Teaching Students to be Healers: The Comprehensive Law Movement

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CHAPTER 6: TEACHING THE NEWLY ESSENTIAL KNOWLEDGE, SKILLS, AND VALUES IN A CHANGING WORLD

SECTION G. Problem-Solving and Conflict Resolution

Subsection 1. Teaching Students To Be Healers: The Comprehensive Law Movement

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1. Introduction

Noted experts on professional legal ethics and law professors argue that lawyers help people, just as doctors do, “if we are doing our jobs properly.” However, as evidenced by the crises in public opinion of lawyers and the legal system and in lawyers’ wellbeing, lawyers’ involvement is not always seen as helpful. Perhaps in response to this perception and also motivated by an intrinsic desire to help people (or, at least, do no harm), lawyers in the last twenty-five years have increasingly sought to develop ways of practicing and adjudicating law that are explicitly healing and positive in effect.

BEST PRACTICES did not report on this movement in detail, nor did it call for educating students about the extent of the change in the profession, but it did catalogue the extent to which lawyers were being called on to incorporate a more complete range of skills, to become problem solvers, and to demonstrate professionalism. Components of professionalism included a commitment to justice, honor, and integrity and sensitivity to diversity. This section paints a more vivid picture of some important developments in practice that have heightened these concepts and practices, and argues that it is an emerging best practice to educate and prepare students for this changing practice.

Some lawyers and judges began experimenting with ways to enhance the transformative potential of law, litigation, and dispute resolution, around 1990. These efforts have coalesced into an overall movement towards law as a healing profession. Specifically, these methods seek to heal or transform disputes, clients, communities, and society. The “vectors” of this movement include: therapeutic jurisprudence and the problem solving court movement, collaborative law, restorative justice, creative problem solving, transformative mediation, and related disciplines.

1 The reader for this section was C. Benjie Louis.
2 Ronald D. Rotunda & John S. Dzienkowski, Introduction § 1-7 The Public Image of Lawyers in RONALD D. ROTUNDA & JOHN S. DZIENKOWSKI, LEGAL ETHICS - THE LAWYER'S DESKBOOK ON PROFESSIONAL RESPONSIBILITY § 1-7 (2013-2014 ed.): “A friend … interjected, ‘People often want to be doctors so that they can help people.’ But lawyers help people too. Granted, unlike engineers, we construct no bridges. Unlike doctors, we mend no bones. Unlike architects, we design no buildings. Unlike artists, we paint no portraits. There is little that we do that the human hand can touch. But – if we are doing our jobs properly – we take on other people's burdens, we relieve stress, we pursue justice. We enable mankind to live a more peaceful and just life. We take the veneer of civilization and we make it a little thicker.” [Italics added.]
3 ROY STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007).
4 Id., text at notes 145-66, 212-17, 483-505.
5 Id., text at notes 239-60.
such as preventive law, procedural justice research, and holistic justice. Many names are used to refer to this movement, such as comprehensive, transformative, relationship-centered, non-adversarial, or integrative law. The movement sometimes integrates mindfulness, spiritual practices, leadership, or community transformation into legal practice.

2. The “Vectors” of the Comprehensive Law Movement

While distinguishable from each other, all of these vectors share two common goals that differentiate them from traditional approaches to law. First, all explicitly seek to improve parties’ wellbeing (or at least not worsen it) as the parties go through a legal matter, case, or problem. However, each vector may define wellbeing differently, for example, as psychological wellbeing, relational health, moral growth, or lack of hostility. Second, they all take into consideration more than legal rights, obligations, and duties in resolving legal matters. They take a “rights plus” approach, factoring in considerations such as relationships, morals, values, needs, goals, psychological dynamics, resources, beliefs, and communities, when assessing how to proceed to resolve the legal problem. While litigation may be the best choice for a client’s wellbeing and overall goals, such as in the case of a client for whom litigation is personally empowering, methods other than litigation are often utilized instead.

