Liverpool Law Review
https://doi.org/10.1007/s10991-023-09329-7

Strengthening the Theoretical Commitments Underpinning Therapeutic Jurisprudence Research: Ontology and Epistemology

Anna Kawałek[1]

Accepted: 30 May 2023

Abstract
Therapeutic Jurisprudence is a legal philosophy concerned with the human effects of the law. Its scholarly work promotes greater interaction between law and the social sciences to draw attention to the therapeutic and/or anti-therapeutic side-effects of law. Despite significant headway having been made in therapeutic jurisprudence scholarship during its relatively short lifespan, there remain gaps in theory, not least, in terms of the ontological and epistemological commitments that underpin and drive its research, as well as how its methodology resonates with those from its predecessor schools: legal realism and sociological jurisprudence. This essay will respond to these gaps and, in doing so, will also acknowledge some of the key similarities and differences in the methodological underpinnings of the claims from legal realism and sociological jurisprudence (as well as legal positivism and formalism).

Keywords Therapeutic jurisprudence · Methodology · Theory · Epistemology · Ontology · Legal realism · Sociological jurisprudence

Introduction

The scholarship of therapeutic jurisprudence has expanded in rapid and organic growth since it first emerged (relatively recently) in 1987 (Wexler 2018a, b). Although it was primed by legal realism and sociological jurisprudence—two bodies of thought that proceeded it—therapeutic jurisprudence was the first movement to conceptualise the law in the exact terms it uses. Naturally, this caused a flurry of excitement amongst practitioners, academics, and reformists, leading it to, very quickly, diversify in application. Despite there being variations within its (now international) scholarship, therapeutic jurisprudence can be stripped back to one

✉ Anna Kawałek

[1] Leeds Law School, Leeds, UK

Published online: 03 July 2023

proposition: the energy and agency of the law (along with its associated legal rules, procedures, roles, actors, and institutions) can by-produce therapeutic and/or anti-therapeutic consequences for those that experience it (Wexler 1990).

The most famous example of therapeutic jurisprudence in action is the problem-solving court, an umbrella term capturing several specialist courts catering for the specific needs of service-users (Wexler and Winick 1991, 2003; Wexler 1990, 2000). The most widely implemented version is the drug court, which established around the same time as therapeutic jurisprudence, sought to assimilate criminal justice and the drug treatment to achieve long-term curative outcomes for drug-using offenders (ibid; Belenko 1998). Within this unique court environment, lawyers, judges, and treatment providers work as a supportive team, tasked with addressing the underlying causes of offending by providing therapy and rehabilitation opportunities alongside compliance measuring, sanctions, and deterrence features (ibid). Due to their shared ethos, a partnership soon emerged, in which therapeutic jurisprudence's academic research informed and enriched the practice of the courts (Hora et al. 2011; Hora 2002, 2011; KPMG 2014; Kawalek 2018, 2020). As quoted by therapeutic jurisprudence's co-pioneer, Winick, therapeutic jurisprudence can 'provide valuable material from which legal decision makers can craft legal rules' (Winick 1997, p. 1)—and the problem-solving court is just one example of this.

To forge the material to which Winick refers, therapeutic jurisprudence draws upon insights from the social sciences paralleling its own goals. Findings from these disciplines help to articulate what works in (non-legal) practice, and therapeutic jurisprudence adapts these findings for use in law processes (Petrucci et al. 2005; ibid). For example, in the problem-solving court context, therapeutic jurisprudence may show that key interpersonal and behavioural styles from other contexts, such as therapy and counselling, can be used by the judge to enhance their own practice in problem-solving courts (Kawalek 2020; Wexler and Winick 2000, 2003; Petrucci 2002). Or it might show that when a judge uses motivational interviewing during conversations with court users, this provokes better engagement, much like other therapeutic programmes (Birgden 2004a, b). Or it may capitalise on the findings from procedural fairness in criminology to hypothesize that judges can increase feelings of fairness by eliciting voice, validation, and voluntary participation, which has a reformative and therapeutic effect (Warren 2003; McIvor 2009; King 2003; Wexler 2016; Perlin 2013). As the first school to make such claims and create such synergies, therapeutic jurisprudence research has been ground-breaking.

Despite breaking new ground, not least in the problem-solving court context, therapeutic jurisprudence has faced opposition from scholars who claim that it is atheoretical, in part due to its broad scope, wide subject matter, and loose coding of its definition and core principles (including the key term "therapeutic" itself) (Roderick and Krumholz 2006; Slobogin 1995; Wilson 2021; Freckelton 2008; Arrigo 2004; Brakel 2007; Schopp 1999; Birgden 2009; Winick 1997). In addition to this, therapeutic jurisprudence is claimed to have heritage in legal realism and sociological jurisprudence (Pepson 2008; Winick 1997); these claims are not well-justified, and the exact links remain unclear in the existing literature, which only adds to the lack of clarity. Moreover, though these schools are similar, there are also key differences, including their stance on normative propositions (i.e., whether or not theory

should prescribe statements around what the law ought and ought not to do), which again contributes to the lack of clarity and creates fundamental inconsistencies within therapeutic jurisprudence's overall body of literature.

The most widely offered critique is that therapeutic jurisprudence has prematurely expanded within its practical and empricial dimensions before it has been fully cultivated at theoretical level, and thus is atheoretical (Roderick and Krumholz 2006; Slobogin 1995; Wilson 2021; Freckelton 2008; Arrigo, 2004; Brakel 2007). The critique that it is atheoretical in part links to the lack of clarity the therapeutic jurisprudence literature carries in places. For instance, there are ongoing discussions (and conflicting answers) as to whether or not therapeutic jurisprudence is normative and the therapeutic jurisprudence literature (Slobogin 1995; Schopp 1999; Arrigo 2004; Pepson 2008; Birgden 2009). Wexler states that 'therapeutic jurisprudence in no way suggests that therapeutic considerations should trump other considerations' (Wexler 1993, p. 21). Though this implies a non-normative agenda, in the next sentence of the same essay, Wexler states that 'mental health law should be restructured to be better accomplish therapeutic goals' (ibid, p. 21). Inconsistencies such as this has caused broad debates as to whether therapeutic jurisprudence is and should be normative (for instance see Schopp 1999; Birgden 2009).

Moreover, therapeutic jurisprudence ascribes to a broad range of applications, raising questions as to what therapeutic jurisprudence *is* and what *is not*. Usually ignited by newly engaged scholars who bring with them a desire for precision (Yamada 2021), such discussions focus on whether therapeutic jurisprudence should be considered a theory or practice (King et al. 2014; Stobbs et al. 2019a), way of thinking or lens (Cattaneo and Goodman 2000; Freckelton 2008), paradigm, research agenda, or philosophy (Roderick and Krumholz 2006, Wexler 2011), method (Stobbs et al. 2019a), 'set of procedural guidelines, protocols and techniques' (ibid, p. 45), adjective (Slobogin 1995), or even if it is a community (Stobbs et al. 2019b). Its 'conceptual fluidity' (Yamada 2021, p. 689) is openly admitted by proponents who state that therapeutic jurisprudence can be each and all of these things—*what* therapeutic jurisprudence *is* simply depends on the way one chooses to interpret and apply it (ibid; Stobbs 2020; Wexler 1995, 2011; Winick 1997). To complicate matters further, because therapeutic jurisprudence is interdisciplinary by design with various conceptions of "theory" offered by the disciples of sociology, psychology, criminology, and social work (and law), this can make clear and discernible theory even more difficult to pinpoint for therapeutic jurisprudence analyses, which has in turn led to many theoretical and analytical strategies and interpretations.

