5–6.
Therapeutic jurisprudence scholarship has grown to be vast and rich. TJ has now entered its third decade of life with a deeper voice, a longer stride, and a more assured stance, with scholars applying the TJ lens in “ever more innovative ways—to see patterns, make connections, and traverse far flung legal doctrinal territory in search of better, more humane ways to structure, interpret, and practice law.” What more appropriate timing to my reframing of the Krakow Conference could I ask for than to arrive on the cusp of such expansion?

A. TJ Principles

In a nutshell, TJ is the study of law’s healing potential. My Dean and colleague, Kevin H. Smith, has distilled its essence as follows:

Proponents of Therapeutic Jurisprudence suggest that legal rules, legal procedures, actions of legal actors broadly construed, and the general operation of the legal system are social forces that produce therapeutic or anti-therapeutic consequences. A consequence is “therapeutic” if it is “beneficial for the mental (emotional), and/or physical health of the parties concerned.” “Anti-therapeutic”

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44 Bruce J. Winick, Therapeutic Jurisprudence and the Role of Counsel in Litigation, in Practicing Therapeutic Jurisprudence, supra note 14, at 311.
consequences are those which are detrimental to the mental, emotional, or physical health of individuals.  \(^{45}\)

All laws and most aspects of the legal system’s operation produce the potential for therapeutic or anti-therapeutic effects. Therefore, TJ has come to be used to analyze a large number of substantive areas of law,\(^ {46}\) core legal skills utilized by attorneys,\(^ {47}\) and even the production of legal scholarship.\(^ {48}\) Scholars recognize that legal rules, procedures, actions and actors can be therapeutic for one participant while anti-therapeutic for another,\(^ {49}\) a dichotomy certainly relevant to the victims of the Holocaust, who endured anti-therapeutic consequences, and to their rescuers, who experienced therapeutic effects.\(^ {50}\)

While TJ principles, for the most part, have been applied microanalytically to individuals, they are just as suitable for macroanalytical analysis of large systems.\(^ {51}\) TJ, therefore, has been applied in broad contexts, such as the health care crisis and health care reform,

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\(^{47}\) Winick, *supra* note 23, at 471.


\(^{50}\) See discussion *infra* Part III.

contract law and its effects on disadvantaged consumers,\textsuperscript{52} and the creation of systems for child representation in abuse and neglect cases.\textsuperscript{53} Certainly Dean Smith’s use of TJ tenets to analyze an example of civil disobedience takes a macroanalytical view.\textsuperscript{54} A therapeutic jurisprudence lens has even been applied to the development of cross-cultural competency in the law school curriculum.\textsuperscript{55} In a global context, TJ has been applied to the creation of legal responses to the emotional effects of terrorism.\textsuperscript{56} Its relevance in the setting of the Krakow Conference, therefore, finds ample scholarly support.

\textbf{B. TJ Techniques and Methodologies}

In addition to establishing the overriding principles discussed above, the TJ movement has endorsed certain practical techniques or methodologies to assist lawyers to act more therapeutically. The legal checkup, which is a technique to identify psycholegal soft spots, for example, has become legendary. Such soft spots are areas in which legal procedures or legal interventions may not lead to a lawsuit or legal risk but may produce fear, hurt feelings, anger, or other dimensions of psychological

\begin{footnotesize}
\textsuperscript{52} Id. at 27.
\textsuperscript{54} Smith, \textit{supra} note 45.
\textsuperscript{55} Hartley & Petrucci, \textit{supra} note 11, at 180.
\end{footnotesize}
imbalance. Each lawyer-client encounter, on the other hand, also offers psycholegal opportunity spots, places where sensitive attorneys can act in ways that will achieve psychological benefit for the client.\textsuperscript{57}

One TJ technique particularly relevant to my Krakow Conference reflections is rewinding. The rewinding technique causes the user to go back in time to the beginning or to a prior point in a case or situation to consider how a more therapeutic or less severe outcome could have been achieved. The prior point chosen is that in which a critical act or omission occurred. The rewinding exercise asks the lawyer (or teacher) to ponder what could have been done to avoid that problem or its recurrence. This technique produces the greater self-awareness and insight required of culturally competent lawyers, while also honing problem-solving skills.\textsuperscript{58}

The creators of the rewinding technique have developed a useful checklist, in which the following items are addressed:\textsuperscript{59}

1. Identify the area of the law to which this problem relates.
2. Provide a brief description of the legal situation as it was at the time you initially became involved.
3. Describe the potential or actual non-legal motivations or consequences to the parties involved.
4. In your experience, how often does this type of situation occur?
5. Provide a description of the action taken and the legal and non-legal outcomes.

\textsuperscript{57} Wexler I, \textit{supra} note 14, at 48; Winick, \textit{supra} note 44, at 312.
\textsuperscript{59} Paltry et al., \textit{supra} note 19, at 443–45.
6. Explain whether or not this approach resulted in successful legal and non-legal outcomes.
7. Describe alternate approaches that could have been taken and how the legal and non-legal outcomes may have been more or less successful than the actual outcome.
8. Using the rewinding technique, describe how this situation may have been prevented or diminished in severity by other attorneys or other judges at earlier points in time.\textsuperscript{60}

Another healing technique applicable to the lessons of the Krakow Conference is reframing. Commonly used in the realm of mediation, reframing is a technique used to replace harmful and judgmental observations or actions with neutral or factual ones. For example, one would talk about a learning disabled or intellectually challenged individual, rather than a mentally retarded person. Through reframing, the framework of what is said or done is changed, and consequently, one’s perceptions of the event or situation also shifts.\textsuperscript{61}

Mediation experts Robert Baruch Bush and John Folger describe this reframing technique as the offering of possible reinterpretations of the parties’ actions or motives. They suggest that when one party asserts a negative interpretation of the other’s behavior or past actions, the mediator should asks the parties to think of four or five possible explanations for the behavior that are less negative. The goal is to open up the parties’ thinking

\textsuperscript{60} \textsc{Practicing Therapeutic Jurisprudence}, supra note 14, at 494–97.
\textsuperscript{61} Bush & Folger, supra note 21, at 269; John W. Cooley, \textsc{Creative Problem Solver’s Handbook for Negotiators and Mediators} 200 (2005); Gallagher, supra note 20, at 101.
to entertain alternate possibilities. Tagged the transformative model of mediation, this approach posits that people have the capacity to change the quality of their interactions to reflect personal strength or self-confidence (the empowerment shift) and relative openness or responsiveness to the other (the recognition shift). Human interaction thus can regenerate and become constructive, connecting, and humanizing. Though not frequently referenced in the TJ literature, reframing is nevertheless a quintessential TJ technique because it focuses on therapeutic or non-therapeutic outcomes of legal processes and procedures.

