Growing Pains: The Integration vs. Specialization Question For Therapeutic Jurisprudence And Other Comprehensive Law Approaches

Susan Daicoff, Arizona Summit Law School
GROWING PAINS: THE INTEGRATION VS. SPECIALIZATION QUESTION FOR THERAPEUTIC JURISPRUDENCE AND OTHER COMPREHENSIVE LAW APPROACHES

Susan Daicoff*

INTRODUCTION

Therapeutic jurisprudence is by now well-established as a force to be reckoned with in the law. No longer relegated to a law-and-psychology movement, or to an approach relevant only

* Professor of Law, Florida Coastal School of Law. The author gratefully acknowledges the unfailing encouragement and assistance of Professors David B. Wexler and Bruce J. Winick, the “fathers” of therapeutic jurisprudence, over the last decade, the excellent research assistance of Jennifer Kerman, Adriann S. Garland, and the overall support of Holly Bolinger and Kevin Emmett Dunn, in the preparation of this Article.

to mental disability law, it has established its efficacy in a variety of areas, including criminal law, family law, employment law, estate planning, immigration law, corporate planning, health law, and general civil disputes. Furthermore, its success heralds the growth of other, emerging movements in the law, such as collaborative law, restorative justice, and other approaches. Thomas Scheff has called these emerging disciplines “vectors.” These vectors comprise an overall movement towards law as a healing profession, which I have called a “comprehensive law movement.”

This movement, with therapeutic jurisprudence perhaps at its head, is no longer in its infancy. It may be in more of an “adolescent” phase, complete with growing pains and experimental adjustments appropriate to this awkward stage. As such, it now faces many important questions, such as the application of ethics rules to some of its more innovative dispute resolution techniques, the efficacy of some of its methods (such as drug treatment courts), and various other critiques.


5. See, e.g., Symposium, What Does the Future Hold For Drug Courts?, 29 FORDHAM URB. L. J. 1858, 1890 (2002) (presenting Deborah P. Small’s argument that drug treatment courts “cherry-pick” their participants and thereby ensure a high success and low recidivism rate).

One of these significant questions is the topic of this Article: Should therapeutic jurisprudence, and the other vectors of the comprehensive law movement, be integrated into the legal profession generally, or should they remain separate and distinct approaches to law, lawyering, and adjudication? In other words, should all lawyers and judges learn to practice therapeutic jurisprudence, and apply it in appropriate cases, or should it be a separate and distinct discipline, practiced by only specially-trained individuals in the legal profession?

The history and definition of therapeutic jurisprudence and the comprehensive law movement will be briefly discussed, and the current status of training in these movements will be explored. The advantages and disadvantages of integration versus specialization will be debated. Finally, various obstacles to the growth of the movements will be discussed.

I. THERAPUTIC JURISPRUDENCE AND THE COMPREHENSIVE LAW MOVEMENT

Since 1990, a number of similar movements, disciplines, or "vectors" have simultaneously and independently emerged, in disparate fields. These include: preventive law, therapeutic jurisprudence, procedural justice, holistic justice, restorative justice, transformative mediation, collaborative law, creative problem solving, and problem solving courts—including mental health courts, drug treatment courts, unified family courts, and other specialized, interdisciplinary courts.7

The impetus for the growth of these vectors has been tripartite dissatisfaction: (1) social dissatisfaction with law, lawyers, and the legal system; (2) lawyers' and judges' dissatisfaction with their work—and psychic distress; and (3) clients' dissatisfaction with lawyers and the legal system.8 In collaborative law occurred more than a decade earlier between Pauline H. Tesler, The Believing Game, the Doubting Game, and Collaborative Law: A Reply to Penelope Bryan, 5 PSYCHOL. PUB. POL'Y & L. 1018 (1999), and Penelope E. Bryan, "Collaborative Divorce:" Meaningful Reform or Another Quick Fix?, 5 PSYCHOL. PUB. POL'Y & L. 1001 (1999).

7. Daicoff, supra note 3, at 1-3 (arguing that all of these "vectors" converge into one movement, the "comprehensive law movement"). A full description of each of the vectors is outside the scope of this Article. For a more complete description and example of each vector, see id. at 10-35.

response, lawyers\(^9\) and judges\(^10\) began to imagine—and attempt to develop—more satisfactory ways of lawyering and resolving criminal and civil matters. At the same time, certain philosophical shifts in thinking may also have spurred the development of these vectors. For example, society has begun to recognize the value of global interdependence, which translates into greater human interdependence and community,\(^11\) as well as the importance of matters such as forgiveness and apology in conflict resolution.\(^12\)

### A. Two Common Characteristics

Professor Bruce J. Winick, one of the founders of therapeutic jurisprudence, explains the relationship between these movements with an analogy to members of a family: The casual observer can detect the family resemblances, but each has his or her own individual, unique qualities. No two are just alike.