Of these potential applications, whether therapeutic jurisprudence should be considered a theory has been most routinely debated. Famously, in 2011, Professor Wexler posited that therapeutic jurisprudence 'has never pretended to be a full-blown theory' (Wexler 2011, p. 33). However, elsewhere, it has been conceptualised and understood as such (Vols 2019). For instance, in recent work, Vols (2019) argues that therapeutic jurisprudence can be regarded as a theory with both descriptive (observing the law's effect on people) and normative (prescribing how legal systems should be designed and applied) components. It has also been stated that therapeutic jurisprudence ascribes to not one normative theory (Kress 1999). Not only this, but Vols (2019) nuances his claim by stating that there are in fact five variations

of therapeutic jurisprudence theory. The uncertainty as to whether therapeutic jurisprudence is a theory and whether it is normative epitomises some of the paradoxes and tensions within its scholarly work, and has caused some to claim that it lacks credibility (Roderick and Krumholz 2006; Slobogin 1995; Wilson 2021; Freckelton 2008; Arrigo 2004; Brakel 2007; Schopp 1999). Arguably, this has been catalysed (or perhaps caused) by the overall lack of discussion (or perhaps lack of interest) in this area. Furthermore, more general concerns that therapeutic jurisprudence is 'amorphous, subjective, and evolving' (Kawalek 2020, p. 3), has left a legacy of inconsistency; this has rendered it vulnerable to the critique that it is 'all things to all people' (Wilson 2021, pp. 5, 13, 14), too broadly imagined, lacks coherency, and is theoretically unsound (Roderick and Krumholz 2006; Slobogin 1995; Wilson 2021; Freckelton 2008; Arrigo 2004; Brakel 2007; Schopp 1999).

Although some scholars call for more tightly formed definitions, clearer scope, and more ready, replicable, and valid research frameworks, the wide terms set by therapeutic jurisprudence have been comfortably embraced by its long-term followers (Yamada 2021; Wexler 1995; Freckelton 2008). In fact, a common response to those troubled by the latitude of therapeutic jurisprudence is that its malleability is also its beauty; if therapeutic jurisprudence relies almost exclusively on how the applicator interprets, moulds and mobiles it, this leaves breathing space for lively debate, creative application, and the potential for wide-ranging impacts, which has indeed been demonstrated. As such, if therapeutic jurisprudence has changed perspectives of the law (Stobbs 2019; Wexler 2008; Freckelton 2008) and has 'made a positive difference in actual legal practice' (Kress 1999, p. 557) it is tempting to ask to what end tighter definitions and further clarity is necessary.

When reflecting on her PhD journey on therapeutic jurisprudence and mental health courts, Dr Richardson (2019, p. 307) comments that 'when I commenced my thesis, though it was suggested… that they [mental health courts] were underpinned by therapeutic jurisprudence, it was not explicated precisely in what ways therapeutic jurisprudence informed those courts. Nor did the literature provide a comprehensive explanation of the connection between therapeutic jurisprudence and mental health courts'. Richardson also states that 'therapeutic jurisprudence is a strength of the mental health court model—or at least has the potential to be—but has not been clearly articulated and, as a result, is not well understood' (ibid, p. 208). Reflecting on my own doctoral thesis that examined UK problem-solving courts using a therapeutic jurisprudence lens, at times I found it difficult to articulate therapeutic jurisprudence values for the purpose of empirical measurement (which inspired the development of a standardised empricial research tool—published elsewhere) (Kawalek 2020). In other work, Wilson (2021, p. 3) comments that drug court and therapeutic jurisprudence principles are often conflated, and 'our understanding of… what a therapeutic jurisprudence approach offers remains limited'. These resonating observations embody some of the difficulties pinpointing the principles of therapeutic jurisprudence for mobilisation within the problem-solving court context. Considering that problem-solving courts are therapeutic jurisprudence's most common associate, links between it and its other potential applications may be more difficult to find.

Undeniably, the therapeutic jurisprudence literature gives a strong sense of the "idea" of therapeutic jurisprudence from which we can extrapolate relevant principles. But the researcher must be willing to put in the legwork to make them tangible; this can require patience, and risks quickly losing those newly introduced to therapeutic jurisprudence (as Richardson, Wilson, and I were as doctoral candidates) searching for oven ready theory and answers. Arguably, therefore, greater precision is necessary for the long-term sustainability of the therapeutic jurisprudence movement.

How researchers can expedite therapeutic jurisprudence methodology is a prominent topic, which has been given significant thought and attention in recent years, as will be shown shortly. However, it is prudent to acknowledge the questions and gaps still remaining—the literature has not yet deeply explored the theoretical commitments (ontology and epistemology) underpinning therapeutic jurisprudence scholarship nor how therapeutic jurisprudence's methodology conforms (and does not) to those of its predecessor schools.[1] Notably, Stobbs (2019) has stated that the therapeutic jurisprudence scholarship fits best with pragmatism—as will be shown, I do not disagree with this proposition, only in this paper I endeavour add nuance and clarity to this proposition. As such, in this paper, I seek to develop the theoretical tenets that underpin therapeutic jurisprudence methodology to respond to the critics and to develop the current literature on the topic.

I will do so by discussing the theories that generate knowledge claims in therapeutic jurisprudence methodology (rather than theorising about the law itself using a therapeutic jurisprudence lens). To do so, I will examine other bodies of jurisprudence, tracing how their theoretical assumptions are adopted and replicated in therapeutic jurisprudence research. Legal realism is most widely cited as having done the initial spadework for therapeutic jurisprudence (Diesen 2006; Finkelman and Grisso 1994; Winick 1997; Yamada 2001, 2021; Dahlin et al. 2010; Olowu 2007) though it can also be said as having leanings towards sociological jurisprudence (Madden and Wayne 2003; Brody and McMillin 2001; Olowu 2007). To date, although therapeutic jurisprudence's link to these schools has been acknowledged by scholars, the exact details of how each of these schools have influenced therapeutic jurisprudence has not yet been unpicked in great detail or with sustained nuance, and certainly not with an explicit focus on methodological components underpinning these scholarly bodies. Yet creating precision is necessary if we are to respond to the critics, keep the therapeutic jurisprudence alive, and plug the gaps in therapeutic jurisprudence theory. With the overarching goal of strengthening therapeutic jurisprudence's theoretical tenets, this paper will showcase how particular aspects of therapeutic jurisprudence methodology resonate with those of its predecessor schools.

