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## Constructing a Normative Framework for Therapeutic Jurisprudence Using Social Work Principles as a Model

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# CONSTRUCTING A NORMATIVE FRAMEWORK FOR THERAPEUTIC JURISPRUDENCE USING SOCIAL WORK PRINCIPLES AS A MODEL

*Robert G. Madden<sup>1</sup> & Raymie H. Wayne<sup>2</sup>*

In this article, the authors assert that Therapeutic Jurisprudence (“TJ”) is a perspective as well as a social movement in its infancy. If TJ is to continue to develop as a movement, however, it will need to adopt a normative framework to guide its legal reform agenda. The authors present the normative framework of the social work profession as an ideal foundation for TJ proponents to build upon. Specifically, the authors assert that the social work values of service, social justice, respecting the dignity and worth of all people, the importance of human relationships and integrity and competence, as operationalized through ecological theory, should be considered as a normative foundation for the TJ movement.

## I. INTRODUCTION

TJ, first introduced in 1987, has been coined a “field,”<sup>3</sup> a “perspective,”<sup>4</sup> a “concept,”<sup>5</sup> and a “movement.”<sup>6</sup> This paper asserts that TJ is a perspective as well as a social movement in its infancy. The main argument of the paper, however, is that for TJ to continue to develop as a movement, it will need to adopt a

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<sup>4</sup> ROBERT G. MADDEN & RAYMIE H. WAYNE, *SOCIAL WORK AND THE LAW: A THERAPEUTIC JURISPRUDENCE PERSPECTIVE* (in press) (transcript on file with author).

<sup>5</sup> Shirley S. Abrahamson, *The Appeal of Therapeutic Jurisprudence*, 24 SEATTLE U. L. REV. 223 (2000).

<sup>6</sup> David Finkelman & Thomas Grisso, *Therapeutic Jurisprudence: From Idea to Application*, 20 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 243, 245 (1994).

normative framework to guide its legal reform agenda. The normative framework of the social work profession is presented as an ideal foundation for TJ proponents to build upon.

## II. TJ: A REBEL WITHOUT A CAUSE

TJ is best described as both a legal perspective and a social movement. As a perspective, TJ examines the therapeutic and anti-therapeutic consequences that flow from legal rules, legal procedures, and legal actors.<sup>7</sup> TJ asks policy makers, judges, lawyers and other legal actors to examine the law's impact on the stakeholders of the legal process.<sup>8</sup> The only agenda created by the TJ perspective is that, when all other things are equal, the therapeutic outcomes should be maximized.<sup>9</sup> The TJ perspective serves to encourage public dialogue and outcome research.

Often included in discussions of TJ is the assertion that the law, consistent with justice, due process and other relevant normative values, can and should function as a therapeutic agent.<sup>10</sup> Consistent with the notion that TJ indicates a preference for how the law should function, law reform is identified as one of the perspective's goals. However, once goals are attributed to TJ, it is no longer just a perspective for viewing the legal world, but rather, it is a call to change the methodology for the practice of law. Whereas a perspective does not require action, a movement is active and has goals based on a statement about how things should be, i.e. a normative framework.

A normative framework states how things ought to be. It serves as a baseline from which to evaluate a current state of affairs. A normative framework shapes the way people

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<sup>7</sup> See Dennis P. Stolle & David B. Wexler, *Therapeutic Jurisprudence and Preventive Law: A Combined Concentration to Invigorate the Everyday Practice of Law*, 39 ARIZ. L. REV. 25 (1997).

<sup>8</sup> See LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE (David B. Wexler & Bruce J. Winick, eds., 1996) [hereinafter LAW IN A THERAPEUTIC KEY].

<sup>9</sup> See David B. Wexler & Bruce J. Winick, *Therapeutic Jurisprudence as a New Approach to Mental Health Law Policy Analysis and Research*, 45 U. MIAMI L. REV. 979 (1991).