Many share some common features with one or two other vectors, but all share two common characteristics. They all explicitly: (1) seek to optimize human wellbeing in legal matters, (2) ...
whether that wellbeing is defined as psychological functioning, harmony, health, reconciliation, or moral growth; and (2) focus on more than legal rights, so they include the individual’s values, beliefs, morals, ethics, needs, resources, goals, relationships, communities, psychological state of mind, and other concerns in the analysis of how to approach the legal matter at hand. Several of the “vectors” also are collaborative, nonlitigative, nonhierarchical, therapeutic, interdisciplinary, or explicitly consonant with the lawyer’s morals, but not all share these features.

B. Organizational Chart of the Movement

Professor David B. Wexler, another of the founders of therapeutic jurisprudence, has explained that some of the vectors function as “lenses” through which one might view a legal matter or problem, while other vectors provide “processes” for actual resolution of legal matters or disputes. For example, preventive law (PL), therapeutic jurisprudence (TJ), holistic justice (HJ), procedural justice (PJ), and creative problem solving (CPS) are all broad, theoretical lenses through which one might view or analyze a client’s legal problem. Collaborative law (CL), transformative mediation (TM), restorative justice (RJ), and problem solving courts (PSCs) are all processes by which disputes can be resolved, often outside the traditional court process.

The comprehensive law movement is an important addition to the lawyer’s “toolkit,” since before, the lawyer’s only lens was a binary, win/lose, adversarial/litigation view. The lawyer’s tools were limited to litigation, negotiation and settlement, arbitration, mediation, and private trials. The comprehensive law movement greatly enhances the lawyer’s options for ways to view, analyze, and resolve the client’s problem.

For example, suppose a corporate client comes to see a lawyer because the client has a disgruntled employee who is on the brink of suing her employer. Formerly, the lawyer could advise the client to do nothing or to sue and then either settle, arbitrate, mediate, or proceed to trial. Now the lawyer can, with

the client, view the matter a number of ways: preventively (are there other disgruntled employees, should the client revamp his personnel procedures); holistically (what is the relationship between the client and his employee, how do the client's values relate to the matter); therapeutically (what is best for the client's wellbeing, does he need some assertiveness training or human relations training); from a procedural justice standpoint (does the employee need a “voice” and to participate in the resolution of the matter); or via creative problem solving (should the lawyer and client brainstorm options, or “think outside the box”). The lawyer can also offer more options to the client for resolution: (1) collaborative law, where each client has a separate lawyer and all four parties meet in a series of four-ways to resolve the dispute, and the lawyers withdraw if the process breaks down and the parties go to court; or (2) transformative mediation, where the mediator focuses explicitly on the moral growth of the parties, through encouraging them to find their own solutions and to stand in each other’s shoes (empathy), rather than on finding a solution to the dispute.14

II. TRAINING IN THERAPUTIC JURISPRUDENCE AND THE COMPREHENSIVE LAW VECTORS

A number of law school courses15 and lawyer training programs16 have developed to teach the vectors of the comprehensive law movement. As these courses and programs have emerged, a set of basic competencies has also emerged for one to practice law and adjudicate in a healing fashion. The author has grouped these competencies into four categories: (1)

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15. See Marjorie A. Silver, Emotional Competence and the Lawyer’s Journey, in THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION 5, 51 n.212 (2007) (asserting that there are eighteen law schools that offer such courses).

16. See, for example, the collaborative law training programs offered by the International Academy of Collaborative Professionals, www.collaborative practice.com (last visited February 23, 2008).
intrapersonal skills, (2) interpersonal skills, (3) decision-making skills, and (4) dispute resolution and judging skills.

A. Intrapersonal Skills

To practice law comprehensively, the lawyer or judge must first have excellent intrapersonal or self-awareness skills. This is the ability to inventory one’s own emotions, motivations, drives, impulses, biases, and behavior, and make adjustments. Marjorie A. Silver has written at length about the phenomenon of countertransference in the lawyer-client relationship and how important it is for the lawyer to be aware of and manage his or her automatic responses to the client, whether overly positive or negative. The lawyer or judge also must be able to manage the interpersonal “boundaries” with the client or litigant. This means knowing “where I stop and you begin,” or what issues are “mine to deal with and which are yours.” In other words, which decisions are the lawyer’s and which are the client’s, which obligations are the lawyer’s and which are the client’s, and then not muddying or crossing those lines. Linda G. Mills also writes about the use of appropriate self-disclosure by the lawyer, in order to create trust and a bond in the lawyer-client relationship. While it is a delicate balance to use this appropriately, it can be useful in lawyering comprehensively, where an open, trusting lawyer-client relationship is needed, often in cases involving emotionally laden issues.