Although the intention is to create clarity for those who want it, the aim is not to discredit any work that takes a different approach; the goal is to be constructive—assisting

[1] Note that Stobbs (2019) provides an accessible overview of the terminology *ontology*, *epistemology*, *methodology*, and *methods*. His articulation is particularly useful because it demonstrates the link between these key pillars of knowledge acquisition (ontology, epistemology, methods), each layer creating a building block for the next, and together creating rigorous methodology.

newcomers and others who seek a gateway into a clear therapeutic jurisprudence world. One of therapeutic jurisprudence's friendlier critics, Slobogin (1995, p. 204), posits that therapeutic jurisprudence faces a 'dilemma of empirical indeterminacy', where he asks if 'the vagaries of empirical research, upon which therapeutic jurisprudence heavily relies, doom its proposals' (ibid, p. 193). By clarifying some of the theoretical commitments underpinning a therapeutic jurisprudence methodology, it is within this critique of therapeutic jurisprudence theory to which the main arguments from this paper respond.

To summarise and taken together, there are three themes (or gaps) in therapeutic jurisprudence scholarship that this paper deals with simultaneously:

- Therapeutic jurisprudence is critiqued for being atheoretical. How can we strengthen therapeutic jurisprudence's core methodological tenets (ontology and epistemology), in turn, responding to the critics?
- Therapeutic jurisprudence as a methodology is an emerging body of scholarship where there are still gaps in theory—a continued focus on this area offers a contribution to a topical area of therapeutic jurisprudence scholarship.
- Therapeutic jurisprudence is said to have heritage in legal realism and sociological jurisprudence, yet a careful analysis of why and how this is the case has not yet been offered, and certainly not with a distinct focus on their methodologies. A deeper analysis of this area may help to plug gaps in therapeutic jurisprudence theory, as well as addressing where and when it is normative (again responding to the critics).

The process of unpicking how therapeutic jurisprudence methodology replicates that of the legal realists and sociological jurisprudents requires a thorough analysis of the core positions of the other dominant schools. As such, a secondary aim emerged, where the discussions have relevance beyond the therapeutic jurisprudence community:

- To acknowledge some of the differences and similarities between the methodologies of the dominant paradigms in jurisprudence (formalism, legal realism, sociological jurisprudence, and legal positivism). This paper will suggest that there are fundamental overlaps between the core epistemologies of the latter three schools using a Venn diagram. Whilst this has the overarching aim of placing therapeutic jurisprudence in context, these discussions may aid scholars from outside the therapeutic jurisprudence community.

It is my view that during its early life, therapeutic jurisprudence needed time and space to grow and be experimental before crystallising into a coherent body of thought; however, it is now mature enough to grasp the nettle and more clearly define some of its key propositions and theoretical assumptions.

Therapeutic Jurisprudence as a Developing Methodology

Since the publication of Slobogin's (1995) critical piece, significant headway has been made in the field of therapeutic jurisprudence methodology and methods;

arguably, this is the most popular topic in therapeutic jurisprudence at present. Wexler (2014) devised the therapeutic jurisprudence wine-bottle metaphor in 2014 as a proposed evaluative framework to encourage researchers to consider therapeutic factors on 'bottle' (or the 'therapeutic design of the law') and the 'wine' (or the 'therapeutic application of the law') levels (see also Wexler 2015a, b).[2] The former are structural factors, such as: statutes, provisions, rules governing legal institutions, policies and procedural norms and values—these cannot easily be changed, developed, or manipulated in everyday practice (Wexler 2014, 2015a, b). The latter are practitioners' techniques, skills, or approaches, filling gaps left by the bottle, where judicial discretion can be used to infiltrate and influence practice (ibid). A combination of both interlinked components (and their strength) determines the extent to which a legal context may and/or does operate in line with therapeutic jurisprudence. From an evaluation perspective, Cooper (2019) has encouraged researchers to explore how bottle and wine level considerations are translated into research questions, research design, and analysis. We have seen this implemented e.g., Kawalek (2018, 2020) and Kawalek et al. (2022), which used both layers of analysis to frame various UK problem-solving court evaluations.

Other key work that has significantly progressed the methodology topic is Petrucci's (2002) research, which examined how respect, as a core ingredient of a problem-solving judicial interaction, could be broken down into seven measurable components for the purpose of therapeutic jurisprudence evaluation. Later, Petrucci and Winick's (2005) 'an invitation for social sciences' chapter set out a number of specific ways that the social sciences and therapeutic jurisprudence could better work in tandem. Part of this included defining the scope of therapeutic jurisprudence, the type of research questions that it may ask, and some of its limitations (ibid). More recently, Petrucci (2021) has also considered the use of context-mechanism-outcome pattern hypotheses and generative causation in the therapeutic jurisprudence context.

Although therapeutic jurisprudence methodology was a topic that had been percolating for several years, it was put in the spotlight during the 2017 biannual conference for therapeutic jurisprudence held at Charles University in Prague, where a dedicated methodology panel was formed within the therapeutic jurisprudence stream.[3] As part of this, Stobbs presented the paper 'everything you wanted to know about therapeutic jurisprudence methodology but were afraid to ask' and Vols presented 'therapeutic jurisprudence as a theory and methodological basis in doctrinal and socio-legal research'. In addition, Sturgis presented how to conduct therapeutic jurisprudence-friendly interviews. These presentations would answer questions for audience members undertaking therapeutic jurisprudence research. However (as intended), they aroused more questions than they answered.

[2] Notably, this structure has heritage in the sociological jurisprudence of Roscoe Pound (1910) whose work first distinguished the law in the books from the law in application.

[3] The panel was called 'Methodology and Theory at the Cutting-Edge of Therapeutic Jurisprudence' See the abstract book from the official conference website (International Academy of Law and Mental Health) https://img1.wsimg.com/blobby/go/c394b424-d915-4ee7-9aba-21b85ee2779c/downloads/Prague%20AB.pdf?ver=1651550266636. See official website: https://ialmh.org/.

Researchers resumed work on this area for the two years that followed, and at the same conference hosted by the International University of Rome two years later, another therapeutic jurisprudence methodology panel was formed.[4] This saw the release of the therapeutic jurisprudence methodology and theory volume—the first textbook dedicated solely to therapeutic jurisprudence as a methodology (Stobbs et al. 2019a). The book offers a collection of sixteen chapters to assist with therapeutic jurisprudence research, recognising the need for a resource that 'identifies, illustrates and explains examples of best practice for conducting therapeutic jurisprudence research and practice' (ibid, p. 26). On the same panel, Vols developed the theory and methodology discussion in his presentation; I presented the first statistically validated measurement tool for therapeutic jurisprudence in empirical projects; and Schopp discussed the practice of integrating different research traditions within a therapeutic jurisprudence analysis. On another panel at the same conference, Waterworth presented 'measuring legal actor contributions in court from a therapeutic perspective'.[5] As such, though it had been embryonic for several years previously, the topic *therapeutic jurisprudence as a methodology* very quickly became a highly prevalent genre of scholarship. Therefore, by offering a continued focus on this area mapping therapeutic jurisprudence's ontological and epistemological commitments, this paper fits within a rapidly emerging body of literature.