<sup>10</sup> See LAW IN A THERAPEUTIC KEY, *supra* note 8.

conceptualize problems and the solutions they seek.<sup>11</sup> Normative statements can be traced to specific values, which in turn serve as the foundation for a profession's mission.<sup>12</sup> Ultimately, the goals of a profession, or movement, flow from its mission. Thus, if TJ is to be anything more than a perspective, if it does indeed have legal reform goals, it is essential that its proponents agree on its core values and develop a mission to guide its legal reform agenda. A normative framework is needed to guide the continued development of the TJ movement.

### III. TJ AS A SOCIAL MOVEMENT

Haynes and Mickelson identify ten phases of a social movement.<sup>13</sup> The first phase is the recognition of a problem or a need by a single individual or a small group of people. The second phase consists of a larger group of people incorporating the ideas of the founders and taking ownership of the issue. The subsequent phases include expanded consciousness raising, leadership development, increased emotion amongst stakeholders, institutional leadership development, solution development, debate over strategies and solutions, data gathering, public dialogue, solution testing, and relinquishment of positions.

Applying the phases as described by Haynes and Mickelson requires the articulation of a problem statement. Clearly, the unintended, anti-therapeutic consequences, as well as the missed opportunities for increased therapeutic consequences, are indicative of the way the law currently functions. The corresponding need is for greater attention, especially in the form of empirical research to the therapeutic consequences of the law. This clearly defined problem statement suggests that TJ has successfully completed the first phase of a social movement. Phase two of a social movement requires that a larger group of people

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<sup>11</sup> See Sally E. Merry & Susan S. Silbey, *What Do Plaintiffs Want? Reexamining the Concept of Dispute*, 9 JUST. SYS. J. 151, 153-54, 169-77 (1984).

<sup>12</sup> See FREDERIC G. REAMER, *SOCIAL WORK VALUES AND ETHICS* (2d ed. 1999).

<sup>13</sup> See KAREN S. HAYNES & JAMES S. MICKELSON, *AFFECTING CHANGE: SOCIAL WORKERS IN THE POLITICAL ARENA* (4th ed. 2000).

accept the problem and/or need as real, and take ownership of the issue.<sup>14</sup> TJ's appeal to a larger audience is demonstrated by its application to an increased number of areas of the law in recent years.<sup>15</sup> As the influence of TJ has grown, formal structural components have emerged such as the institution of an international conference, and the promulgation of books and law review/journal articles.

TJ is a social movement in its infancy. For the movement to develop, TJ must claim its own theories and practice approaches, which must then be tested for effectiveness in light of the movement's stated mission. Without the ability to evaluate TJ practice, any outcome can arguably be defined as therapeutic. By not continuing to develop as a social movement with a mission, TJ risks the dismissive wave of a largely unaware bar, and the prospects of the progeny not surviving its founders.

The threshold question that must be confronted, however, is whether the TJ movement requires a normative theory. TJ scholars have addressed the need for the adoption of a normative theory in response to the criticism that TJ is unable to resolve conflicts between therapeutic values and other interests. Kress maintains that "deductive certainty" arising from a normative theory is not a valid expectation.<sup>16</sup> He argues that the field of TJ (and by association, the law) is strengthened by the diversity of the individual normative positions of those using a TJ lens to analyze a legal interaction, a rule or a legal procedure.<sup>17</sup> However, the

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<sup>14</sup> *Id.* at 82.

<sup>15</sup> See, e.g., Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J. 775-808 (1997); Thomas L. Hafemeister, *End-of-Life Decision Making, Therapeutic Jurisprudence, and Preventive Law: Hierarchical v. Consensus-Based Decision-Making Model*, 41 ARIZ. L. REV. 329 (1999); Rose Daly-Rooney, *Designing Reasonable Accommodations Through Co-Worker Participation: Therapeutic Jurisprudence and the Confidentiality Provision of the Americans with Disabilities Act*, 8 J.L. & HEALTH 89, 89-104 (1993/94); MICHAEL L. PERLIN, *The Voluntary Delivery of Mental Health Services in the Community*, in LAW, MENTAL HEALTH, AND MENTAL DISORDER 150 (Bruce D. Sales & Daniel W. Shuman eds., 1996).