As a TJ tool, reframing can be incorporated into the Wexler/Paltry rewinding checklist by the addition of the following:

1. Describe the actors as they see themselves.
2. Reduce negative opinions about the actors or the situation to facts.
3. Find the nobler intentions in the actors or in the situation.

When I used the TJ techniques of rewinding and reframing to begin to make sense of the Krakow Conference, I saw that public service values

62 BUSH & FOLGER, supra note 21, at 269–70.
65 GALLAGHER, supra note 20, at 104–05.
66 I prefer to use the term “public service values” rather than “justice” because “justice” is such an elusive term. See Aiken, supra note 10. I define public service values broadly to include notions of serving, doing good, and giving back, whether through the representation of low-income individuals and groups who otherwise would have no access
need not only be taught by reference to the tragedy of the Holocaust, and I immediately turned to focus on the altruism of that era. This view, fortunately, is gaining traction among Holocaust scholars. Rabbi Harold M. Schulweis, for example, writes in the introduction to a leading work on Holocaust rescuers: “The history of the Holocaust requires ‘keeping faithfully a double memory…a memory of the best and of the worst.’ Repression of either side of the ledger both distorts history and paralyzes the future.”67

I turn in the next sections, thus, to introduce the altruists, to describe their characteristics, and to apply my revised TJ checklist to the Krakow Conference themes. In a subsequent section, I will discuss the ways in which TJ principles have assisted me to rewind and reframe myself as a teacher and mentor of public service activities, motivated by my desire to make conscious the multicultural competence skills that my students need to the legal system, whether through accepting the lower salary of a legal services lawyer, public defender or prosecutor, or even through sitting on the bench.

67 SAMUEL P. OLINER & PEARL M. OLINER, THE ALTRUISTIC PERSONALITY xiii (1988) [hereinafter OLINER I.] Rabbi Schulweis directed the Institute for Righteous Acts. Professor Samuel Oliner, who himself was rescued in Poland by a peasant woman, was an Emeritus Professor of Sociology at Humboldt State University in Berlin, Germany, and he founded and directed the Altruistic Behavior and Prosocial Behavior Institute there. See The Altruistic Personality and Prosocial Behavior Institute: Dr. Samuel P. Oliner, HUMBOLDT STATE UNIVERSITY, http://www.humboldt.edu/altruism/samuel.html (last visited July 13, 2011). I presented this paper on July 19, 2011, at the 33rd International Conference on Law and Mental Health held under the auspices of the International Academy of Law and Mental Health at Humboldt University.
to successfully practice and that I believe my students already unconsciously possess to a degree.\textsuperscript{68}

\section*{III. Attributes of the Altruists in the Holocaust}

And yet, amidst the great darkness, there were still pinpoints of light. The horrors, the atrocities, the heinous and brutal things that man perpetrated upon man...the accounts of these have been told and retold many times. But the sparks of human greatness that flared up during that nightmarish time...these have not been told enough.\textsuperscript{69}

Only a small part of the voluminous writing about the Holocaust deals with rescue, rescuers, and the characteristics of the “righteous among nations.”\textsuperscript{70} This research, however, has been helped along by the founding of Yad Vashem, the Holocaust Martyrs’ and Heroes Remembrance Authority in Jerusalem, Israel, in 1953. Yad Vashem, through the development of its Righteous Among the Nations Department, has cataloged the accounts of more than 23,000 Holocaust rescuers in \textit{The Encyclopedia of the Righteous Among Nations} series.\textsuperscript{71} This vast collection enriches other research findings.\textsuperscript{72}

\begin{footnotesize}
\footnote{68 See Howell, \textit{supra} note 27, regarding the stages of competence and competency.}
\footnote{69 \textsc{Halberstam \& Leventhal}, \textit{supra} note 37, at xii.}
\footnote{70 Tec, \textit{supra} note 37, at viii. Nechama Tec is a Professor Emerita of Sociology at the University of Connecticut.}
\footnote{71 \textsc{The Encyclopedia of the Righteous Among Nations: Poland} (Sara Bender \& Shmuel Krakowski eds., 2004) [hereinafter \textsc{Encyclopedia}].}
\footnote{72 See sources cited \textit{supra} note 9 and note 37.}
\end{footnotesize}
What is altruism? The word is rooted in the Latin *alter* and simply means “other.” It is credited to Auguste Comte, who conceived of altruism as a devotion to the needs of others based on selflessness. Sociologist Nechama Tec further refines this definition by classifying two types of altruism: normative and autonomous. Normative altruism refers to helping behavior demanded, expected, and supported by society, while autonomous altruism is defined as selfless behavior, often opposed by society and involving great physical and social risks. Both normative and autonomous characteristics will be found among the annals of the Holocaust righteous described below, although those who exhibited autonomous behavior clearly predominate.

Who are these rescuers? They were both individuals acting alone and groups of people acting in concert. I will first give examples of each category, singling out primarily names with a family connection. Subsequently, I will summarize the research on the attributes they exemplify.