B. Interpersonal Skills

The comprehensive lawyer or judge also needs excellent interpersonal skills, including the ability to communicate well with other lawyers, judges, and clients, the ability to listen, and

17. See Silver, supra note 15, at 17-28; see also Marjorie A. Silver, Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship, in PTJ, supra note 1, at 357, 377-78 (defining countertransference in the lawyer-client context).


the ability to put into place processes that will give others
"procedural justice." Emeritus Dean Dauer writes about
listening to clients' emotions as "more than 'noise' to be gotten
through." Procedural justice informs the lawyer that litigants
need "voice," for those in positions of authority to treat them
with respect and dignity, and to have a chance to participate in
decision-making, if possible, to maximize their "buy-in" to the
decision and compliance therewith. An appreciation of the
value of apology in resolving legal disputes and the ability to
foster opportunities for apologies to emerge are also important
skills. Finally, training in problem solving skills is useful.
Creative problem solving is valuable because it provides a
variety of methods by which the participant can acquire these
skills.

C. Decision-Making Skills

The comprehensive lawyer's decision-making may also be
more extensive than the traditional lawyer's. When deciding
how to accomplish the client's goals, the lawyer may take into
account and identify "psycho-legal soft spots" or places where
psychology and law intersect to create an opportunity for, or
need for preventive action by, the lawyer. The lawyer may

L. REV. 213, 221-23 (2006) (discussing the importance of communicating with
clients).

20. See Tom R. Tyler, The Psychological Consequences of Judicial
Procedures: Implications for Civil Commitment Hearings, in KEY, supra note
1, at 9-12.

21. See Edward A. Dauer, Reflections on Therapeutic Jurisprudence,
Creative Problem Solving, and Clinical Education in the Transactional

22. See Tyler, supra note 20, at 9-12 (calling these concepts "participation,"
"dignity," and "trust"); see also Bruce J. Winick, Redefining the Role of the
Criminal Defense Lawyer at Plea Bargaining and Sentencing: A Therapeutic
Jurisprudence/Preventive Law Model, in PTJ, supra note 1, at 245, 280-82
(discussing enhancing compliance).

23. See supra note 12 and accompanying text; see also William Schma,
Diane Kjervik, Carrie Petrucci, & Charity Scott, Therapeutic Jurisprudence:
Using The Law To Improve The Public's Health, 33 J.L. MED. & ETHICS 59
(2005).

24. See Janeen Kerper, Creative Problem Solving vs. The Case Method: A
Marvelous Adventure in Which Winnie-The-Pooh Meets Mrs. Palsgraf, 34
problem solving).

25. Cf. Stolle et al. 1997, supra note 1, at 18-21, 42-43 (proposing the
integration of therapeutic jurisprudence and preventive law and defining the
employ an ethic of care, rehabilitative approach, or interdisciplinary focus in criminal cases. For example, a criminal lawyer might strategize about the value of a confession in a criminal case, or a judge might utilize procedural justice and treatment compliance concepts in planning a sentencing process so that a defendant is more likely to comply with the court's order.

D. Dispute Resolution and Judging Skills

The comprehensive lawyer's toolkit is larger. In addition to traditional approaches, it contains the additional "lenses" and "processes" of the movement. For example, disputes might be resolved via the restorative justice models of a "circle process," where all involved parties in the community meet and each is given an opportunity to speak about how the event affected him or her and then reach consensus on what should be done.


30. These are: collaborative law, transformative mediation, restorative justice, problem solving courts, traditional litigation, and existing dispute resolution processes. Daicoff, supra note 3, at 10, 24-33.

31. Circle process is one form of dispute resolution sometimes utilized in restorative justice processes. See Gordon Bazemore & Mark Umbrecht, A

559
Many other, nonlitigative solutions to legal disputes are afforded by the vectors of the comprehensive law movement. Simply adopting a therapeutic approach to traditional dispute resolution processes, however, can require new skills and behaviors from the lawyer or judge.

Finally, judges may require training in order to adjudicate and function in new ways, whether in traditional courts or in problem solving courts, where their roles are quite different from those of traditional courts. These new judging skills may include interdisciplinary competence, collaboration, and the ability to mete out “tough love.” This approach has been described as judging with an interdisciplinary, problem-solving, collaborative, bold, engaged, and action-oriented approach, instead of a more traditional one of restraint, disinterest, and modesty.