<sup>16</sup> See Ken Kress, *Therapeutic Jurisprudence and the Resolution of Value Conflicts: What We Can Realistically Expect, in Practice, from Theory*, 17 BEHAV. SCI. & L. 555, 555-58 (1999).

<sup>17</sup> *Id.*

adoption of a generalized normative framework does not necessarily reduce the significance of individual normative positions applied in specific situations. A normative framework provides guiding principles from which individual positions can be derived.

#### IV. PARALLEL PATHS: THE SOCIAL WORK EXAMPLE

The normative foundation of the social work profession is especially applicable to the TJ movement because of several key commonalities between the fields.<sup>18</sup> First, the development of social work as a profession has followed a similar path to that taken by TJ. Second, both social work and TJ are applicable to work with systems of all sizes. Third, both social work and TJ practitioners take on a variety of professional roles and identities, which makes definition difficult.

#### V. DEVELOPMENT OF THE SOCIAL WORK PROFESSION

The social work profession emerged from a philanthropic tradition and a specific perspective for helping people in need. The normative theory that guides modern social work practice evolved over many years.<sup>19</sup> The development of the social work profession mirrored the evolutionary process of social movements previously described. Significantly, the original focus shifted from the process of discovery of social problems and helping techniques, through the initial practice applications and philosophical statements, towards developing increasingly formal, functional structures.<sup>20</sup> These structures included the creation of

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<sup>18</sup> See, e.g., Susan L. Brooks, *A Family Systems Paradigm for Legal Decision Making Affecting Child Custody*, 6 CORNELL J.L. & PUB. POL'Y 1 (1996); Babb, *supra* note 15; Robert G. Madden, *Legal Content in Social Work Education: Preparing Students for Interprofessional Practice*, 20 J. TEACHING IN SOC. WORK 3 (2000); ROBERT G. MADDEN & RAYMIE H. WAYNE, *SOCIAL WORK AND THE LAW: A THERAPEUTIC JURISPRUDENCE PERSPECTIVE* (in press) (transcript on file with author).

<sup>19</sup> See F. ELLEN NETTING ET AL., *SOCIAL WORK MACRO PRACTICE* 26 (2d ed. 1996).

<sup>20</sup> See Donald Brieland, *Social Work Practice: History and Evolution*, in *ENCYCLOPEDIA OF SOCIAL WORK* 19 (Richard L. Edwards, ed., 1995).

organizations, theories, standards or techniques that guide the refinement of the field and support the propagation of a new generation of practitioners committed to the profession's mission.

In the early years of the twentieth century, social reformer, Jane Addams described social workers' development of settlement houses as a "subjective necessity."<sup>21</sup> She believed that they arose as a result of a natural process to implement the ideals of the philanthropic movement and to establish a means for perpetuation and development of the profession of social work.<sup>22</sup> The settlement house movement relied on a common set of assumptions about community development and the empowerment of poor people and immigrants living in cities. At about the same time, Mary Richmond began to write the first book on social work.<sup>23</sup> In the introduction, she suggested that the methods and purpose of social casework needed to be defined.<sup>24</sup> Further, Richmond called for the description of the various forms of social work practice, a task she viewed as both a convenience and a necessity.<sup>25</sup>

It seemed to me then, and it is still my opinion, that a part of the ground which all social case workers could occupy in common, and that it should become possible in time to take for granted . . . a knowledge and mastery of those elements, and of the modifications in them which each decade of practice would surely bring.<sup>26</sup>

Significantly, the first known attempt to develop a social work code of ethics was believed to have taken place in the 1920s and is attributed to Mary Richmond.<sup>27</sup> It took until 1947, however,

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<sup>21</sup> JAMES W. LINN, *JANE ADDAMS: A BIOGRAPHY* 107 (Greenwood Press, 1968).

<sup>22</sup> *Id.*

<sup>23</sup> MARY E. RICHMOND, *SOCIAL DIAGNOSIS* (1917).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 5.