### A. Individual Rescuers

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75 TEC, *supra* note 37, at 71. Tec points out, however, that most Polish helpers did not work through organizations, but acted individually. *Id.* at 51.
Sisters, Bronisława and Władysława Zawisza, lived in Ojców, near Krakow. They shopped at a store in Skała run by relatives of Sara Borenstein, whose family included two married daughters, a married son and two granddaughters. Because the Borensteins were Jews, they were deported at the beginning of World War II from Katowice to Skała, Sara’s hometown. While simply living their own lives, the Borenstein men were killed by the Nazis in 1942. The women and children were left behind and alone. Somehow they managed to escape to the Zawisza summer home near Ojców, where the Zawisza sisters hid the family in the attic. Because Bronisława was ill, Władysława did most of the daily work of caring for the Borensteins, including baking bread at night so as not to arouse Nazi suspicion. In 1944, the sisters helped the Borenstein family reach Krakow, where the Council for Aid to the Jews (described subsequently) helped them until the war ended. The Borensteins then immigrated to Israel.76 The fate of the Zawisza sisters is unknown.77

77 The Zawisza sisters were likely age contemporaries of my parents. Although these Zawisza sisters were not known to us, my family kept in regular contact with closer relatives in the homeland through letters and Christmas presents. During my several trips to Poland, I reconnect with the Zawisza relatives, but I was unable to locate any other family members.
Jan Piekarski was a widower who lived in Warsaw with three children, Janina, Krystyna, and Zygmund. Jan was a childhood friend of Bina Szlosberg. In 1943 Bina’s family of six was deported to the Warsaw Ghetto from their home in Sochaczew. The only person they knew in Warsaw was Jan Piekarski. They asked Jan to rent an apartment for them, and he did so in the name of his daughter, Janina. The Szlosbergs lived there peacefully for a year with Jan supplying all of their necessities.

In 1944, an informant revealed the identity of the Szlosberg family, and they were all arrested. Several Szlosbergs bribed the police and thus escaped death. Four members of the Szlosberg family then lived in Mr. Piekarski’s home; two lived in another apartment. Mr. Piekarski continued to take care of all of them. During the Warsaw Uprising, Mr. Piekarski managed to get most of the family out of Warsaw (helped by Żegota, described subsequently), but Zygmund Piekarski remained with those Szlosbergs left behind, hiding among the ruins of Warsaw. The entire Szlosberg family survived and moved to Israel after the war. Mr. Piekarski’s fate is unkown.

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78 Virtual Wall of Honor: Poland, YAD VASHEM, http://www1.yadvashem.org/yv/en/righteous/pdf/virtual_wall/poland.pdf (last updated Jan. 1, 2011). “Piekarski” was my step-grandfather, Anthony’s, surname, and “Krystyna” is the Polish equivalent of my given name, Christina. Anthony Pierkarski married my maternal grandmother several years after she was widowed.

79 ENCYCLOPEDIA, supra note 71, at 605.
The Polish volume of the *Encyclopedia*, as well as other documentation, is replete with stories such as those of the Zawiszas and the Piekarskis. They are the Iwanskis, Kowalskis, Swierzowskis, Adamowskis, Krygowskis, Wojciks, etc., names which populated the neighborhood and church in which I grew up in Amsterdam, New York.

The deeds accomplished by the individual rescuers varied in personal impact from those which entailed little personal risk to those of life and death consequences. The helpers may have provided false documents; escorted an individual out of the ghetto; provided food or lodging; warned of impending danger; or built appropriate hiding places. Locating constant supplies of food and medicine, finding a doctor or an undertaker, and raising large sums of money presented greater risk. Some activities of rescuers would be classified by the legal system as subversive, such as smuggling individuals, food and supplies to individuals across ghetto borders. All told, by 1986, Yad Vashem had recognized 1,505 Poles of the 5,742 Righteous Among Nations. One expert estimates the number of individual helpers in Poland as possibly ranging as high as 3

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80 *Encyclopedia*, supra note 71; BARTOSZEWSKI & LEWIN, supra note 37, at 435–42.
82 LUKAS, supra note 37, at 31–34.
83 TEC, supra note 37, at 70–84, 87–98.
million to 5 million.\textsuperscript{84} It is notable that Polish rescuers overcame greater pressures and fears than did helpers in other countries, because Poland was the only country in which assisting Jews was punishable by death.\textsuperscript{85} Polish rescuers were quintessential civil disobedients.\textsuperscript{86}

2. Group Rescuers

A number of groups in Poland engaged in concerted efforts to assist Jews and other victims of Nazi cruelty, including the famous Council for Aid to the Jews (Żegota); the Bureau of Information of the Home Army (the underground paper, Builetny Informacyjny); the Polish Front (Front Odrodzenia Polski); the Polish Catholic Church; the Polish Red Cross; and the Polish Boy and Girl Scouts (Hacerze).\textsuperscript{87} For illustrative purposes, I will focus on the activities of Żegota and the Boy Scouts; as a teacher of a children’s clinic, it is fitting that I concentrate on group activities involving children.

A number of trade unions, political parties, Catholic intellectuals, and even governmental agencies came together in 1942 to form the Council

\textsuperscript{84} \textit{LUKAS, supra} note 37, at 157.


\textsuperscript{86} According to Professor Smith, the civil disobedient is one who intentionally has violated one or more laws; the law violation must be motivated by a considered assessment that the law is immoral; the disobedience must be open and non-violent; and finally the civil disobedient must be willing to peaceably submit herself to the legal system and be punished. Smith, \textit{supra} note 45, at 115–25.

\textsuperscript{87} \textit{ENCYCLOPEDIA, supra} note 71, at xxviii–xxxiii; \textit{LUKAS, supra} note 37, at 180. Among the few names of lawyers I found in my research is Henryk Wolinski, who was a manager for the underground newspaper. \textit{BARTOSZEWSKI & LEWIN, supra} note 37, at 17.
for Aid to the Jews. The organization informally adopted the name “Żegota” to avoid using the word “Jew” in everyday speech because its use was so dangerous. Żegota’s mission was to broadly assist the Jewish people through locating hiding places, securing food and supplies, forging documents, supplying medical care, smuggling money into ghettos, and offering survival pensions. It had a Children’s Section, led by Irene Sendler, whose function was to place Jewish children with Polish families or in group homes, orphanages, or educational institutions. Żegota carried out its rescue operations throughout Poland with the active participation of people from all walks of life, from all social strata, and from all political views. The organization frequently included people who had been anti-Semitic. As previously documented, Żegota assisted the Piekarski rescuers, but it is unknown whether the organization helped the Zawisza sisters.