Whereas training in therapeutic jurisprudence and the other comprehensive law approaches might have been initially limited to didactically learning the intellectual ideas underpinning the disciplines, the movements have now developed to the point that an integrated approach to training in this way of practicing and adjudicating law is possible. A phased program of skills acquisition, including role-playing and simulations, progressing through the four phases outlined above, is now contemplated and, in some law schools, underway.


33. Id. at 96.

34. Id. at 82 (citing MARY ANN GLENDON, A NATION UNDER LAWYERS 152 (1994)); see also Schma et al., supra note 23, at 60 (describing the role of the judge in a problem-solving court as a hands-on problem solver).

35. The author conceptualizes teaching these skills in these four phases; however, Silver, supra note 15, at 51, notes that eighteen U.S. law schools offer courses devoted to a more therapeutic approach to the practice of law.

36. The author’s course, Comprehensive Law Practice, at Florida Coastal School of Law explicitly does this. Professor Bruce J. Winick’s course, New
III. ADOLESCENT AWKWARDNESS: ISSUES FACING THERAPEUTIC JURISPRUDENCE AND THE COMPREHENSIVE LAW MOVEMENT

First they ignore you, then they laugh at you, then they fight you, then you win. – Mahatma Gandhi

Every truth passes through three stages before it is recognized. In the first it is ridiculed, in the second it is opposed, in the third it is regarded as self-evident. – Arthur Schopenhauer

Therapeutic jurisprudence and other comprehensive law approaches appear to have passed through inception and are now experiencing resistance, perhaps moving towards acceptance. Achieving this progression requires thoughtful decisions about integration, specialization, and attention to the best ways to overcome a variety of obstacles to its growth.

A. Resistance

The fact that therapeutic jurisprudence and other comprehensive law approaches are garnering criticism may be a positive development. If we believe the above quotes, resistance to new ideas is simply one of the developmental phases that occur when greater change is taking place. Not only is it to be expected, but it is a sign of growth and progression and a penultimate stage before the new ideas become generally accepted.37 In the analogy of this Article, it is commensurate with “adolescence,” and accompanies experimentation and occasional adjustments and realignments resulting from rapid growth.

B. Integration v. Specialization

However, one issue that faces therapeutic jurisprudence and the other vectors of the comprehensive law movement is whether or not all lawyers should be trained in these approaches.

Directions in Lawyering, at the University of Miami School of Law, may also provide this training.

37. Note that the federal courts echoed a recognition of a period of less-than-general acceptance, which often precedes general acceptance, of new ideas, in Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923) (requiring that new scientific ideas be “generally accepted” before they are admissible in court). But see Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) (replacing the Frye test).
(I would call this an “integration” model) or whether only a select few lawyers should attempt to practice law in this way (I would call this a “specialization” model).

1. Integration

In an integrated model, all lawyers and judges would receive training in therapeutic jurisprudence and in all of the vectors of the comprehensive law movement. This training would exist alongside traditional legal training. In practice, each client or case presented would be analyzed according to the various lenses available: traditional/adversarial/win-lose, dispute resolution/win-win, therapeutic jurisprudence, procedural justice, creative problem solving, holistic justice, preventive law, or some other lens (such as a religious or spiritual lens). An approach or combination of approaches would then be chosen. In a legal matter, the lawyer and client would make this choice together, based on the client’s choice, after an open discussion between the lawyer and client. In adjudication, the judge would make a choice, depending on what is appropriate for the particular case at hand. For example, a criminal justice attorney might decide to be a traditional adversarial defense attorney, a therapeutic attorney, or a restorative justice participant.

2. Specialization

In a specialized system, only those lawyers and judges who were interested in comprehensive law approaches would receive training in, practice, and apply them. Lawyers would specialize in areas such as preventive law, collaborative law, or transformative mediation, for example. Law firms would have “comprehensive” departments, alongside existing litigation and transactional departments. Boutique law firms would specialize in comprehensive law approaches, such as holistic justice, as

38. American Bar Association Model Rule of Professional Conduct 1.2 clarifies that the client determines the ends of legal representation.

39. American Bar Association Model Rule of Professional Conduct 2.1 requires the lawyer to “exercise independent professional judgment” and “render candid advice,” which may include “other considerations such as moral, economic, social, and political factors, that may be relevant to the client’s situation” including “more . . . than strictly legal questions.” MODEL RULES OF PROF'L CONDUCT R. 2.1, cmt. 3. Comment 4 to ABA Model Rule 2.1 also clarifies that the lawyer should know when to refer to an appropriate nonlawyer professional, such as one in the mental health professions.
does William Van Zyverden of Vermont,\textsuperscript{40} or collaborative law, as does David Hoffman's BostonLawCollaborative firm.\textsuperscript{41} Clients would learn to make choices about whether or not to hire a comprehensive lawyer or a traditional, adversarial lawyer, for their case, or perhaps lawyers would assist clients in determining which type of lawyer to choose, in the initial interviews. Law schools would teach comprehensive law approaches only in upper-level elective courses and only law students interested in alternative ways of practicing and adjudicating law would be exposed to them.\textsuperscript{42} The comprehensive law movement, and its vectors, would continue to develop in a parallel fashion to traditional law.