Approach to Paper

Some of the most dominant jurisprudences in legal scholarship are formalism, legal positivism, sociological jurisprudence, and legal realism. However, when reading the respective bodies of literature for legal positivism, sociological jurisprudence, and legal realism in particular, often the differences between these schools are so subtle that it is difficult to tell them apart (unlike formalism which is distinct). Although therapeutic jurisprudence is said to be the progeny of legal realism and sociological jurisprudence, to plot where and how therapeutic jurisprudence methodology conforms (as well as does not) to these two schools due to their overlaps, required firstly creating a map of the theoretical claims made by the four key jurisprudences, their similar themes, and (as importantly) their key differences.

The development of this map (which later became Table 1) involved searching for literature offering a succinct, focused, and sustained overview of the ontologies and epistemologies underpinning each of the four key jurisprudences. However, no literature was retrieved of this nature with most pieces discussing their respective substantive theories, rather than aggregately discussing of their key methodological similarities and differences. This may link to a personal observation that legal scholars (both therapeutic jurisprudents and others) more than

[4] The panel was called TJ Methods and Methodology: https://img1.wsimg.com/blobby/go/c394b424-d915-4ee7-9aba-21b85ee2779c/downloads/Rome%20AB.pdf?ver=1656572025612.

[5] This presentation was called 'What Can Judges Do to Facilitate Change: Measuring Legal Actor Contributions in Court from a Therapeutic Perspective'.

Table 1 comparing and contrasting the epistemologies and ontologies of some dominant schools of jurisprudence, and therapeutic jurisprudence

School	Ontology	Primary epistemology	
Formalism 1860s and the 1920s	Objectivist	Rationalist	
Legal Positivism eighteenth and nineteenth centuries (and contemporary into the 20th)	Subjectivist	Empiricism	
Sociological Jurisprudence 1906–1930	Subjectivist	Critical constructivism	
Legal Realism 1930–1960	Subjectivist	Pragmatism	
Therapeutic jurisprudence 1989–	Subjectivist	Bottle	Critical constructivism
		Wine	Pragmatism

most other social scientists (for example: from psychology, sociology, and criminology) seem to shy away from discussions on ontological and epistemological theory or perhaps simply are not interested in theory it. Yet these discussions are important because: first, they help create logically arranged substantive theory within both single pieces and across bodies of scholarship. Legal theory is often generated without scholars having appreciation of the theoretical (methodological) configurations of their claims (which could be said to epitomise many of the critiques of therapeutic jurisprudence itself). This can lead to inconsistencies, tensions, and scattered results, which in turns risks loss of reputation, viability, and credibility (Freckelton 2008). Second, appreciation of methodological theory guarantees research validity, where a tightly wound and carefully applied methodology provides more accurate interpretation of results.

Thus, inductively, a secondary goal materialised. Since the existing literature offered nothing that synchronously pulled together the core methodological commitments of these legal schools, I devised Table 1 for this purpose. Originally, I had not intended to use Table 1 in this published article, as I developed it merely as an aid for planning the paper. However, as the Table responds to the gap in the literature I had identified, and because it complements the discussions that follow, it is hoped that it may help other legal researchers, particularly law PhD students (as myself and other identified scholars were), feeling daunted by the words: *theory, ontology,* or *epistemology.* It is not perfect and could be criticised for making broad brush claims about each school's key theoretical positions; thus, I openly invite these scholars to amend, nuance, and improve it. However, I hope that it and the discussions that follow act as a starting point to scholars both inside and outside of the therapeutic jurisprudence community who are endeavouring to strengthen their understanding of the theory underpinning their claims.

Discussion of the Table and Therapeutic Jurisprudence's Theoretical Roots: Ontology, Epistemology, and Methods

Following the pre-eminence of legal positivism during the eighteenth and nineteenth centuries, two dominant bodies of jurisprudence arose in the early twentieth century. The first is sociological jurisprudence, most commonly associated with Roscoe Pound's writings between circa 1906–1930 (though the movement can be seen to capture earlier thinkers such as: Hebert Spencer, Von Jhering, Max Weber, Emile Durkheim, and Eugen Ehrlich) (Freeman and Lloyd 2001). The second is legal realism, which was spearheaded by the American Realists (namely, Mr Justice Holmes, Jerome Frank, Karl Llewelyn, William Twining) and the Scandinavian Realists (most prominently, the "trio" comprising Axel Hägerström, Alf Ross, and Herbert Olivecrona) arose circa 1930–1960 (ibid).

Although the legal realists succeeded the sociological jurisprudents, they took undoubtable influence from their predecessors, arguably to the point of complete academic fusion (ibid; Olowu 2007; Brakel 2007). Unlike many other bodies of thinking, there were open channels of (often fraught) communication between key thinkers, Pound and Llewelyn, who publicly debated their differences as well as their (less commonly admitted) shared perspectives (Hull 1987, 1989; Llewellyn 1930; Pound 1930; Jütersonke 2016). This cross-paradigmatic channel is unique, making the distinction between the two bodies nebulous, and leading some to view realism as merely an 'offshoot' of sociological jurisprudence (Rumble 1965, p. 566; see also the blurring classifications of the schools in Brakel 2007; Olowu 2007).

This confusion is compounded by the conflicting categorisations of Roscoe Pound. Although most would label him as a sociological jurisprudent (Freeman and Lloyd 2001; White 1972; Ingersoll 1981; Kimball and Coquillette 2020), others (including Pound himself in some writings) would consider Pound's work of realist genre (Brakel 2007; Olowu 2007). Regardless of where we place Pound, the uncertainty of his position epitomises the blurring of disciplinary lines between legal realism and sociological jurisprudence, arguably to the point that they should be conceived as singular body of thought separated by nothing more than a personal, political, and professional feud between Pound and Llewelyn (Kimball and Coquillette 2020).

The most adamant observer of their key conceptual differences was Karl Llewelyn himself, who, in 1930, would characterise legal realism as an entirely new jurisprudential body (Llewellyn 1930). However, it remains open to interpretation whether this is a true academic distinction or whether Llewelyn's own grudge against Pound caused a reluctance to affiliate (ibid). When reading the literature detailing the precise differences between schools, what is most clear, ironically, is the lack of clarity, with each individual source saying something different about their key distinctions (Ingersoll 1981; Rumble 1965; Tebbit 2017). As will be shown, this can in part be explained by their overlapping methodologies. Furthermore, these overlaps could explain why there is confusion as to where we place therapeutic jurisprudence, with some scholars claiming therapeutic

jurisprudence is part of legal realism (Diesen 2006; Finkelman and Grisso 1994; Winnick 1997; Yamada 2001, 2021; Dahlin et al. 2010; Olowu 2007), some sociological jurisprudence (Madden and Wayne 2003; Brody and McMillin, 2001; Olowu 2007), and others both.[6]

Ontology

As the table shows, despite what many think (For instance, see Sebok 1995; Dworkin 1986, p. 36, Benditt 1978, p. 61; Freeman and Lloyd 2001) the realists were not scholarly opponents of the legal positivists – this section will highlight many fundamental similarities between the theoretical assumptions made by the two schools, particularly at an ontological level.[7] In fact, the ontological position that I am about to discuss (which I will conclude is subjectivist as per Table 1), was (arguably) nascent in the work of the legal positivists, accelerated by the sociological jurisprudents, magnified in particular by the legal realists, and latterly adopted in therapeutic jurisprudence. However, each school relies on a different ontology to formalism (which is objectivist); this means that the question 'what is reality' or 'what is law' prompts different answers. As a result, the subjectivists make similar genres of substantive claims to one-another, though of a very different nature to the objectivists (which is adopted by the formalists as per Table 1).