Polish and Jewish children played a major role as helpers and rescuers, largely through the Polish Boy Scout and Girl Scout organizations. They were the core of the underground resistance in Poland, participating in non-combat activities such as serving as couriers, distributing underground press, cleaning and storing weapons, and helping to find hiding places for

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88 BARTOSZEWSKI & LEWIN, supra note 37, at 24. One lawyer, Leon Feiner, served as second vice-president of the initial organization. Id.
89 OLINER I, supra note 67, at 28–29.
90 BARTOWSZESKI & LEWIN, supra note 37, at 24–25.
91 TEC, supra note 37, at 51.
escapees. They engaged in “small sabotage,” i.e. diversionary propaganda.\textsuperscript{92} They scrawled mottos such as “Poland Will Win!” or “Hitler is a Dogcatcher!” on walls. They served as social workers, firefighters, ambulance and rickshaw drivers.\textsuperscript{93} Recently it has come to light that the Boy Scouts even did their good deeds in the work/death camps.\textsuperscript{94}

One of the Boy Scouts’ most impressive accomplishments was to run a postal system in Warsaw, carrying mail through streets, rubble and sewers. During the first month of the Warsaw Uprising of 1944, they moved 120,000 pieces of mail.\textsuperscript{95} The youngest scouts, those who staffed the post offices, were called the “Troops of Zawisza,” named for a neighborhood in central Warsaw that centers around a roundabout dedicated to the Polish war hero, Arturo Zawisza.\textsuperscript{96} These children’s acts of altruism were accomplished at great personal peril.\textsuperscript{97} Ms. Diane Ackerman in\textit{ The Zookeeper’s Wife} recalls an archival photograph showing a metal mailbox decorated with both an eagle (the Polish national symbol) and a lily to

\begin{itemize}
\item \textsuperscript{92} \textit{Lukas, supra} note 37, at 127–30.
\item \textsuperscript{93} \textit{Ackerman, supra} note 37, at 122–23.
\item \textsuperscript{95} \textit{Lukas, supra} note 37, at 137. See \textit{Norman Davies, Rising ’44: The Battle for Warsaw} (2003), for a complete history of the Warsaw Uprising. The Warsaw Uprising was a 63 day military action undertaken in 1944 by the Polish Underground Movement to liberate Warsaw from Nazi invaders. Its intent was to preserve Poland’s freedom and sovereignty. \textit{Id.}
\item \textsuperscript{97} \textit{Lukas, supra} note 37, at 31–33, 191.
\end{itemize}
illustrate that the youngest scouts risked their lives delivering letters.\textsuperscript{98} The walls of the Warsaw Rising Museum in Warsaw, Poland document the courage and sacrifices of these children.\textsuperscript{99}

Much can be gleaned about the attributes of the Polish altruists of the Holocaust by reading anecdotal stories. There is added richness to be found in our store of information, however, through the findings of research studies, summarized below, that describe their traits.

3. Why Did the Altruists Do What They Did?

Professor Samuel Oliner and his colleagues at Humboldt State University in Berlin examined some 50 research studies about rescuers and found some sixty-five variables reported. He classified them into eight simplified categories as follows: 1) moral; 2) religious; 3) empathic; 4) principled/autonomous; 5) situational; 6) personality traits; 7) normative; and 8) other. Some research that Oliner examined was empirically based; some writers interpreted existing empirical studies; others took a broad philosophical or theological approach; still others reported historically.\textsuperscript{100} The results of several studies are described below.

\textsuperscript{98} ACKERMAN, supra note 37, at 278.
\textsuperscript{99} BARTOSZEWSKI & BUJAK, supra note 96.
Among the earliest studies was that of sociologist Perry London who examined 27 rescuers and 42 rescued people who came to the United States from Europe after 1945. He found they had three characteristics in common: 1) a sense of adventure; 2) a strong identification with a parental model of moral conduct; and 3) a sense of being socially marginal, i.e. standing out within one’s environment. Regarding the second factor, he notes the high correlation between helping behavior and a strong identification with a parent, usually one parent more than another, who had strong opinions on moral issues and served as a role model for moral conduct. 101

London admits difficulty in interpreting the social marginality factor because his entire research cohort consisted of individuals who chose to leave their homelands. He explains this factor as possibly representing individuals who stood apart from Nazi values, resulting in social ostracism. This subgroup, at the same time, was very adventuresome, a factor which may have also explained its migration away from the homelands.102

101 London, supra note 81, at 241–47. London’s finding regarding the influence of a parental role model is confirmed in a study of highly committed civil rights workers in the United States in the 1970s. David Rosenhan, The Natural Socialization of Altruistic Autonomy, in ALTRUISM AND HELPING BEHAVIOR, supra note 74, at 251–67 (“They have learned, by loving precept and percept, to respond easily to the needs of others.”).