These approaches can be divided roughly into two groups: those that provide a lens through which legal problems are viewed (e.g., therapeutic, preventive, holistic) and those that provide innovative and nontraditional processes and mechanisms for resolving legal matters (e.g., collaborative law, restorative justice, problem solving courts, transformative mediation, etc.). The “lens” vectors also assist lawyers and judges to practice or adjudicate law in traditional legal arenas and settings with a healing approach. For example, therapeutic jurisprudence scholars

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7 **SUSAN L. BROOKS & ROBERT G. MADDEN, RELATIONSHIP-CENTERED LAWYERING: SOCIAL SCIENCE THEORY FOR TRANSFORMING LEGAL PRACTICE** (2010).
8 **MICHAEL KING, ARIE FRIEBERG, BECKY BATAGOL, & ROSS HYAMS, NON-ADVERSARIAL JUSTICE** (2009).
12 **DEBORAH L. RHODE & AMANDA K. PACKEL, LEADERSHIP, LAW, POLICY, AND MANAGEMENT** (2011) (exploring leadership skills for lawyers).
14 This term was coined by collaborative law pioneer and trainer Pauline H. Tesler in a personal conversation with the author around 1997. See http://lawtsf.com/attorneys/pauline-tesler/, archived at http://perma.cc/4LA8-JLPM.
have explored how to adopt a therapeutic jurisprudential approach when practicing law in traditional court settings. The “process” vectors can be thought of as “alternative” alternative dispute resolution (“AADR”) methods. These vectors seek to resolve legal disputes or lawsuits in forums and by means outside of traditional court or mediation processes, such as drug treatment courts, homeless courts, and restorative justice circles.

Brief descriptions of each vector are provided below:15

**Therapeutic jurisprudence** (“TJ”) is a well-known, longstanding, and broadly applied approach to law and judging that views rules of law, legal procedures, and roles of legal actors as social forces that produce therapeutic or anti-therapeutic consequences, whether or not intended, upon those involved. TJ seeks to identify those consequences and then optimize the law’s therapeutic consequences and minimize its anti-therapeutic consequences, without trumping legal rights. TJ has been applied in almost every area of law, including mental health law, family law, employment law, health law, elder law, appellate practice, policing, criminal law, criminal sentencing, litigation, and estate planning.16 It is perhaps most evident in the problem-solving courts.

**Procedural justice** refers to research findings that, in judicial processes, litigants' satisfaction with and perception of the fairness of the process depend more on (1) being treated with respect and dignity by those in authority, (2) being heard and having an opportunity to speak and participate, and (3) the trustworthiness of the authorities (including whether their reasons for their decisions are explained), than they do on the actual outcome (winning or losing) of the legal matter.17 These findings have influenced how lawyers and judges resolve legal matters. Specifically, legal personnel can enhance litigants’ satisfaction if they provide an opportunity for “voice,” treat litigants with respect, solicit input into decisions, and provide explanations for decisions.18

**Preventive law** is an approach to practicing law that, like preventive medicine, explicitly seeks to intervene in legal matters before disputes arise, to avoid litigation and other legal problems. It advocates proactive intervention and emphasizes the lawyer-client relationship, relationships in

15 These are difficult concepts to convey in a few sentences, so these brief descriptions are inadequate. The reader is encouraged to consult the original materials published on each vector. Substantial portions of this paper are taken from other works of the author, e.g., SUSAN SWAIM DAICOFF, COMPREHENSIVE LAW PRACTICE: LAW AS A HEALING PROFESSION, Ch.3 (2011).

16 See DENNIS P. STOLLE, DAVID B. WEXLER, & BRUCE J. WINICK, EDS., PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION (2000) (collecting many of the vectors in the same work, extending earlier efforts by Wexler & Winick). The founders of TJ are David B. Wexler, Professor of Law at University of Arizona and University of Puerto Rico, and Bruce Winick, Professor of Law at University of Miami. Its website is [http://www.law.arizona.edu/depts/upr-intj](http://www.law.arizona.edu/depts/upr-intj), archived at [http://perma.cc/KE9B-PD9](http://perma.cc/KE9B-PD9); it contains a listserve and an extensive bibliography.


general, and planning. For example, client affairs can be regularly audited for legal “soft spots” and careful planning can be done to avoid future legal problems.