<sup>27</sup> See MURIEL W. PUMPHREY, *THE TEACHING OF VALUES AND ETHICS IN SOCIAL WORK EDUCATION* (1959).

for the first formalized social work code of ethics to be adopted.<sup>28</sup> Since then, the National Association of Social Workers, the largest professional social work organization, has adopted and revised several versions of its code of ethics. In spite of the revisions to the code, the same core values have served as the foundation since 1979.<sup>29</sup> This underscores the consistency and clarity of purpose that develops over time, even in the face of a changing world, when key values are articulated and institutionalized as an important part of a profession's reason for being.

Like the TJ pioneers, the early proponents of social work saw themselves as social reformers, with a goal of reducing class and race inequities, as well as improving living and working conditions in urban neighborhoods.<sup>30</sup> The articulation of professional social work values emerged from this mission. TJ currently has a goal of maximizing the therapeutic consequences of legal interventions. TJ values can and should emerge from this articulated mission.

## VI. COMMON APPLICATIONS OF SOCIAL WORK AND TJ

Social work practice uses systems theory, specifically ecological systems theory, to guide professional thinking and action on a micro and/or macro level. Ecological thinking in social work focuses on the reciprocity of person-environment exchanges, in which each shapes and influences the other over time.<sup>31</sup> By assessing the entire system that human beings operate within, social workers are able to target their change efforts at harmful policies (macro-level interventions), dysfunctional institutions (mezzo level interventions) as well as destructive individual behaviors (micro level interventions). The flexible assessment process enables social workers to choose practice techniques

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<sup>28</sup> See Frederic G. Reamer, *Ethics and Values*, in *ENCYCLOPEDIA OF SOCIAL WORK* 19 (Richard L. Edwards, ed., 1995).

<sup>29</sup> *Id.*

<sup>30</sup> See WALTER I. TRATTNER, *FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA* (6th ed. 1999).

<sup>31</sup> CAREL B. GERMAIN & ALEX GITTERMAN, *THE LIFE MODEL OF SOCIAL WORK PRACTICE* 7 (2d ed. 1996).

appropriate to intervention at any level of a system.<sup>32</sup> Because social work interventions take place in such diverse contexts, social workers have developed a range of specialties and practice roles. The lawmaker, the lobbyist, the community organizer, the court officer and the clinician may all be social workers.

The following example demonstrates the range of roles and interventions available to social workers. Picture a young, single mother whose presenting concern is imminent eviction. The social worker would begin by assessing the woman's ability to obtain alternate safe and affordable housing, the woman's need for information or legal support, the likelihood that other tenants in the same building were being unfairly evicted and many other aspects of the woman's situation. Perhaps there are larger system issues related to inadequate housing inspections by city officials or insufficient rental support programs for the poor such that the social worker would work for changes in policies or the amount of resources allocated by the state for rental assistance. Proceeding without a predetermined agenda allows each case to unfold to meet the expressed needs of the individual client. A lawyer seeking to operationalize a TJ perspective might undergo a similar type of assessment.

Like social work, TJ can be applied to systems of all sizes, e.g. the passage of therapeutically sound juvenile laws, creating separate waiting rooms for plaintiffs and defendants in domestic violence courts, or the way an individual judge speaks to a criminal defendant during a sentencing hearing. The lawmaker, the court administrator, the lawyer and the judge may all be part of the TJ movement.

## VII. THE SOCIAL WORK NORMATIVE FRAMEWORK

In order to determine the normative theory underlying social work practice, it is important to identify commonalities in the way all social workers operate. Social work, as a profession, seeks to help people become increasingly self-sufficient by enhancing their adaptive capacities and their ability to obtain and use resources, while simultaneously decreasing barriers in the

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<sup>32</sup> See MALCOLM PAYNE, *MODERN SOCIAL WORK THEORY: A CRITICAL INTRODUCTION* (1991).

environment, making systems more accepting and open to all people.<sup>33</sup> The social purpose of these efforts is to support the healthy development of people and to improve overall satisfaction in social functioning.<sup>34</sup> This mission allows for social workers to operationalize the same core values and mission regardless of their specific role. TJ practitioners also need to assume multiple roles but at this time lack the formal statement of values and missions that bring cohesion amidst diversity.