102 London, supra note 81, at 247. Tec interprets London’s study in a way which supports the social marginality theory. Tec, supra note 37, at 152. In the context of the Amadou Diallo demonstrations in New York City, Professor Smith refers to “psychological separation” as a motivator for civil disobedients and posits that one might engage in civil disobedience in order to separate oneself from legal, social, or economic systems and individuals whom one believes to be immoral. Smith, supra note 45, at 133.
Not totally satisfied with London’s conclusions, Sociologist Nechama Tec took an inductive approach to an examination of attributes of Holocaust helpers by examining individual cases of rescue. She identifies these highly interrelated and common traits: 1) individuality or separateness; 2) independence or self-reliance to act in accordance with personal convictions, regardless of how they are viewed by others; 3) broad and long-lasting commitment to stand up for the helpless and needy; 4) the tendency to perceive aid to the Jews in a matter of fact and unassuming way; 5) unpremeditated or unplanned beginnings of rescue; and 6) extreme suffering and need among the Jews.¹⁰³

Psychologist Eva Fogelman took a slightly different approach in her Rescue Project, beginning with the premise that most people surrender personal responsibility, i.e., walk away from any duty, if those actions are dictated by authority figures such as the Nazis. She examined why certain individuals did not walk away. She concluded that altruistic behavior of individuals in the Holocaust was determined by a combination of personality and situational features as follows: 1) the opportunity to help; 2) social support for such activity; 3) economic resources; 4) nature of

¹⁰³ Tec, supra note 37, at 188. Professor Smith identifies a number of similar motivations among civil disobedients generally, including empathy, self-definition, psychological separation, and doing good. He describes these as therapeutic consequences of civil disobedience in the TJ model. Smith, supra note 45, at 132–34.
living quarters; 5) the characteristics of the person in need of help. She found that Holocaust rescuers were “aware” people with feelings of responsibility who, when the situation provided necessary resources, acted. Their motivations included: moral conscience; relationship and friendship; anti-Nazi ideology; and concerned professionalism. When families asked them to help children, the altruists responded. Fogelman speaks of the rescuers’ self-pride in their ability to maintain moral integrity, their ideological beliefs, their professional standards, and their humane relationships.

Yad Vashem researcher Ella Linde studied 4,119 rescuers with similar results, as follows:

1. Long-standing acquaintance/social ties/coworkers: 2039
2. Humanitarian motivation: 1772
3. Political/Ideological: 237
4. Faith: 89

A subset of Linde’s research focused on rural peasants and foresters who served as helpers because they had the opportunity to hide people.

The Oliners conducted the largest study of Holocaust rescuers, administering an in-depth questionnaire to 700 persons in several Nazi-occupied countries, 406 of whom were rescuers, 126 were non-rescuers, and

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104 EVA FOGELMAN, CONSCIENCE AND COURAGE xiv-xv (1994).
105 Id. at 66, 159–60.
106 ENCYCLOPEDIA, supra note 71, at xxxviii–xxxix.
150 were survivors. Their inclusion of non-rescuers differentiates their research from that described previously. 107 An overwhelming majority of rescuers (87 percent) expressed at least one ethical or humanitarian factor for their actions. Justice, i.e., the lack of justification for persecution of the innocent, was cited as an ethic, although the strongest value expressed by responders was compassion or caring. 108

A major finding of the Oliner research is that the value of caring came from their modeling of parental values and examples. Asking the question, “Was it opportunity or character?,” the Oliners concluded:

Rescuers did not simply happen on opportunities for rescue; they actively created, sought, or recognized them where others did not. Their participation was not determined by circumstances but their own personal qualities. Chance sometimes provided rescuers like … with an opportunity to help, but it was the values learned from their parents which prompted and sustained their involvement. 109

Seventy percent of rescuers spoke of learning ethical values from their parents, as compared to 56 percent of percent of non-rescuers and 57 percent of bystanders. Almost half of all rescuers expressed a learned universalistic ethical orientation, an obligation to all people, not just to a

107 OLINER I, supra note 67, at 261. All findings of the survey are reproduced in the text. Id. at 273–330.
108 Oliner II, supra note 100, at 679.
109 OLINER I, supra note 67, at 142; see also Oliner II, supra note 100, at 680.
particular person, rooted in the values of justice, equality and respect, but predominantly, caring. Finally, the rescuers’ commitment to the well-being of others did not emerge suddenly under the threat of Nazi brutality, but it manifested itself well before World War II and continued long afterwards.  

As I rewind and reframe the Krakow Conference, the above research findings tell me that public service values can be taught, encouraged, and learned. Dr. Fogelman agrees. In her Rescue Project, she concluded that the helpers’ moral courage could be taught, commenting that the rescuers were not extraordinary and exceptional individuals, but simply ordinary people holding fast to their own standards and doing what they needed to do. Thus, she defines a “rescuer-self” that continued long after the war was over. The Oliners’ conclusions are deeper. They say that by identifying the attributes of the rescuers, we can deliberately cultivate them, and then we can create the world we want to live in. They suggest that parents as well as social institutions such as schools can undertake this cultivation.

The jury is out as to whether there is a so-called altruistic gene. Sociobiologists hypothesize that the propensity towards altruistic behavior

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110 OLINER I, supra note 67, at 170.
111 FOGELMAN, supra note 104, at xv-xvii. I certainly was taught to do good by family example.
112 Id. at 159–60.
113 OLINER I, supra note 67, at xviii.
114 Oliner II, supra note 100, at 687.
is conveyed genetically.\textsuperscript{115} That premise had gained recent credence in the work of Daniel Goleman, who in \textit{Social Intelligence} speaks of an instinct for altruism, and in \textit{Primal Leadership}, of the neuroanatomy of leadership.\textsuperscript{116} Psychoanalytic theory, on the other hand, holds that learning, more than biology, explains altruistic behavior and that individuals move through stages of moral reasoning when mental maturation interacts with experience.\textsuperscript{117} Even Goleman recognizes that the observation of an act of courage, compassion, or tolerance can “elevate” another person to act similarly; he admits that “elevation” may be “catching.”\textsuperscript{118}

It matters not whether one accepts the genetic principle or the moral development tenet or a combination of both. Clearly there are lessons to be learned from the Holocaust in addition to “lawlessness.” The stories of the rescuers and research findings regarding their attributes demonstrate that there is a profound message about altruism to be gained\textsuperscript{119} when the Krakow Conference is rewound and reframed.

