Therapeutic jurisprudence ("TJ") studies law as a social force (or agent) which inevitably gives rise to unintended consequences, which may be either beneficial (therapeutic) or harmful (anti-therapeutic). These consequences flow from the operation of legal rules or legal procedures - or from the behavior of legal actors (such as lawyers and judges). TJ researchers and practitioners typically make use of social science methods and data to study the extent to which a legal rule or practice affects the psychological well-being of the people it affects, and then explore ways in which anti-therapeutic consequences can be reduced, and therapeutic consequences enhanced, without breaching due process requirements.[1]

Early development

The term was first used by Professor David Wexler, of the University of Arizona Rogers College of Law and University of Puerto Rico School of Law, in a paper delivered to the National Institute of Mental Health in 1987. Constance Backhouse, a leading legal historian from Canada, has published a biography of Wexler and his work.[2] Along with Professor Bruce Winick of the University of Miami School of Law, who originated the concept with Wexler, the professors suggested the need for a new perspective, TJ, to study the extent to which substantive rules, legal procedures, and the role of legal actors (lawyers and judges primarily) produce therapeutic or antitherapeutic consequences for individuals involved in the legal process. In the early 90's, legal scholars began to use the term when discussing mental health law, including Wexler and Winick in their 1991 book, Essays in Therapeutic Jurisprudence. The TJ Approach soon spread beyond mental health law to include TJ work in criminal law, family and juvenile law, health law, tort law, contracts and commercial law, trusts and estates law, disability law, constitutional law, evidence law, and legal profession. In short, TJ became a mental health approach to law generally.[3] [4]

The approach was soon applied to the way various legal actors--judges, lawyers, police officers, and expert witnesses—play their roles, suggesting ways of doing so that would diminish unintended antitherapeutic consequences and increase the psychological well-being of those who come into contact with these legal figures. In 1999 in a Notre Dame Law Review article[5] TJ was applied to drug treatment courts (DTC) for the first time and the authors asserted that DTCs were TJ in action and that TJ provided the jurisprudential underpinnings of DTCs. TJ has emerged as the theoretical foundation for the increasing number of "problem-solving courts" that have transformed the role of the judiciary. These include, in addition to DTCs, domestic violence courts, mental health courts, re-entry courts, teen courts, and community courts.[6]

Some countries embraced the TJ movement more than others: particularly America where it originated, as well as Canada and Australia albeit with reservations, with England mainly resisting while nevertheless developing some problem-solving courts.[7] Attempts are made to introduce TJ concepts into the systems of various other countries, such as Pakistan.[8]

Reframing roles

Therapeutic Jurisprudence also has been applied in an effort to reframe the role of the lawyer. It envisions lawyers practicing with an ethic of care and heightened interpersonal skills, who value the psychological well-being of their clients as well as their legal rights and interests, and to actively seek to prevent legal problems through creative drafting and problem-solving approaches.[9] [10] TJ also has begun to transform legal education, in particular clinical legal education.[11]

Mainstreaming

Traditionally, TJ was closely associated with problem-solving courts, such as drug treatment courts, because such courts were designed to invite the use of TJ practices (such as procedural justice, judge-client personal interaction, and demonstration of empathy, active listening, and the like). Many desire the expansion of problem-solving courts, but for a number of reasons, especially economic ones, expansion on a large scale seems unlikely; in fact, in some jurisdictions, economic factors have even led to the elimination of such courts. For these and other reasons, a current interest on the part of many TJ scholars and proponents is to "mainstream" TJ—that is, to try to apply TJ practices and principles in "ordinary" courts, especially in criminal, juvenile, and perhaps family matters.

In order to mainstream TJ, a first analytical step is to see to what extent existing provisions of current codes are "friendly"to TJ—that is, whether their legal structure is sufficient to permit the introduction of TJ practices. If so, educational programs should be instituted to discuss how the law may be implemented in a more therapeutic manner. If not, a discussion would be necessary about the desirability and feasibility of legal reform. The analytical methodology in use here employs the metaphor of "wine" and "bottles", where the TJ practices and techniques are the wine and the governing legal structures are the bottles.[12] The mainstreaming project is facilitated by a Blog entitled Therapeutic Jurisprudence in the Mainstream.[13]

Related concepts

Therapeutic jurisprudence has been described as a subset of legal psychology, meaning the scientific study of mind and behavior as it affects or is affected by the law. As well, the term psychological jurisprudence has been used to describe study of the law as it is affected by and affects mind and behavior.[14] Another related concept is restorative justice.[15] The fields of Forensic psychology and forensic psychiatry also operate at the juncture of law and the mind.

The idea that the law can have a therapeutic role should not be confused with any idea that psychological therapies should be attempted to be used for legal ends (such as coercion) rather than clinically for clinical reasons. TJ theorists have also warned against the legal system uncritically accepting psychological experts and theories, and to not allow legal issues to masquerade as clinical ones if they are not.

Coming from the opposite direction, a related approach now dubbed 'jurisprudent psychology' (originally therapy) looks at whether psychological interventions are conducted fairly and consistently with legal concepts of justice.[16]

Therapeutic jurisprudence is also linked to the positive criminology perspective,[17] which is a conceptual approach to criminology that places an emphasis on social inclusion and on forces at individual, group, social and spiritual levels that are associated with the limiting of crime.

Notes

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External links

- International Network on Therapeutic Jurisprudence, David B. Wexler, Director
- Professor Bruce J. Wincik's webpage
- Australasian Therapeutic Jurisprudence Clearinghouse
- WFPL News: State of Affairs on Therapeutic Jurisprudence, Thursday, April 1, 2010
- Hiil Innovating Justice Project "Integrating the Healing Approach to the Criminal Law"
- From therapeutic jurisprudence...to jurisprudent therapy. Drogin EY. Behav Sci Law. 2000;18(4):489-98.
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How Therapeutic Jurisprudence Can Give Life to International Human Rights Michael L. Perlin, International Journal of Law and Psychiatry, July 24, 2013.

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