



Wexler Tribute Issue

Editorial

Foreword: A Tribute to David Wexler Through a Forward-Looking Agenda for Therapeutic Jurisprudence

With good intentions and building on developments in science, law and payment models, the 1960s and 1970s saw persons with serious mental illness leave institutions at high rates, seeking the promise of lives well-lived in communities across the United States (Mechanic & Rochefort, 1990). Sadly, community resources and political will did not match the promise, resulting in many of those same persons ending up back in “the system:” this time, too often the criminal justice system (Lamb & Weinberger, 2005; Prins, 2011). That very system, in turn, ended up re-traumatizing those whom an underfunded mental health system had often failed. What if law, however, could do better: what if it purposefully recognized its impacts on mental health, and sought to mitigate its anti-therapeutic harmful practices and procedures? And so emerged “therapeutic jurisprudence” (TJ), a theoretical construct built on experience advocating for persons with mental illness cycling through the justice system (Wexler & Winick, 1991b). David Wexler, in partnership with his colleague, Bruce Winick, developed TJ as a normative reframing of the consequences of law and lawyering, and an empirical approach to re-orient the work of legal scholars and practitioners to seek more therapeutic approaches to law’s interactions with those so intimately affected by law (Wexler, 1990; Wexler & Winick, 1991a; Wexler & Winick, 1991b; Wexler & Winick, 1996).

Since its development within mental health law in the U.S. (Wexler & Winick, 1991b; Perlin, 2010), and application to problem-solving courts (Hora, Schma, & Rosenthal, 1999; King & Batagol, 2010; Stobbs, 2013; Winick, 2002; Wren, 2010), the field has expanded its substantive and geographic scope. This is not surprising as its founders early on explicated its “interdisciplinary, empirical and international” orientation (Wexler & Winick, 1991b, p. 981). In addition to formal applications in judging (King, 2009; Richardson, Spencer, & Wexler, 2016) and lawyering (Daicoff, 1999; Stolle, Wexler, & Winick, 2000), TJ’s application has expanded to fields such as: family law (Kierstead, 2011), education settings (McWilliam, 2010; Peterson, 2010), forensic psychology (Birgden, 2004), psychiatry (Zariski, 2016), elder law (Kapp, 2010), employment law (Yamada, 2009), and military law (Seamone, 2009). Moreover, we find international adopters in many lands, including Canada (Kierstead, 2009), France (Herzog-Evans, 2013), Sweden (Dahlin, Levina, Kaldal, & Gumpert, 2010), Australia (AIJA, n.d.), New Zealand (Diesfeld & McKenna, 2007), and even Pakistan (Munir, 2018).

As we look back on the accomplishments of David Wexler in driving the reflective approach of judges, lawyers, and law-makers to favor therapeutic consequences in law (Perlin, 2019), this tribute issue of IJLP looks forward, to how—and where—TJ is heading today and

tomorrow. We start with new substantive applications: rethinking approaches to prosecution (Gal, 2019), treatment of persons with intellectual and developmental disabilities in the courtroom (Marinos & Whittingham, 2019), and probation (Bartels, 2019), and extending the field to policy (Campbell, 2019; Yamada, 2019) and health law (Cerinara, 2019). Articles also reveal the expanding global reach of the field, including to Japan (Ibusuki, 2019), Israel (Marcus, 2019), and the UK (Jones & Kawalek, 2019).

Today, more and more scholars and practitioners recognize that law, no matter where applied, affects the well-being of individuals, families, and communities. In response, as the articles in this special issue attest, TJ offers a frame for identifying and studying therapeutic and anti-therapeutic consequences and employing a more healing approach – one that gives voice to those deeply affected by and too often rendered silent by power structures, including legal ones. As we celebrate the field’s leader and heart, David Wexler, TJ recognizes the current and emerging leaders taking TJ to new places with new visions. Cheers to the new wine in new bottles (Wexler, 2014).

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