\textsuperscript{115} OLINER I, supra note 67, at 8–9.
\textsuperscript{118} GOLEMAN, SOCIAL INTELLIGENCE, supra note 116, at 52–53.
\textsuperscript{119} Law professor Reed Elizabeth Loder has similarly reviewed the findings of the Oliners regarding the Holocaust rescuers and their altruism as a backdrop for her discussion of the moral development of law students. Reed Elizabeth Loder, \textit{Tending the Generous Heart: Mandatory Pro Bono and Moral Development,} 14 GEO. J. LEGAL ETHICS 459 (2001).
IV. Rewinding and Reraming the Krakow Conference Through a Therapeutic Jurisprudence Lens

As I have set out in Part II, Professors Wexler, Paltry and others have developed a “rewinding” checklist to reexamine troublesome events or situations and to reconsider how a more therapeutic or less severe outcome could have been achieved. Mediators Baruch Bush and Folger offer a “re-framing” technique to reduce negative opinions or facts and to find the nobler intentions. With my findings about the Holocaust rescuers in hand, I circle back to Part II to revisit the lessons of the Krakow Conference through this TJ lens.

1. Identify the area of the law to which this problem relates.

Teaching law students about the legal profession’s public service obligations and building on their own inclinations to serve.

2. Describe the legal situation at the time you became involved.

Conference theme revolved around maximum injustice, the role of the legal system in injustice, punishment, and the “conspiracy of silence.”

3. Describe the potential or actual non-legal motivations or consequences to the parties involved.

For many participants, the Krakow Conference provided their first opportunity to visit a concentration camp. Organizers wanted conferees to “feel” the horrors of the Holocaust. Without also addressing the righteous acts of the rescuers, however, the “take home” message is incomplete.

4. In your experience, how often does this type of situation occur?
As Oliner, Tec, and others point out, Holocaust scholars first focused their research on the atrocities of the Holocaust and only now are investigating the stories and motivations of the altruists. Survivors and “second generation survivors” first had to come to grips with survivor guilt and then come to terms with the Holocaust. Also, according to Oliner, “confronting goodness may be more painfully challenging than confronting evil.” He says that we look in the mirror and ask what we would do.

5. Provide a description of the action taken and the legal and non-legal outcomes.

Conference organizers focused on the lawlessness of the Holocaust in order to, among other objectives, encourage the inclusion of Holocaust studies in the law school curriculum. In my research, I have found only two references to teaching about the Holocaust in law or law-related publications since 2004. Thus, it could be said that that expected legal outcome was not achieved. The non-legal outcome expected was to enable law professors to “feel” the Holocaust. That objective was achieved in regard to the Holocaust’s lawlessness, but the flip side was not addressed.

6. Explain whether or not this approach resulted in successful legal or non-legal outcomes.

See answer to #5 above.

7. Describe alternative approaches that could have been taken and how the legal and non-legal outcomes may have been more or less successful than the actual outcome.

All laws and most aspects of legal systems produce the potential for therapeutic and anti-therapeutic effects. TJ principles, including psycholegal softspots, culturally competent legal practice, rewinding, and reframing could have been utilized to develop the Krakow Conference themes. One or more of the conference small groups that visited Auschwitz could have been organized around TJ principles. Any number of the Holocaust scholars cited in this article, such as Oliner, Fogelman, Tec, etc. as well as individuals who had been rescued, could have been invited to participate.

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120 HALBERSTAM & LEVENTHAL, supra note 37, at xvii.
121 OLINER I, supra note 67, at xi.
8. Using the rewinding technique, describe how this situation may have been prevented or diminished in severity by other attorneys or judges at earlier points in time.

Broader perspectives could have been represented on the planning group, including TJ scholars.

9. Describe the actors as they see themselves.

Well intentioned, benevolent, dedicated to teaching.

10. Reduce negative opinions about the actors or the situation to facts.

I have no facts about the time and money constraints under which the planners were operating, nor do I have facts about their awareness of TJ principles.

11. Find the nobler intentions in the actors or in the situations.

Perhaps simply to open the door to future dialogue, discussion, and instruction whether among faculty or students. Perhaps to inspire others to do the research, write the papers, reflect, and organize another conference on the application of TJ principles to the “righteous among nations.”

V. TEACHING PROFESSIONAL SERVICE VALUES FROM THIS REWOUND AND REFRAMED LENS

If altruism can be taught, learned, or fostered through parents and educational institutions, as Oliner, Fogelman, Tec, London, Rosenhan and others inform us, then millennial law students can be guided, encouraged and inspired to know themselves as cultural beings and to appreciate and act upon the inclinations to serve the public that they brought with them to law

122 Margaret Martin Barry alludes to such an objective when she mentions that the Krakow Conference was designed to stimulate thinking and cross cultural dialogue. Barry, supra note 10, at 198–200.
school. The TJ framework offers a lens through which to generate such self-awareness. It engages students to explore the positive results that might emanate from tragedy, i.e., therapeutic outcomes available amidst anti-therapeutic events, and to revisit such regeneration amidst tragedy in their lives and then in the lives of their clients.

I often tell my Dean that public service is “in my bones.” Before beginning the journey of writing this article, I had no idea to what extent public service was “in my bones” and how it got there. Now I know that it came through watching what my family did and what they valued, particularly noticing my father and my step-grandfather’s actions, as they discerned what the relatives before them had conveyed.

My research has led me not only to rewind and reframe the Krakow Conference to focus on the Holocaust altruists, but it also has led me to rewind and reframe myself as a clinical teacher and mentor in light of what I have discovered about my roots. My newly rewound and reframed lens leads me to three conclusions about encouraging public service values in the millennial generation of law students: 1) it is helpful for law teachers to make our internalized identity, indeed our culture, explicit to students, i.e.,

123 Professor Loder agrees that law schools can guide students toward a more altruistic character, such as that exemplified by the Holocaust rescuers, through service opportunities. Loder, supra note 119, at 495.
124 My father, Joseph Zawisza, was a millwright, a sheet metalworker, and a skilled laborer. He was the family activist, an involved member of the various Polish-American civic, benevolent, and religious organizations that were the life blood of Amsterdam, N. Y. My step-grandfather, Anthony Pierkarski, very quietly and devotedly cared for my sick grandmother, seven step-children and ten step-grandchildren.
to teach with intentionality; 2) we can effectively teach this age bracket through the technique of “modeling;” and 3) many students have a public service ethic within themselves, which educators need only to draw out.