3. Hybrid

Another possibility is a hybrid approach, combining both the integrated option and the specialized option. All lawyers and judges would be trained in both comprehensive and traditional lawyering and judging, but then perhaps might

\textsuperscript{40} Attorney William Van Zyverden founded the Holistic Justice Center and the International Alliance of Holistic Lawyers; the IAHL's website is http://iahl.org (last visited February 19, 2008).

\textsuperscript{41} The firm's website is http://bostonlawcollaborative.com (last visited February 19, 2008).

\textsuperscript{42} The author teaches one such course at Florida Coastal School of Law, "Comprehensive Law Practice," since 2000. Professor Bruce Winick teaches a similar course at the University of Miami and Professor Stella Rabaut teaches a similar course at Seattle University. Several other courses and clinical programs around the United States focus on one vector, such as therapeutic jurisprudence or restorative justice. For example, Professor David Wexler teaches a course at the University of Arizona on therapeutic jurisprudence, Professor Howard Vogel has taught restorative justice at Hamline University, and Judge Greg Baker directs a therapeutic jurisprudence clinic at William and Mary. Additionally, many U.S. law schools teach stand-alone courses on restorative justice, including Hamline and the University of Minnesota. The University of Wisconsin-Madison has a victim-offender program; Marquette University Law School has a Restorative Justice Initiative Program under former Wisconsin Supreme Court Justice Janine Geske's direction, including two restorative justice courses titled "Forgiveness and Healing" and "Peacemaking and Spirituality" in addition to the basic "Restorative Justice" course and a restorative justice clinic; Georgetown University Law School has a course titled "Restorative Justice In International Human Rights: A New Paradigm"; The University of Maryland has a course titled "Reparations, Reconciliation and Restorative Justice Seminar: Legal Theory and Practice"; William & Mary has a course on retributive and restorative justice titled "Post-Conflict Justice and the Rule of Law"; and there is also a "Restorative Justice" course listed for the University of Denver College of Law.
choose an area in which to focus. Some lawyers could specialize in one approach or the other and some lawyers could practice in both ways, depending upon the needs of the client. To some extent, this is what appears to be happening in the legal profession at the time of this writing. What will develop in the future is unclear. It is also unclear whether the proponents of the comprehensive law movement can and should be conscious and proactive about the direction of its growth: towards integration, specialization, or a hybrid.

4. Advantages and Disadvantages

The following table summarizes some of the advantages and disadvantages of integrated and parallel development.

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<td>Universal</td>
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<td>Clients have equal access to all services</td>
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<td>Disadvantages</td>
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For example, therapeutic jurisprudence and the other vectors of the comprehensive law movement might become more well-known and accessible to society and clients if they were “mainstreamed.” It is more likely that the right clients and cases would receive a comprehensive law approach, rather than a traditional adversarial approach, in an integrated system. Clients would not be required to know they needed a comprehensive lawyer and then find one; lawyers would perform this triage function. However, there are many obstacles to integration, some of which are explored in more detail below. Lawyers, judges, and law professors would have to be retrained in comprehensive law approaches, legal education would have to
substantially change to incorporate comprehensive law approaches, and the legal profession as a whole would have to embrace the relevance of comprehensive law.

Arguably, integrating comprehensive law approaches into the legal profession for all attorneys would raise the legal malpractice standard, so that any attorney who did not have the ability to practice law “comprehensively” would have to refer clients who needed that approach to another lawyer, or face malpractice liability. Lawyers would also have the duty to recognize when a client or case required a comprehensive rather than a traditional treatment. The specter of increased malpractice liability alone is likely to chill integration or mainstreaming of comprehensive law into the legal profession.

Finally, there is the danger of misuse and paternalism exercised by lawyers and judges who believe they are practicing comprehensive law, or therapeutic jurisprudence, but are not sufficiently experienced, trained, or self-aware to know when they are overstepping the bounds of the discipline. For example, it is possible to insist on “rehabilitation” of a criminal defendant when it is not appropriate or desired by the defendant. It is possible to recommend collaborative law for a divorce client, because the lawyer believes in collaborative law and enjoys practicing in that fashion, but where the client’s case is not suitable for a collaborative law approach.