The way in which the social work profession balances individual, community and societal interests, as well as its systems orientation can be viewed as a solid model from which to build a normative framework for TJ. Social work values, theories, and practice approaches unite to create a comprehensive normative structure that influences all of social work practice. TJ proponents should adapt each of the social work components below to create a normative structure for the TJ movement.

#### A. *Values*

Values in social work form the normative basis for determining the selection of practice approach and constitute the principles that guide decision-making. There are six key values identified in the National Association of Social Workers Code of Ethics.<sup>35</sup>

**Service:** Social workers' primary goal is to help people in need and to address social problems.

**Social Justice:** Social workers pursue social change with and on behalf of vulnerable and oppressed individuals and groups.

**Dignity and Worth of the Person:** Social workers respect the inherent dignity and worth of each individual by treating each person in a caring and respectful manner.

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<sup>33</sup> See COUNCIL ON SOCIAL WORK EDUCATION (CSWE), EDUCATION POLICY STATEMENT, Draft 2 (2001) (on file with author).

<sup>34</sup> GERMAIN & GITTERMAN, *supra* note 31.

<sup>35</sup> NATIONAL ASSOCIATION OF SOCIAL WORKERS (NASW), CODE OF ETHICS (1996), available at <http://www.socialworkers.org/pubs/code/code.asp> (last visited on November 8, 2002).

**Importance of Human Relationships:** Social workers engage people as partners in the helping process and strengthen relationships among people.

**Integrity and Competence:** Social workers practice ethically and responsibly.

The social work values, as articulated above, provide clarity and purpose for all social workers. They have meaning, but at the same time are broad enough for each practitioner to apply her own normative positions in specific situations.

### **B. Theories**

There is no single theory that determines the role of the social worker in each particular case. Rather, a social work assessment is based on a complex balancing of the dual focus of client and environment, with a set of available roles that is defined, in part, by the practice setting and, in part, by the client. Social work practice is case specific and substantially client directed. Practice approaches for TJ would need to be similarly designed in that the ultimate goal of maximizing the therapeutic outcome of a legal experience may be limited by the legitimate needs of society or the legal system, by the political implications of a situation, or by the practice setting.

Social work has incorporated knowledge from other disciplines when building its own knowledge base. The theories that ground social work practice are derived from the fields of sociology, psychology, economics, human biology and political science. These disciplines provide social workers with the ability to understand human behavior, development, mental health, family and group dynamics, cultures, and political processes to allow for an intervention at whatever system level is warranted by an ecological assessment. TJ, like social work readily borrows from other disciplines and has gone as far as defining itself as an interdisciplinary area of scholarship.<sup>36</sup> However, as the call for empirical research is heard, TJ will have the opportunity to claim a knowledge base of its own. This opportunity should not be lost.

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<sup>36</sup> See Stolle & Wexler, *supra* note 7.

### C. *Practice Approaches*

Social work practice wisdom is a blend of academic theories learned in the classroom, the application of general professional values to specific situations, and the cumulative professional experiences of the social worker. This disciplinary knowledge (the how and why of social work helping) is integrated with the individual social worker's professional experiences with clients and the context of the practice.<sup>37</sup>

Social work practice approaches strive to create transformative experiences for clients. Ideally, there are benefits to the client that are inherent in the relationship with the professional social worker. To achieve these benefits the social worker must attend to the process, not merely the outcome. Specifically, social workers' practice approaches advocate:

- reinforcing client strengths
- providing a model of positive relationship skills
- listening to client needs and respecting client views
- involving a client in taking actions to resolve problems/meeting needs

While the focus on the person-in-environment is always significant, the social worker uses the relationship itself as an expression of the purpose of social work. This is the case regardless of whether the target system is the person, family, community, legislature or any other system. Social work's emphasis on process should become a norm in all of TJ practice.