The **problem solving court movement** refers to specialized, therapeutic jurisprudential, multidisciplinary “problem solving” courts focused on resolving the nonlegal issues underlying legal problems, instead of punishing defendants or assigning fault. They utilize the court process to resolve criminal cases in an informal, problem solving, collaborative, interdisciplinary, and rehabilitative way. Examples are drug treatment courts, mental health courts, domestic violence courts, homeless courts, veterans’ courts, and unified family courts. These courts emphasize rehabilitation and are usually structured quite differently than traditional courts. Drug treatment courts, for example, report impressive drops in recidivism.

**Holistic justice** is a grass-roots movement among practicing lawyers which takes a broad approach to law and seeks explicitly to integrate lawyers’ and clients’ moral values and beliefs into the resolution of legal matters.

**Creative problem solving** is an approach to lawyering that is explicitly humanistic, interdisciplinary, creative, and preventive. It seeks to prevent legal problems, if possible, and creatively solve those that exist. One creative problem solving center’s website explains that legal problems are increasingly more “human” and require a broader approach for their resolution.

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19 See, e.g., THOMAS D. BARTON, PREVENTIVE LAW & PROBLEM SOLVING (2009) (integrating TJ, CPS, and PL) and ROBERT M. HARDAWAY, PREVENTIVE LAW: MATERIALS AND NON ADVERSARIAL LEGAL PROCESS (1997) (the “textbook” for preventive law; now in its second edition). Its founder was the late Louis Brown and it is associated with Professor and Dean Emeritus Edward Dauer at the University of Denver College of Law. California Western School of Law houses the National Center for Preventive Law and it has its own textbook, reporter, and website: http://www.preventivelawyer.org/main/default.asp, archived at http://perma.cc/KH3L-S6EE.


21 Like holistic medicine, it takes a broader view of legal problems and possible solutions. It was formerly associated with the now-disbanded International Alliance of Holistic Lawyers, whose founder was practicing lawyer William Van Zyverden in Vermont.

Collaborative law is a nonlitigative, collaborative process employed mainly in family law, where the spouses and their partisan attorneys resolve the issues outside of court in a series of four-way conferences. The attorneys and parties agree to voluntary disclosure of information and the attorneys are contractually forbidden from representing their clients in court should the agreement process break down. Often, neutral (and partisan) financial, psychological, child, and vocational experts are an integral part of the conferencing; they provide perspective that assists the parties in their decision-making processes. Collaborative law has grown rapidly since its inception in 1990.

Restorative justice is an approach to criminal justice and criminal sentencing that views crime as a tear in the social fabric between community, victim, and offender. As a result, these are the three stakeholders who resolve crime, not through traditional criminal court, but through dialogue, conferencing, and restitution. Apology and forgiveness are often involved, but not required. Models vary from post-sentencing victim-offender mediation to sentencing done via large group community conferencing and can be an alternative diversion from criminal court or a stand-alone process independent of the criminal court process.

Transformative mediation views conflict as a destabilizing “crisis in human interaction” rather than a violation of rights or conflict of individual interests. Its approach to mediation seeks to transform the parties and increase their moral growth by having the mediator aim at two goals, having the parties: (1) regain their sense of strength and self-confidence (the “empowerment” shift) and (2) expand their responsiveness to each other (the “recognition” shift), much like empathy or the ability to stand in another’s shoes.

3. Examples of the Comprehensive Law Approaches in Action

Here are a few possible examples of applying some of the comprehensive law approaches:

Example 1. An indigent client owns a house but cannot live there because his roommate has successfully obtained a restraining order against him. The client is now homeless. The traditional legal move might be to begin a formal legal eviction proceeding. However, the comprehensive lawyer might employ listening and empathy and discover that the two roommates were longstanding friends; the client regrets the broken friendship. The lawyer marshals her best
creative problem-solving skills to phone the roommate and ask: “What would it take to put this friendship back together, lift the restraining order, and permit my client to move back into his house?” The call is costless and immediate; the eviction takes time and money (or, at least, a motion for a fee waiver). More than legal rights may be restored in this approach.