Specialization, on the other hand, is likely to result in better delivery of therapeutic jurisprudence and comprehensive legal services to clients. Lawyers and judges who specialize and hold themselves out as having special training and expertise in comprehensive law approaches may be less likely to misuse the vectors. They are also less likely to display paternalism or coercion, if they keep abreast of the current literature and growing body of knowledge about comprehensive law, as it explicitly acknowledges these dangers and warns practitioners to be self-vigilant on this front.43

However, there are disadvantages to specialization. Clients and society may not have equal access to comprehensive law approaches if they are first required to identify the need for a

43. See Winick & Wexler, supra note 26, at 607-08 (noting that therapeutic jurisprudence emphasizes the value of self-determination and acknowledges that paternalism can be antitherapeutic).
nontraditional lawyer or court, and second, locate a nontraditional lawyer or court. Individuals with legal problems are often distraught and stressed by the legal problem itself and their ability to carefully select a comprehensive lawyer rather than a traditional lawyer may be hampered by the exigencies of the situation and this stress. Finally, there is a danger that comprehensive law approaches may be economically marginalized, if too much specialization occurs. This means that reduced fees might be charged for these services, compared to traditional adversarial lawyering, if they are seen as somehow “softer” and “easier” for the lawyer and thus less valuable. There is no evidence that this is occurring, however, as lawyers simply appear to be charging legal fees at their hourly rate for their services, regardless of approach.44

While the integration/specialization question remains open, the hybrid approach appears to be most likely, where most lawyers and judges are aware of the various comprehensive law vectors, but only a few choose to practice or adjudicate in those ways. Regardless of the manner of its growth, it is likely that therapeutic jurisprudence, and comprehensive law approaches in general, will continue to grow. The remainder of this Article will explore some potential obstacles to its growth and suggest some ways in which those obstacles might be overcome.

C. Obstacles to Growth

There are at least four sources of challenge for therapeutic jurisprudence and the other vectors of the comprehensive law movement. The challenges come from legal education, the current climate of private law firms, lawyers’ and judges’ perceptions of the legal ethics code, and some personality attributes of attorneys.

1. The Law School Climate

Legal education may unwittingly steer lawyers away from focusing on the values prominent in a comprehensive or therapeutic law practice. For example, legal education has empirically been shown to foster an emphasis on extrinsic rewards, such as grades, awards, and the esteem of others, rather

44. See TESLER & THOMPSON, supra note 14, at 56, 265 (indicating that collaborative lawyers are paid at their hourly rates for their services).
than intrinsic satisfactions such as community, connectedness, service, or making a difference. Comprehensive law and therapeutic jurisprudence, in contrast, emphasize intrinsic values, such as healing individuals, improving their wellbeing or relationships, and restoring harmony to communities. Krieger and Sheldon also empirically demonstrated that, to the extent that law students shifted from an intrinsic value system to an external value system, their own wellbeing decreased, so it is not necessarily adaptive to the law that legal education fosters this focus. Legal education may need to learn how to help students preserve their intrinsic value system during law school, in order to maintain their own psychological well-being. This is likely to assist them in preparing to practice law comprehensively.

Legal education also touts that it trains individuals to "think like a lawyer." This often means sifting out only the legally relevant facts in a case. To the extent that this means ignoring the emotions, relationships, psychological dynamics, needs, morals, and mental wellbeing of the individuals involved in a particular legal matter, it tends to work against excellent comprehensive law practice. Therefore, some retraining often needs to occur, to assist lawyers in learning how to integrate sensitivity to these factors into their overall decision-making skills, which include an ability to sort out what is legally relevant from what is not.

45. See Kennon M. Sheldon & Lawrence S. Krieger, Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well Being, 22 BEHAV. SCI. LAW. 261, 280-81 (2004) (comparing the emotional wellbeing of law students at Florida State University to that of advanced undergraduate students at the University of Missouri and finding that law students who endorsed intrinsic values tended to shift to value external rewards, during law school).
46. See Daicoff, supra note 3, at 56-57.
47. See Sheldon & Krieger, supra note 45.
48. See Elizabeth Mertz, The Language of Law School: Learning to "Think Like a Lawyer" (Oxford Univ. Press, Inc. 2007) (reporting the results of an empirical study of students in eight law schools); see generally Kurt M. Saunders & Linda Levine, Learning to Think Like a Lawyer, 29 U.S.F. L. REV. 121 (1994) (reporting the results of their empirical study of the intellectual transformation that occurs in law school).
2. The Law Firm Climate

The current climate of private law firms may work against comprehensive law approaches, with its emphasis on billable hours and collected legal fees. It does not tend to encourage lawyers to experiment with new forms of lawyering without proven, lucrative results.