The social work assessment begins with a focus on competencies and strengths, and is therefore less likely to produce blame and thus is less likely to communicate negative images of the client. But a strengths-based approach is insufficient for clients living in difficult circumstances with an unresponsive environment. Many people in society are affected by oppression and discrimination and are denied an equal voice. Social work is committed to using empowerment practice approaches to promote and support client resilience, assertiveness, self-healing, self-advocacy and other forms of action that challenge oppression.

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<sup>37</sup> See PAYNE, *supra* note 32.

Empowerment practice also includes a commitment to liberation strategies to challenge the political and social institutions that perpetuate disempowering policies and systems.<sup>38</sup>

TJ practitioners can further therapeutic goals by learning about social work practice approaches and models including strategies for interprofessional collaboration, client empowerment, cultural competence, and strengths-focused practice. These practice approaches are consistent with, and driven by, core values including a commitment to social justice, self-determination, the dignity and worth of every individual, and nonjudgmentalism. The values, theories and practice approaches described herein form a normative structure that could be a foundation for a mission to guide the TJ movement.

## VII. UNDER CONSTRUCTION: A NORMATIVE THEORY FOR TJ

Similar to social work, TJ needs a normative framework that is flexible enough to balance competing values when there is conflict between a legal value and a therapeutic value.<sup>39</sup> A starting point in developing a normative framework for TJ is to define what is meant by therapeutic and to ascribe some weight to therapeutic outcomes when confronted by competing values. There may be intuitive answers to this dilemma, however, currently there is no normative theory or value base from which to decide the *tough* cases.

As previously stated, social work practice utilizes ecological theory, which acknowledges that the continued interaction between the person and the environment shape each other over time.<sup>40</sup> This may be the most important conceptual tool for TJ. Using ecological theory to inform TJ practice would result in defining a therapeutic outcome as improved *adaptedness* between the person and the environment. Ecological theory supports improved human adaptedness through changing rules or policies, creatively employing problem-solving strategies, enhancing the coping skills of a client, empowering a client to be a

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<sup>38</sup> See JUDITH A.B. LEE, *THE EMPOWERMENT APPROACH TO SOCIAL WORK PRACTICE: BUILDING THE BELOVED COMMUNITY* (2d ed. 2001).

<sup>39</sup> See Kress, *supra* note 16.

<sup>40</sup> See LEE, *supra* note 38.

self-advocate, and supporting additional research to further demonstrate the consequences of a law or legal procedure. Ecological theory enlarges the field of inquiry in a manner that allows for creative solutions that can increase therapeutic outcomes. Ecological theory has the added attraction that it is dynamic and interactive with changing conditions. In the legal arena, the swinging of the political pendulum requires a theory that can be applied to variable circumstances.

Ecological theory serves as an ideal framework for TJ because it is particularly applicable to systems of all sizes and, as suggested for TJ by Kress<sup>41</sup> encourages the use of creative problem-solving or conflict-resolution techniques to maximize therapeutic outcomes. The employment of ecological theory allows for therapeutic outcomes to be pursued through changes on an individual or system wide basis. Thus, if an anti-therapeutic law cannot be changed because it embodies important legal, social or historical values, an individual could be helped to create therapeutic alternatives. For example, a member of the TJ movement might advocate for treatment services for an alcoholic imprisoned under mandatory sentencing laws for driving while intoxicated, thereby adding therapeutic value to the anti-therapeutic incarceration. Good social work practice, ecological theory and TJ require that practitioners seek to lessen the anti-therapeutic consequences of harmful laws that cannot be changed.

In addition to the use of ecological theory, social work advocates for the use of a set of practice approaches that focuses on strength and competencies, and honors the values of dignity and worth of the individual, equality of opportunity, and self-determination, among others. These practice approaches are powerful social forces and represent an opportunity to reinforce a moral position. The legal system is an institutionalized system consisting of laws, legal processes, and legal actors. Hasenfeld, writing about social services, has argued that institutions whose purpose is to change human behavior necessarily engage in *moral work*.<sup>42</sup> Every interaction individuals have with the legal system confers a moral judgment about their social worth, and creates a

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<sup>41</sup> See Kress, *supra* note 16.