I reach these conclusions because millennial generation of students now in law school share some of the traits of the Holocaust altruists. In this section I will first summarize the relevant research about the traits of the millennial generation and compare those findings to the rescuers. I will then discuss concrete ways in which I can better use this research to explicate my culture, model a public service ethic, and draw it out in my students.

A. Attributes of the Millennial Generation

As has been stated previously, the millennial generation, also known as Gen Y, encompasses individuals born between 1982 and the present.125 As a general proposition, they are said to display the qualities of a sense of entitlement, consumerism, high self-esteem, transience in relationships, and an unwillingness to join large social groups that are not technology-driven. Some say they are difficult to educate for public service.126 They also exhibit the traits of being special and sheltered, confident and team oriented,

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125 McClellan, supra note 13.
conventional, pressured and achieving. These are not traits that appear in the Holocaust rescuer research.

On the other hand, the millennial generation stands out for its civic mindedness, strong individualism and antiauthoritarianism, traits which do appear among the Holocaust altruists. With their can-do positive attitudes, they have been likened to the GI Generation who fought in World War II. They intend to make long strides in solving major problems in our country and our culture today. This trend is increasingly noticeable in many professions, including nursing, law enforcement, teaching,

127 Leslie Larkin Cooney, Giving Millennials A Leg Up: How to Avoid the “If I Knew Then What I Know Now” Syndrome, 96 Ky. L. J. 505–09 (2008) (promoting TJ principles to engage the millennial generation in the moral dimensions of law practice); Leslie Larkin Cooney, Walking the Legal Tightrope: Solutions for Achieving a Balanced Life in the Law, 47 SAN DIEGO L. REV. 421 (2010) (discussing the unique needs of women in the legal profession); McClellan, supra note 13, at 261–66; Wegner, supra note 64, at 988–90 (addressing the need for major curriculum reform).

128 McClellan, supra note 13, at 257 (citing Neil Howe and William Strauss who are widely known for their generational work); Berenson, supra note 126, at 59 (noting their high rate of volunteerism); Wegner, supra note 64, at 899. Howe and Strauss document the millennials’ community service ethic as well as their desire to tangibly do good deeds. NEIL HOWE & WILLIAM STRAUSS, MILLENNIALS RISING 8, 216 (2000).

129 Patricia D. Chambers, Tap the Unique Strengths of the Millennial Generation, 40 NURSING 48, 49–50 (2010) (noting that their high degree of altruism leads to a remarkable level of volunteerism). 130 James C. Henchey et al., Ready or Not Here They Come, 72 POLICE CHIEF (2005) (noting the generation’s strong signs of altruism and calling them the most socially conscious generation since the 1960s).

government, and business. The legal profession, too, sees law students graduating and continuing their civic mindedness. Public interest law is becoming a “sustaining motivation” for young lawyers. To sum up, Gen Y, without a doubt, shares a number of the traits of the Holocaust rescuers, such as individualism, anti-authoritarianism, social/moral conscience, the desire to do good deeds, and altruism, itself.

Quite importantly, the millennial generation shares another attribute with the Holocaust rescuers: the degree of closeness they have with their parents and their parents’ generation. The Oliners, it will be recalled, list the values passed on by parents and teachers as the factor most highly correlated with altruistic behavior. The millennial generation, indeed, cares about the values and character of their parents’ generation at home and in

134 Andrew F. Susko, The Importance of Getting Involved, PA. LAW., 29 (Sept.–Oct. 2007) (reporting on an American Bar Association study that showed greater volunteerism and suggesting a high interest among lawyers in meaningful engagement in the profession and in the community).
136 I disagree with Professor Berenson who says that Gen Y law students do not embrace a pro bono ethic. See Berenson, supra note 126.
According to a recent comprehensive study of the millennial generation:

Millennials have been raised with a global awareness of everything from political issues to poverty and environment. They have been expected to volunteer and give back, both by parents who had a history of social engagement and college admissions officials who began to factor such activities into the super competitive college admissions process. In many ways, Millennials see it as a job to clean up the messes made by previous generations. When it comes to work, if they are going to be spending hours of their day on a job, they want to feel they are making a dent.¹³⁸

How does this research and knowledge make me a better teacher? My students are always watching me, that I know,¹³⁹ whether I am teaching them to holistically represent abused and neglected children in the Child and Family Litigation Clinic,¹⁴⁰ advising them about creating a mandatory

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¹³⁷ McClellan, supra note 13, at 267.
¹³⁹ Some student comments include: “Your enthusiasm and dedication have picked me up when I was down to make me who I am as I emulate you.” (Atina Rizk); “Your leadership and dedication have been invaluable and inspiring; thank you for your commitment to social justice and the community.” (Anna Santos); “Your mentorship and leadership have been invaluable.” (Grace Whiting).
¹⁴⁰ The Child and Family Litigation Clinic at the University of Memphis Law School teaches law students core legal skills through representing children in a variety of civil legal matters. Through giving a vulnerable population “voice” in the legal system, I hope to awaken within students who will be tomorrow’s litigators, advocates, lawmakers, and judges a spirit of compassion, a sense of fairness, and understanding of equal justice. http://memphis.edu/legalclinic/child.php.
pro bono requirement for law school graduation, or mentoring them to develop and implement Alternative Spring Break public service projects.¹⁴¹

Before I did the research for this article, I practiced TJ concepts unconsciously, indirectly or unknowingly. Professor Cooney reminds me:

[T]he unintentional or indirect approach is simply not enough. Rather, it is not merely beneficial, but it is necessary, that as stewards of the profession we attach the Therapeutic Jurisprudence name to what we do and particularly to what we teach. We need to be more thoughtful about Therapeutic Jurisprudence and we must develop it more purposefully in our approach to teaching clinical law students.¹⁴²