Formalism dominated juristic philosophy and legal theory within the latter part of the nineteenth century and early twentieth century (Lobban 2018). Its ontological position endorses an idealism and essentialism akin to Plato's forms (Freeman and Lloyd 2001). In classical philosophy, Plato famously postulated that 'a concept delineates the essence of a species or natural kind' (Pildes 1999, p. 607). This means that every seen or experienced "thing" from the physical world is proceeded by a pure, theoretical, and supernatural form. The most well-used example given by teachers of ancient philosophy is a *chair*. The chair that we experience—that we sit on—in an everyday sense may have variety and idiosyncrasies in the way it manifests the essence of "*chairness"*. Yet cutting across these physical embodiments is a perfect chair within what Plato terms, the Universe of the Forms (Plato 1911, 1943 republications). This means that the chairs we experience in the physical world are just recurrences and imitations of (with varying degrees of perfect correlation to) the ideal, pure, and objective chair (ibid). According to Plato, this same evaluation can be extended to all "things" in the physical world—each physical entity has a metaphysical partner—its perfect half (ibid). Knowledge of the forms can only be acquired by philosophers with the criticality and faculties of mind to tap into metaphysics (Plato, from 1943).

Applying this to the legal sphere, formalism assumes that there is a higher, perfect, and independent law similar to Platonic forms, which means that law is

[6] In 2022, at the International Conference for Law and Mental Health, I asked the expert audience their opinion on the heritage of therapeutic jurisprudence, and many believed has heritage in both schools.

[7] It is also important to make clear that legal positivism is very different to the positivist research paradigm.

objective (rather than socially construed) (Freeman and Lloyd 2001). In the same way that knowledge of the forms can be acquired by philosophers, formalists believed that metaphysical laws can be readily discovered in common law or legislation by anyone with legal expertise (namely, judges) (ibid). This means that law can be objective and free from subjective interpretation and applied consistently by judges once (if) they access it (ibid). The result is the potential for uncontroversial application of accepted and known legal principles and dogmas to facts, generated by rationalist thinking (ibid).

Legal positivism was built on entirely different foundations. Many of the earlier positivists (such as Bentham and Austin), saw law as an expression of societies with a sovereign (ibid; Green and Adams 2019). Their trans-political theories consider the law to be an outward expression of the will of the state and command of that authority, as accepted by society (Green and Adams 2019). Accordingly, a legal system depends on the presence of certain structures of governance and reflects social standards (ibid). Put differently, law 'has its ultimate basis in the behaviours and attitudes of its officials' (ibid, p. 103). This claim rests upon the assumption that, ontologically, law is a man-made entity—a very different position to formalism's metaphysics.

This subjectivist ontology of law was shared by the sociological jurisprudes albeit with a slightly different substantive emphasis. Entitling it 'mechanical jurisprudence', Pound (1908) famously scorned the formalist position, claiming that the law is more than a system of rules with a fundamental form that can be applied perfectly by lawmakers (ibid; Freeman and Lloyd 2001). Pound (1908, p. 605) stated the law 'must not be judged by the results of science it achieves, not by the niceties of its internal structure; it must be valued by the extent to which it meets its end, not by the beauty of its logical processes'. Thus, he believed law's origin, and well as its adequacy, is to be considered through its external effects (Freeman and Lloyd 2001). In terms of substantive theory, Pound forged the concept *social engineering* to suggest that law's purpose is to strike a balance between competing interests in society (namely, individual, public, and social) (ibid). At the heart of this lies a theoretical commitment to the law, legal institutions, and legal principles being socially construed. As such, for Pound (and the sociological jurisprudents), law also has a subjective origin.

Developing Pound's critique of mechanical jurisprudence, the realists made a sustained attack on formalism, though in a more focused, explicit, and advanced way than their predecessors, seeking to debunk what they considered to be abstract, fictitious, mystical, and imaginary concepts in law, hence realism (ibid). Holmes (1981, republished in 1963, p. 5) famously stated that 'the life of the law has not been logic: it has been experience'. The Scandinavians propelled the ontological position that law is human dependent and man-made, rather than metaphysical (Freeman and Lloyd 2001). For instance, Hägerström stated that legal science is embedded within a physical reality and thus should be emancipated from the phantoms of human mind and Olivecrona stated that the law should be considered in context of cultural and historical origins (ibid).

These sentiments are heavily reflected in therapeutic jurisprudence scholarship. Therapeutic jurisprudence examines the therapeutic and anti-therapeutic *effects* of

law, legal processes, and actors (Wexler and Winick 1991, 2003; Wexler 2000; Winick 1997). Also see practical applications in Hora et al. (2011), Hora (2002), KPMG (2014), Hora (2011), Kawalek (2018, 2020). Freckelton (2008, p. 578) states that therapeutic jurisprudence 'recognises the reality that law functions, like it or not, as an agent that has the potential for both deleterious and beneficial consequences for health and wellbeing'. To make such claims, therapeutic jurisprudence commits to the law being a social and human-made "thing". Winick (1997, p. 3) claims that law 'is a living breathing organism', which means that law should not be conceptualised in metaphysical terms, but in the same everyday terms set by subjectivist ontology adherents. Much of the therapeutic jurisprudence literature is centred around human (particularly service-user) interaction with the law (particularly judges) in problem-solving courts and discusses how best to engage progress and enhance rehabilitative outcomes for drug court candidates (Winick and Wexler 2003). This means that the therapeutic jurisprudence literature agrees that the law the mind has no reality (and is in fact redundant); law is given an ontological body through its effect on behaviours, mental health, and within social applications. As such, law cannot be separated from experience, nor can it be understood outside of humans' subjective reactions to it and interactions with it. Thus, therapeutic jurisprudence also rejects formalism and its objectivist ontology.