<sup>42</sup> See Yeheskel Hasenfeld, *Organizational Forms as Moral Practices: The Case of Welfare Departments*, 74 SOC. SERV. REV. 329-51 (2000).

level of blame related to the attribution of responsibility for their situation. People tend to internalize these experiences as a reflection of their self-identity and valuation.<sup>43</sup> Thus, a social work practice model can be used as a *how to* prescription that would make legal interactions more therapeutic.

Several of these practice approaches and values correlate with current investigations of how TJ can be applied to promote therapeutic results for people involved in the legal system (such as preventive law, client apologies, respect, and client involvement in legal planning and decision-making). Being client-centered means ascribing high social worth to every client. A lawyer who believes in the possibility that a client with chronic schizophrenia would be able to live a productive life if supported with consistent case management and monitoring services is more likely to seek these outcomes on behalf of that client. More importantly, a client who experiences a lawyer's belief in capabilities is more likely to succeed in a program.

It is fallacy to think that social research will be able to provide the type of objective data needed to support changes in legal rules, processes and institutions in all areas where the judiciary intervenes.<sup>44</sup> However, there are some areas of the law where the goals of the court are consistent with therapeutic values such as specialized courts dealing with social issues,<sup>45</sup> family courts,<sup>46</sup> and probate courts. In these cases, creative interdisciplinary research can be effective in justifying reform initiatives. What effectiveness can a TJ analysis have in those cases where there is little concern for therapeutic outcomes but the law or legal process is so antitherapeutic that TJ must not be normatively neutral?<sup>47</sup> If normative neutrality results in the

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<sup>43</sup> *Id.* at 331-32.

<sup>44</sup> See David Finkelman & Thomas Grisso, *Therapeutic Jurisprudence: From Idea to Application*, 20 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 243, 250 (1994).

<sup>45</sup> See Abrahamson, *supra* note 5.

<sup>46</sup> See Susan L. Brooks, *Therapeutic Jurisprudence and Preventive Law in Child Welfare Proceedings: A Family Systems Approach*, 5 PSYCHOL. PUB. POL'Y & L. 951, 953 (1999).

<sup>47</sup> See John Q. LaFond, *Therapeutic Jurisprudence: Can Therapeutic Jurisprudence Be Normatively Neutral? Sexual Predator Laws: Their Impact on Participants and Policy*, 41 ARIZ. L. REV. 375 (1999).

generation of innovative, interdisciplinary research, but is unable to make principled prescriptions about what ought to be done,<sup>48</sup> the shelf-life of TJ is likely to be limited to the time it takes to study the legal system and its influence will be significant but insufficient.

### VIII. CONCLUSION

Employing a TJ perspective, lawyers, judges, policy makers, and mental health professionals have become committed to scholarship and legal reform that can reduce harmful experiences for people in the legal system. TJ, a young movement with a cumbersome name, has developed to the point where it is poised to formalize many of its ideas, practices, organizational forms, and values. For many scholars and practitioners, TJ represents a new, invigorating way of looking at legal issues and systems. If lawyers and other legal actors are going to fulfill this new role, they will need a theoretical framework and a normative structure to:

- develop therapeutic lawyering skills and practice approaches,
- ground the assessment of client needs and societal needs,
- suggest a research agenda that is interdisciplinary and innovative,
- assist in the analysis of alternative solutions and the weighing of competing values, and
- use empirically-validated research to guide the selection of the most effective interventions.

This paper argued that a normative structure similar to the one developed in social work would meet the needs of the TJ movement. It would be principled yet flexible. One of the concerns most frequently voiced about the development of a normative framework for TJ is that it would result in the need to make a choice between therapeutic values and other values that are

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<sup>48</sup> See R. F. Schopp, *Therapeutic Jurisprudence: Integrated Inquiry and Instrumental Prescriptions*, 17 BEHAV. SCI. & L. 589-605 (1999).

important to society and specifically, to the legal system. Social work theory and values provide a model that does not force that limited choice, but rather focuses on those systems that can be changed to enhance the adaptedness of person and environment. This would allow TJ to advance to a more institutional school of thought that could be used in teaching, learning and applying TJ concepts.