3. The Ethics Code

One of the most controversial issues has been the legal ethics codes. Lawyers’ and judges’ perceptions of the legal ethics code are often an obstacle to the growth of comprehensive law approaches. There is a perception that a duty of zealous advocacy prohibits lawyers from suggesting any resolution to the client’s case that is not what the client explicitly says they want. For example, suppose a criminal defense client comes to a lawyer for her third driving-under-the-influence charge. She says, “Get me off. I want the lightest sentence possible. I did it but I can’t afford jail time because I have two children to take care of.” If zealous advocacy means that the lawyer unquestioningly accepts the client’s directions as to the ends of the legal representation and proceeds forward, then it ignores the ethics code’s blessing of the lawyer’s role as advisor. The lawyer and the client may miss out on a significant opportunity for this client’s life to change. Suppose the client is a drug-dependent mother. She qualifies for either drug dependency court (a specialized, diversionary, problem-solving court focusing on rehabilitation) or a general therapeutic jurisprudence approach utilizing drug rehabilitation treatment while awaiting traditional court sentencing on the criminal charge. If, through gentle exploration by the lawyer, or through referral of the client to a mental health counselor, the lawyer and the client together determine that the client really wants to

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50. See MODEL RULES OF PROF'L CONDUCT, preamble (2002); see also id. R. 1.1, 1.3, 2.1 (allowing lawyer to bring extralegal factors into the legal representation in his or her role as advisor).
change and kick her drug habit, then the comprehensive or therapeutically-oriented lawyer can suggest these options.

When done properly, without paternalism and coercion of the client, but with sensitivity and empathy for the client, excellent results for the client can occur. The client could successfully complete rehabilitation, become drug-free, and go on to mother her children in a much better way. This is a dramatic example, but similar opportunities exist in many cases in the lawyer's office. Often, a lawyer is the only professional that some people will ever see. The ethics code clearly encourages both the lawyer as zealous advocate and the lawyer as advisor, yet sometimes the latter role is overlooked.

However, legal professionals must be mindful of coercion and conflicts of interest. Lawyers and judges must be sure that they are not so enamored of therapeutic jurisprudence and other comprehensive law approaches that they push their own agenda ahead of the client's, or that there is a conflict of interest under the ethics code requiring withdrawal.51

Additionally, there is controversy over the feature of collaborative law requiring the attorneys to withdraw if the collaborative process breaks down and the case proceeds to court. Some states have expressly permitted this limitation on the scope of representation and one has expressly disallowed it.52 The American Bar Association appears to have resolved the controversy for the moment, finding the limitation acceptable.53 The existence of this controversy, however, is further evidence

51. See id. R. 1.7(a)(2) (stating a concurrent conflict of interest can exist as a result of a personal value of the lawyer).

52. See Colorado Ethics Opinion 115, supra note 4, at 1 (finding this feature of collaborative law per se unethical while noting that New Jersey, Texas, and Florida have found collaborative law permissible under their respective ethics codes).


When a client has given informed consent to a representation limited to collaborative negotion toward settlement, the lawyer's agreement to withdraw if the collaboration fails is not an agreement that impairs her ability to represent the client, but rather is consistent with the client's limited goals for the representation. . . . Thus, there is no basis to conclude that the lawyer's representation of the client will be materially limited by the lawyer's obligation to withdraw . . . [and] no conflict arises . . .

Id. at 4-5.
of the adolescence of the comprehensive law movement, complete with arguments, awkwardness, and conflict. These issues may become more settled when it reaches a later, more mature phase of its development.

4. The ‘‘Lawyer Personality’’

Finally, the personality attributes of many attorneys in the legal profession today may impede the rapid growth of therapeutic jurisprudence and the comprehensive law movement generally, as lawyers tend to deemphasize interpersonal relationships and emotions in their decision making. As a group, they are overwhelmingly ‘‘Thinkers’’ on the Myers-Briggs Type Indicator, a popular personality test, as compared to ‘‘Feelers,’’ meaning that they tend to value logic, analysis, rights, duties, and obligations, over interpersonal harmony, mercy, or harm to others, when making decisions.54 This suggests that many lawyers and judges may not naturally be attuned to matters relevant to comprehensive law approaches.

In addition, empirical evidence suggests that many law students scored as internally conflicted, nervous, awkward, suspicious, aloof, and cautious, even though they also scored as tending to be seen as aggressive, socially ascendant, ebullient, and having leadership potential, suggesting that they projected the appearance of great self-confidence despite these inner feelings.55 These qualities explain why a cerebral, left-brained


55. See Stephen Reich, California Psychological Inventory: Profile of a Sample of First-Year Law Students, 39 PSYCHOL. REP. 871, 871-74 (1976). They also scored as apologetic, self-defensive, constricted in thought and action, impulsive, dogmatic, moody, under-controlled, self-centered, and inhibited, while also being quick, spontaneous, self-seeking, persuasive, expressive, intelligent, sharp-witted, outspoken, and possessing self-confidence, suggesting
profession such as the law might have attracted them, but it also suggests that, as these individuals enter law practice, they may need some additional training in order to have excellent interpersonal competence and sensitivity. Many individuals in the legal profession may not naturally tend to have high competencies or interest in emotional or interpersonal matters, which may impede the growth of comprehensive law approaches.