In terms of substantive theory, therapeutic jurisprudence has closest resonance to American Realism, both focusing on analysis of the courts, common law and legal agency at judicial level (ibid, Freeman and Lloyd 2001). Famously, Llewelyn (1931, p. 44) stated that 'judges are men; as men they have human backgrounds', which epitomises the American realist claim that the law is imperfect; it is shaped by judges' personal prejudices, individual choices, entrenched viewpoints and ideologies—thus, it is infused with subjectivity and politics (for instance, see: ibid; Holmes 1963; Llewellyn and Adamson Hoebel 1941; Freeman and Lloyd 2001; Telman 2014). In key text *Law and the Modern Mind*, Frank (1963) put so much emphasis on the psyche and personality of judges that he claimed that judge-made law may be influenced almost exclusively by what the presiding judge had for breakfast. No doubt radically stated, of note is the rejection of perfectly formed, internal, and pure law (also see Jütersonke 2016). If law is a manifestation of human behaviour, the realists argue that it does not materialise in the predictable, consistent, and uncontroversial forms as assumed by the formalist conception (Freeman and Lloyd 2001).

Similarly, therapeutic jurisprudence claims that even when the law is applied accurately by judges or other legal actors, it is imperfect, potentially causing anti-therapeutic consequences (wine) (Wexler 1990; Freckelton 2008; Winick 1997). Lewellyn's (1940) consideration of the 'juristic method' underpinning certain skills and practices at judicial level Twining (1993) resonates with the therapeutic jurisprudence focus on judicial behaviours and interactions (Winick and Wexler 2003) Thus, there is no such thing as transcendental law; both scholarships assume that law does not (and cannot) possess a metaphysical core. As such, both commit to a subjectivist theory in which the law *is* peoples' lived experience and it *is* social context. As such, therapeutic jurisprudence ontology replicates that from legal realism and sociological jurisprudence (and legal positivism). In the same way, all of these scholarships also reject formalism's objectivist ontology.

Epistemology

So far I have discussed the question of what law *is*. Ontologically, if law is subjectivist and given an existence through social facts, the question becomes how can we build knowledge of that reality? In other words, how can we know the law? How can we access valid law? These questions are answered through epistemological enquiry.

As proposed, the ontological underpinnings of legal realism, sociological jurisprudence, legal positivism, and therapeutic jurisprudence are synonymous—each school commits to the same subjectivist ontology, which means that the question of "*what is law?"* prompts similar answers. However, there are also overlaps in their key epistemological commitments, not least because they conform to epistemologies which themselves converge. The point is that each school could be said to rely on a different epistemology, however, these epistemologies intersect with one-another—the epistemologies themselves make similar ontological and epistemological commitments. This explains, firstly, the observation that the substantive theories of these jurisprudences can be difficult to tell apart which itself explains why, secondly, therapeutic jurisprudence is said to be similar to legal realism and sociological jurisprudence respectively, though how, where, and why have not been specifically unpacked. Note that these suggestions made throughout this section are designed to contextualise therapeutic jurisprudence scholarship—there may be different interpretations of the methodology of these different schools, which I respect and am not attempting to debunk or disassemble.

The colour codes from Fig. 1 map onto those from Table 1. To summarise these epistemologies, first, sociological jurisprudence could be said to use critical constructivism, a hybrid blend of social constructivism and critical theory (Kincheloe 2005). In terms of the "critical" aspect, academic arguments may be situated in critical theories, such as feminism, postmodernism, and Marxism. In terms of "constructivism", this means that there is an assumption that knowledge is created, accepted, and reinforced in the mind—through interaction with others, interpretation, and collectively construed human experiences (Berger and Luckman 1966). As such, the critical constructivists generate critique of sociological infrastructures whilst recognising the social aspects of human experience by giving special sensitivity towards the interplay between human interpretation and power (Kincheloe 2005). Second, legal realists could be said to use pragmatism, which takes a special interest in building knowledge based on real-life 'practical understandings of concrete, real-world issues' (Patton 2005). Pragmatism avers that our understanding of the world is built on subjective, real, and political experiences and behaviours, rather than objective law, mechanically applied (Kelly and Cordeiro 2020). It measures successes of the real world through their practical usage (usually through mixed and multi methods) (Kaushik and Walsh 2019). Finally, the legal positivists could be said to use empiricism, which claims that legal concepts are embedded into known facts of physical reality—as such, they can be experienced through the primary physical senses, experiments, and observations. (e.g., sight, touch, hearing, etc.), which in turn creates theory applicable to real world observations (Alston 1998; Freeman and Lloyd 2001).

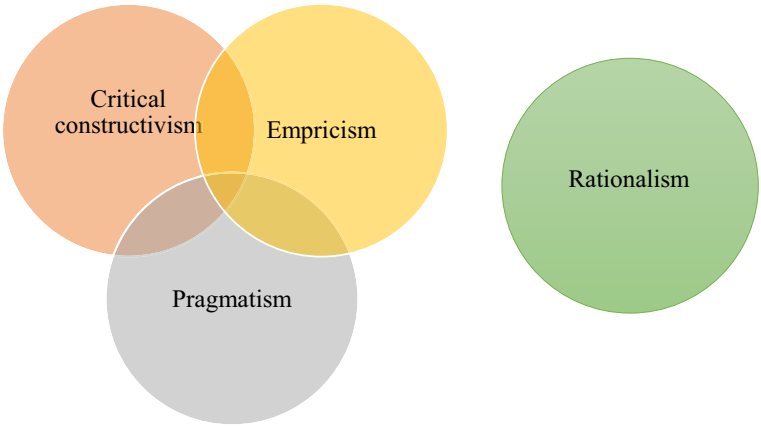

Fig. 1 The epistemologies of some of the dominant legal schools

However, despite their different emphases, these three epistemologies themselves overlap (and therefore so do the substantive claims generated by these three schools). The Venn diagram shows that although the principal epistemology of each three schools is different, each has notable commitments to the other epistemological traditions. This is unlike formalism, which (in addition to its unique ontology) uses an outlying epistemology, hence, it generates a very different genre of substantive claim. Formalism could be said to ascribe to a rationalist epistemology, which assumes that knowledge is acquired through reason 'as the chief source and test of knowledge' and without the aid of the senses (Blanshard 2020). Using rationalism, formalism's epistemological knowledge of the law is generated through a priori logic, innate thinking, deductions, and abstractions.

In terms of legal realism and sociological jurisprudence, whilst many of their epistemological commitments imbricate, the realists predominantly engage a pragmatistic epistemology whilst the sociological jurisprudes predominantly engage critical constructivism. During different stages of a therapeutic jurisprudence analysis, therapeutic jurisprudence may lean more heavily towards either realism or sociological jurisprudence within its methodological commitments. This is because Wexler encourages therapeutic jurisprudence analysis to be structured across two tiers: the first is the wine; the second is the bottle (Wexler 2014, 2015a, b). The next part of this paper will show that when we consider the wine, therapeutic jurisprudence analysis embraces an epistemology akin to the legal realists. However, a bottle analysis, therapeutic jurisprudence follows the epistemological trajectory of the sociological jurisprudents.

The Epistemology of Therapeutic Jurisprudence Wine (or Application of the Law)

Formalism is usually considered the antithesis of legal realism (and, by extension, therapeutic jurisprudence wine), and owing to their ontological beliefs, the realists

and therapeutic jurisprudence wine analysts construct knowledge of the law in a very different way to the formalists. Using the epistemological tradition of pragmatism, the realist and therapeutic jurisprudence wine literature utilise a posteriori analysis to discover a "thing" in its broader context, analysing it through its effects. Notably, this proposition is in agreement with Stobbs' (2019) view that therapeutic jurisprudents utilise pragmatism.