Gen Y students admittedly appreciate the personal stories of their professors and the insights they offer.¹⁴³ Students arrive at law school with interpersonal qualities, such as empathy, a social conscience, and altruistic leanings, and they need validation that these are critical skills for the lawyer’s toolbox.¹⁴⁴ Indeed, it is essential that self-aware lawyers are comfortable with cultural difference and are effectively able to community openly with clients across cultural divides.¹⁴⁵

¹⁴¹ See supra note 1; see also University of Memphis, Alternative Spring Break at the Cecil C. Humphreys School of Law, YOUTUBE (March 14, 2011), http://www.youtube.com/uofmemphisvideos#p/search/4/4IrUEWVEYic; University of Memphis, Public Service for spring break, YOUTUBE (April 20, 2010), http://www.youtube.com/uofmemphisvideos#p/search/6/GdG7ebrlBRU.
¹⁴² Cooney, supra note 23, at 411.
¹⁴³ McClellan, supra note 13, at 275.
¹⁴⁴ Cooney, supra note 23, at 414.
¹⁴⁵ Hartley & Petrucci, supra note 11, at 179.
As a result of the greater cultural awareness I have acquired, I will be more intentional in my teaching. I utilize a series of exercises when I teach my unit on cross cultural lawyering in the clinical setting. Building on the examples suggested by Professor Peters, I first ask students to identify five assumptions they made about their client or other stakeholder that prove to be true. Then I ask them to identify five assumptions that proved false and subsequently reflect on the following Peter’s trilogy: 1) Identify assumptions in our daily practice; 2) Challenge assumptions with fact; 3) Lawyer based on fact.  

I next use the “Parallel Universe” exercise which requires students to brainstorm five possible explanations for a client’s troubling or confusing behavior. The next exercise requires students to identify five ways in which they are similar to their clients and five ways in which they are different.

We next collectively define the word “culture” and then reflect upon and describe, first, ourselves and then our clients as “cultural beings.” As a result of writing this article, I have added a segment to my cultural competency unit in which I ask my students to consider the sources of those motivations and values which led them to attend law school and whether they originated with their parents, grandparents, teachers, or other mentors.

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146 Peters, supra note 9, at 292.
147 Peters, supra note 9, at 290.
148 Id. at 310.
I build on those insights by sharing the research contained in this article to describe my rewinding and reframing process and my teaching springboard based on my cultural roots. I hope, as a result, to inform students about why public service is in my bones and perhaps in theirs as well.

Not only do students watch us, but they model us. Students mirror what they observe in our behavior with clients and others. In fact, “modeling,” it has been suggested, is a social work tool that belongs in the normative framework of TJ. As has been previously recounted, it is the observation of one’s parents or teachers when they exhibit an act of courage, compassion, or tolerance, not the words they use, that is “catching.”

As a law teacher and practitioner, my TJ cultural competence toolbox now includes modeling with intentionality. I know that I cannot merely tell my students to value public service work, but I must model how to put this value into action. I must handle pro bono cases myself; I must take the hard children’s cases that no one else wants to do; I must participate in Alternative Spring Break along with my students. As the parents and teachers of the rescuers in the Holocaust motivated them to

149 According to sociologist, Harvey Horstein, social models are powerful influences on helping behavior, as observers watch and form the desire to emulate the behavior seen. Harvey A. Hornstein, The Influence of Social Models on Helping, in ALTRUISM AND HELPING BEHAVIOR, supra note 74, at 29.
150 Brooks, supra note 53, at 353.
151 See discussion supra Part III.
behave altruistically, I, too, must practice what I preach if I am to foster and encourage public service among my students. By modeling some of values of the Holocaust altruists to my students and by recognizing the goals that I believe my students want to achieve, I can make the positive lessons of the Holocaust come alive to the Gen Y law student.

CONCLUSION

This article has addressed the use of TJ principles and techniques to reframe and rewind a very thought-provoking conference about lawlessness to achieve more balance in my own cultural competence and in the larger legal pedagogy. It has illuminated a flip side to the lawlessness of the Holocaust and has portrayed the deeds and motivations of the altruists as a highly effective teaching tool for Gen Y law students. Gen Y law students, like the rescuers, have a social/moral conscience, desire to do good, are individualistic and anti-authoritarian. Most importantly, they look to their parents and teachers for leadership by example.

Additionally, this article has made inroads into the global and macroanalytic application of TJ principles and techniques. It has infused the teaching of public service values to Gen Y law students with a TJ framework that incorporates less commonly referenced tools which also fit under the TJ umbrella, such as teaching with intentionality, teaching through modeling behavior, and developing cross-cultural competence.
The TJ principles and techniques discussed here have broader implications for law school teaching, not only in the clinical setting, but in the more traditional classroom. The example of civil rights or disability law comes to mind. These are subjects suitable for the rewound and reframed approach I have described here because research shows similarities between the attributes of civil rights workers in the 1970s and the Holocaust altruists. These classes might be taught not only by the study of rights and remedies for wrongs committed against individuals or groups. The professor might enlighten students about the courage of the lawsuit plaintiffs, their motivations, and their values. The professor might also inform students about the service ethic of the plaintiff’s lawyers. Civil rights and remedies can be easily rewound and reframed to focus on therapeutic outcomes of laws, legal processes, and legal systems.

So, too, might we more effectively teach professional responsibility by teaching with intentionality and ourselves modeling a public service ethic. Professor Berenson argues that teaching the Code of Professional Responsibility is the lens through which public services values might be instilled. Professor Wegner suggests that curriculum reform is necessary to accomplish this result. Professors Hartley and Petrucci believe that the infusion of cross-cultural competence throughout the curriculum enable

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152 See Rosenhan, supra note 101.
153 Berenson, supra note 126, at 52.
154 Wegner, supra note 64, at 867.
students to move from self-awareness to action. These approaches and many others have merit. For me, however, it is “sprawuj się,” the trail laid out by example by my parents and grandparents, that offers me my clearest path and may offer my students their truest direction as well.

\footnote{Hartley & Petrucci, supra note 11, at 179.}