D. Overcoming Obstacles to Integration

Various strategies may be employed to overcome each of the foregoing obstacles. Because therapeutic jurisprudence and the other vectors of the comprehensive law movement may be necessary to the continued vitality of the legal system, it is critical that these obstacles be overcome. Clients, society, judges, and lawyers are dissatisfied with the current legal system. The comprehensive law movement has emerged in part in response to calls for reform.56

It will be helpful to continue to collect and report outcome data on the results of comprehensive approaches, such as: the efficacy and recidivism rates of drug treatment courts, the rates of compliance with court orders when procedural justice concepts are utilized in the court process, and satisfaction data for clients when comprehensive approaches are used. This data can be used to adjust and refine comprehensive law institutions, such as collaborative law processes, drug treatment courts, mental health courts, unified family courts, using interdisciplinary approaches in legal work ("psycho-legal soft spots"), and others.

Continued exploration of the ethical issues involved in interdisciplinary law practice and in innovative dispute resolution processes will also refine and develop those practices and processes. Conflict over the ethical issues presented should

56. Stuart Webb created collaborative law in response to a need to change family law. See Webb & Ousky, supra note 9, at xiv-xv. Judge Peggy Hora noted that drug treatment courts can be much more rewarding for judges than the frustration of watching the same individuals cycle in and out of their courtrooms. Peggy Fulton Hora & William G. Schma, Therapeutic Jurisprudence, 82 JUDICATURE 9, 11 (1998).
eventually sharpen the edges of what is, and is not, appropriate for lawyers in a comprehensive law practice, which will be helpful guidance.

The public, the judiciary, and the legal profession as a whole need to be educated about the availability and efficacy of comprehensive law approaches, allowing informed choices. Those working in and researching the vectors of the comprehensive law movement may want to be conscious and explicit about their intentions for the growth of the movement, whether they believe it should be mainstreamed or parallel to traditional law.

Finally, and perhaps most importantly, therapeutic jurisprudence and the other comprehensive law vectors should be recast as simply “best lawyering practices,” excellent legal advising, or “leadership.” These approaches are useful and appropriate in many cases. It is simply good lawyering in many situations to approach the case from a comprehensive viewpoint, taking into account all the new knowledge, skills, and processes now available to lawyers and judges as a result of the growth of the movement over almost two decades now. While many lawyers may not choose to practice in this way, due to some of the obstacles noted above, they can still appreciate its relevance and perhaps employ a comprehensive lawyer in their firm to whom they can refer appropriate clients, much as transactional lawyers send their clients in litigation to the litigators in their firm. This recasting can help overcome resistance in the legal profession to comprehensive law approaches.

Interestingly, however, some of the obstacles explored above and this proposal, together, tend to suggest that a hybrid integration/specialization of the comprehensive law movement into the legal profession is most appropriate. Some of the obstacles suggest that, indeed, many lawyers may continue to choose to practice law traditionally. However, all lawyers can be made aware of comprehensive law approaches, just as all are aware of litigation—some can choose to do it (like litigation) as well as practice law more traditionally, while others can choose to refer those clients to a lawyer who specializes in a comprehensive form of practice.

What is important for proponents of therapeutic jurisprudence and comprehensive law, however, is that this choice of hybridization be made explicit, as the movement
grows. In this way, perhaps the dangers of both integration and specialization, such as misuse, paternalism and coercion by untrained legal personnel, lack of access to comprehensive services, and marginalization of comprehensive law approaches, can be openly discussed and avoided.

CONCLUSION

The future of the legal profession is encouraging. In the last two decades, the results of traditional criminal trials and the securities scandals cast doubt on the legal system and on lawyers generally. The promise of a better way of resolving legal matters and disputes exists. Therapeutic jurisprudence and the other comprehensive law approaches provide that promise. These movements are no longer in their infancy. Efforts are underway to integrate these disciplines into the legal profession as a whole, whether as integrated ideas or distinct specialties. These efforts are fraught with challenge, as is to be expected with change of any sort. Just as infants mature into adults, an awkward adolescent phase is to be expected. We can, however, be conscious of the challenges of this phase of the growth of the movement and address them openly and with thought. What is encouraging is that change, and growth, are occurring.