Llewelyn (1951) described realism as a behavioural approach concerning the social effects of law. He proposed that the law and court-based decisions are a 'careful study of the instrumentalism, the pragmatic and the socio-psychological decision elements' (Llewellyn 1930, p. 447, footnote 12c). Holmes (1963) stated that knowledge of the law does not come from reading books, but rather from studying how it manifests in people, their reactions, and through material consequences (also see Jütersonke 2016; Ross' (2020) later work considered that to know the law, and to build knowledge of it, is to know and understand observable social or psychological facts. Therapeutic jurisprudence adopts this potion; Wexler (2000) rejects the analytical reasoning that accompanies rationalist epistemology, building understanding instead by examining therapeutic and / or anti-therapeutic effects of legal actors in context. According to Freckelton (2008, p. 577) quoting Winick (1997), therapeutic jurisprudence 'proceeds on the basis that the vitality of the law lies in its experience, rather than its logic, and the law is merely "part of a rich tapestry of human interactions"'. This means that to know the law is to know broader psycho-social consequences. As such, the epistemological language used by therapeutic jurisprudence wine and realism is similar, both positing that knowing the law is knowing contextually shaped meanings, practical experiences, and human reactions to it and interactions with it. However, as an aside, the discussions so far also show overlaps to the language used by the critical constructivists and empiricists (Kincheloe 2005; Alston 1998).

Pragmatism has key features that distinguish it from similar epistemologies. Through its concern with real-life effects, pragmatism uses practical "successes" as an evaluative framework (Morgan 2014; Freeman and Lloyd 2001). This is strongly reflected in the practical epistemological dispositions of legal realism and therapeutic jurisprudence wine. Legal realist writings focus on policy analysis and relate evaluations to practical problems in the real world (for instance see the discussion on law-jobs Llewellyn (1940) and also Holmes 1963). This is particularly true of the American work, which focused on court behaviours and judicial practice (ibid). For instance, Llewelyn coined the term *law-jobs* to describe law's *job* as ensuring the survival of human groups (ibid). For Llewelyn, law should be evaluated in terms of how effectively these jobs are being carried out, thus, he underpins his legal analysis with a practical rationale (ibid).

Similarly, scholarship for therapeutic jurisprudence wine is well-known for bridging the gaps between theory and practice (for example see Winick and Wexler 2003). Not only are many of the therapeutic jurisprudence community themselves practitioners of wine (e.g., judges) which bolsters this intersection, many therapeutic jurisprudence writings are concerned with how we can change the practice of (for instance) the courts to align with therapeutic jurisprudence principles (Hora et al. 2011; Hora 2002, 2011; KPMG 2014; Kawalek 2018, 2020). By way of example,

some of my other work discusses how to enhance UK problem-solving courts to sync with international best practice principles (in terms of consistency of magistrates, bespoke training, and forging professional collaborations with the international community) (Kawalek 2020). This exemplifies how therapeutic jurisprudence wine findings naturally have strong practical implications and connotations. However, unlike legal realist writings, wine analyses are less concerned with common law, and instead focus on skillsets and techniques used by judges. Since both have been criticised for refusing to take a normative legal position (Freeman and Llyod 2001; Saks 2000; Schopp 1995, 1999; Birgden 2009; Fond 1999), this is at least somewhat justified for therapeutic jurisprudence, which does not offer so much of a legal analysis at wine stage, but rather a social psychology evaluation of a legal space, making legal normativism less relevant. Any normative proposition it offers at this stage usually relates to practice, not law with the bigger and more powerful changes able to occur only systemically. Therefore, when these ought questions occur, this often becomes bottle territory (this point will be picked up shortly).

Wexler (1992, 1993) states that therapeutic jurisprudence seeks to influence policy grounded in psychological outcomes and therapeutic goals. This position is reiterated by Slobogin (1995, p. 219), who considers that therapeutic jurisprudence 'force[s] policymakers to pay more attention to the actual, rather than the assumed, impact of the law and those who implement it'. Elsewhere, therapeutic jurisprudence has been described as reconceptualising the law 'in quest of solutions to problems such as domestic violence, homelessness, and drug use' and as 'a pragmatic and results-oriented approach to solving legal problems' by searching for 'treatment of remedies' (Pepson 2008, p. 239). Winick (1997, p. 185) states that therapeutic jurisprudence 'is an interdisciplinary enterprise designed to produce scholarship that is particularly useful for law reform' since it endeavours to 'help shape the development of the law'. As such, therapeutic jurisprudence encourages us to ask new and innovative questions about the law, not for the sake of siloed academic thinking, but to make a positive difference to peoples' lives, hence a practical rationale. Again, this is not necessarily a normative for law reform—it instead a special sensitivity towards ensuring that research findings find their way back into the real world to change and challenge existing and future practice.[8]

Not all realists would agree with this analysis; pragmatism was thought to be not empirical enough for some (Freeman and Lloyd 2003 see "the revolt against formalism" section). In their quest to enlarge knowledge and relate it to the practical

[8] This sentiment could be extended to the therapeutic jurisprudence methodology discussion itself. When I developed the aforementioned therapeutic jurisprudence measurement tool, I did so in the spirit of enhancing practice. By standardising evaluation of "wine" in problem-solving courts, we increase replicability of results and create externally valid datasets. This enables international analyses to be conducted, which better understand general structures of good (and less good) practice—this has strong practical value. In the same vein, some may question the purpose of developing the theoretical modalities of therapeutic jurisprudence's ontological and epistemological claims within this paper. Aside from responding to the critics, when a methodology is carefully understood and then applied, this leads to valid research results. This means that we can be more certain that the claims about the wine are theoretically sound and consistent. As such, it embraces pragmatism.

problems of society, some realists claimed that pragmatism was too little concerned with the study of actual facts (ibid). It would therefore be tempting to categorise realist epistemology as empiricism. Undoubtably, realism and therapeutic jurisprudence wine analyses have strong hues of empiricism. In particular, the realists possessed a distaste for intuitive and a priori thinking, instead emphasising insights garnered by the empirical social sciences through a posteriori learning (ibid; Leiter 2001). Adopting this position, much of the therapeutic jurisprudence work, especially in the court context, is driven by granular data and information collected directly and first-hand at research sites by researchers and practitioners (for example, Kawalek 2018, 2021; Petrucci 2002; Bartels 2017a, b, 2019; Hopkins, et al. 2022).