Example 2. A homeowner’s neighbor has sued her for damage done by her dogs to the neighbor’s house, alleging a breach of the subdivision’s covenants. The neighbor has also filed a criminal complaint against the homeowner for the dogs’ behavior and has begun regularly calling the authorities (code enforcement, homeowners’ association, etc.) to complain about various actions of the homeowner (outside lights, unmowed grass and weeds in yard, misplacement of garbage cans, etc.). In response, the homeowner successfully obtained an injunction restraining the neighbor from making further excessive civil or criminal complaints to the authorities about the homeowner’s actions. Both, therefore, have grievances against each other which have resulted in civil and criminal cases being filed. A traditional legal move might be to file an answer, move to dismiss the civil complaint, and aggressively defend the criminal citations (if any), denying all culpability. The comprehensive lawyer might, upon further exploration, discover that these neighbors have a long-standing feud between them that is being expressed in the courts. This lawyer might suggest a more effective means of resolving this feud than through litigation, which will not solve the underlying problem. As long as these two are neighbors, conflict is likely to continue, unsolved, without a more creative, relational, holistic approach to the “problem.” Collaborative law or transformative mediation might be helpful as more effective, concrete processes for resolving their conflict. A restorative justice perspective in the mediation might even afford them an opportunity for reconciliation, if appropriate.

Example 3. A business owner is contemplating filing for personal bankruptcy as well as the bankruptcy of his business. Perhaps his financial ruin was caused in part by the collapse of the economy and in part by poor business/personal budgeting, spending, incurring of debt, and financial planning. Perhaps he has an “Achilles heel” for going into business with friends and family members whose business acumen is poor. The transformative or TJ/preventive bankruptcy lawyer might view this legal representation as an opportunity to provide counseling for the client to change how he handles financial and business decisions, so that this situation does not recur in the future.

3. Conclusion

The comprehensive law approaches (or vectors) facilitate the work of lawyers seeking to positively impact, if not explicitly transform, disputes, clients, communities, and society. These vectors have grown substantially since 1990. Many are now so well known that a failure to advise a client of their availability may constitute malpractice; thus, they should be taught in law school courses. All practicing lawyers should be exposed to the wisdom of procedural justice,

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26 The lawyer may also need excellent “relational lawyering skills” such as empathy, ability to read others, and negotiating skills, in order to solve this problem.

27 As in the previous example, this lawyer might need good relational skills, such as careful listening skills, gentle and well-timed confrontive statements, excellent negotiation skills, and a good understanding of what nonlegal educational and coaching resources might be most helpful for this client.
therapeutic jurisprudence, creative problem solving, and preventive law, in order to maximize
client satisfaction with their legal services and optimize the outcomes of their clients’ cases.

These approaches may or may not seem new to many lawyers and judges. However, what may
be new is the identification of these approaches as distinct, identifiable, teachable, and learnable
competencies that should be explicitly included in law school courses. While initially law school
taught these disciplines only in separate elective courses, if at all, it now seems more appropriate
to include each vector in the appropriate substantive course.28 Family law courses should
include a module on collaborative law; criminal law courses should include a module on
restorative justice and problem solving courts; mediation courses should include a module on
transformative mediation; and interviewing and counseling courses, clinics, and externships
might include modules on therapeutic jurisprudence, preventive law, creative problem solving,
and procedural justice.29

As practice evolves and new approaches arise, the law school curriculum should reflect the
changes to prepare students both for the state of practice as it currently is, and for their role as
future agents of on-going change.

28 Arizona Summit Law School, Florida Coastal School of Law, the University of Miami, the University of Puerto
Rico, and the University of Arizona were among the first to offer courses on the vectors of the movement.
29 See Chapter 6, Section G, Subsection 2, Teaching Students To Be Problem-Solvers and Dispute-Resolvers below.