However, there are also distinctions within the focuses of these epistemologies. Pragmatism's concern with practical solutions yields a future-orientation and can be almost consultative. As a result, it tolerates all methods and datatypes so long as they can create channels back into the real world to analyse practical successes. This is why we often see pragmatists using mixed and multi methods and blending research traditions (Kaushik and Walsh 2019). In law, this means that doctrinal research is just as useful as empirical data. Indeed, whilst some therapeutic jurisprudence wine literature is undeniably data driven, a significant portion is also doctrinal (see a significant volume of the work of Professor Perlin e.g., Perlin 2011; Perlin and Cucolo 2021; Klotz et al. 1991; Winick 1997) it may take the form of case notes or short practice reports (Wexler 2018a, b), other parts are blogposts and even anecdotal writings (for instance, see blogging on the ISTJ website: https://mainstreamtj.com/cassel/). The point is that therapeutic jurisprudence wine evaluations do not have a closed preference for specific data sources, so long as they can generate findings with firm connections to the real world, which boils down to a desire for solution-focused research hence pragmatism. This is unlike empiricism, which seeks to present (often quantitative) factual information about the current physical world with little subjective interpretation, no future orientation, and usually using just one method. As such, though the realists do adopt some features of empiricism (as these epistemologies themselves overlap), this is not its strongest epistemological influence.

Referring back to Table 1 and Fig. 1, empiricism instead best captures the epistemological position of legal positivism. Legal positivists prioritise empirical data exclusively, often (at least in the earlier days) of natural science genre (Priel 2012). For the reasons already made about the convergent epistemologies, empiricism also commits to other philosophies. To demonstrate this using just one example, where Austin discusses state structures, sovereign commands, and authoritarianism, he shows concern for the law as it is applied in politics, society, and context (Freeman and Lloyd 2001). To make such claims, he taps into critical constructivism and pragmatism.

The Epistemology of Therapeutic Jurisprudence Bottle (or Design of the Law)

This section moves away from examining the courts, judicial behaviour, and common law at micro-level, to statutory law, legislation, and rules and regulations at

macro-level. In therapeutic jurisprudence, the bottle considers exactly these factors in terms of their therapeutic and/or anti-therapeutic value, and how law can be remodelled systemically to enhance outcomes (Wexler 2014, 2015a, b). In terms of substantive theory, sociological jurisprudence and its branches consider the law's impact in terms sociological infrastructures. Depending on the scholar, it might make grandiose claims about the law's effect on social conditions, for instance, social welfare, justice, social consciousness, institutionalism and social control, inequality, oppression, poverty, and class, or subtler claims about the links between society, law, and legal enterprises, often working to dismantle accepted societal structures and assign new goals (Rumble 1965). This is then contextualised into implications on individual people, that is, how these general themes impact psychosocial outcomes and wellbeing. Using a broader frame of analysis to the realists, this approach relies on the epistemological assumptions from critical constructivism.

In 1993, Wexler described therapeutic jurisprudence as a mental health counterpart to the new public law movement law (Wexler 1993) (which can be considered a contemporary branch of sociological jurisprudence) as proposed by Rubin (1991). Rubin (ibid) claimed that the uprising of the administrative state has changed our primary lawmakers and adjudicators from the courts to legislators and government administrators (ibid). As such, law is no longer the 'special province' of the judiciary, and 'courts intercede in this law making process, but less often than the casebooks would suggest' (ibid, pp. 798, 804). Rubin (ibid) argues that this is a form of expanding government control; statutory law is used by the administrative state to achieve specific policy goals and political aims, making it a state weapon. On a basic level, this changes what most law "looks" like 'from common to statutory law', making legislation more commonplace than before (ibid, p. 806). On more a complex level, this permeates the practice of the courts and minds of judges who, obliging to the state, justify their reasoning through policy arguments that serve the basis of legislation (abandoning judicial reasoning, logic, and the principles of common law) (ibid).

Despite sociological jurisprudence making significant inroads for enriching thinking about the sociological implications of law and the relationship between law and society, Rubin claimed that their legal arguments focused too little on the state and too vigorously on common law (ibid). Thus, though it is marked by similar themes and interests to sociological jurisprudence, as a contemporary branch, new public law focuses on a different type of law (statutory) to traditional sociological jurisprudence (ibid). Observing 'a decline in traditional mental health law scholarship' Wexler (1993, p. 20), considers that new public law parallels therapeutic jurisprudence. Though Wexler's paper was published many years before he first disseminated the seminal wine-bottle analytical framework, by asking constitutional and administrative law questions and by likening therapeutic jurisprudence to new public law, we see nascent bottle-level discussions developing (as opposed to those pertaining to discretionary court practice and skillsets—wine). This means that Wexler's early connection to new public law is entirely justified, though should now be conceived as limited to bottle analyses in light of the nuance provided by the "wine" and "bottle" concept from his later work (Wexler 2014, 2015a, b).

The above discussion forms the context; of note is how these altered conceptions of law impact methodology. If contemporary law predominantly takes the form of legislation rather than common law, it follows that legislators and administrators have become the best recipients for legal scholarship as opposed to judges. Thus, legal writing (and legal education) must realign and adapt to reach this audience (1991). This means abandoning intellectually sound conclusions in line with previous court decisions as per the old method, and recrafting arguments to encapsulate solution-focused policy goals (ibid). Rubin suggests using a methodology akin to political science by drawing upon expertise from the surrounding social sciences, positing that we should 'seek to employ other disciplines to build new intellectual constructs' (ibid, p. 810). In a similar way, Wexler (1993) invites therapeutic jurisprudence scholars to generate policy arguments that reach out to relevant government bodies whilst drawing upon the expertise of the social sciences. Thus, both Rubin's new public law and Wexler's bottle call for a refocus on statutes, regulations, and administrative actions buttressed by social science information. Their approach retains many of the key themes from sociological jurisprudence but moves away from analysis of the courts towards statute. Therefore, both advocate that new generations of legal scholars adopt tailored methodologies facilitated by a critical constructivist epistemology.

Naturally, the critical approach offered by critical constructivism brings with it recommendations for reform, reflected in therapeutic jurisprudence bottle analyses. For instance, in my work elsewhere, at bottle level, I critiqued UK law and policy for failing to support therapeutic jurisprudence goals during problem-solving courts implementation (Kawalek 2020). A bottle-level analysis enabled me to advocate for changes to legislation (namely, the Criminal Justice Act (2003) and Courts Act (2003) to bring consistency in panels of magistrates, to encourage court attendance amongst service-users, improve the provisions for drug testing and reporting, and give magistrates a better variety of powers to support drug rehabilitation requirements. Notably, this shows the link between "wine" and "bottle" with legislation impacting practice (however, where law reform is suggested to improve the wine, this becomes bottle territory). Part of the analysis involved appealing to officials from local arms-length bodies and the UK Ministry of Justice to make changes at legislative level (ibid). In doing so and supported by social science insights (mostly criminological), I took a critical approach to UK legal structures whilst showing awareness of their impact on individual-level psycho-social outcomes (ibid). In this example, to ensure continuity of practitioner thereby bettering judicial practice, we must look at changing statute and therefore appeal to the state within a normative agenda. As such, by adhering to a critical constructive epistemology following new public law, it reached out to administrators, whilst possessing strong reformative overtones of systemic nature.

With this in mind, Arrigo's (2004) critical piece explored some of the tensions ostensibly created by the therapeutic jurisprudence position. According to Arrigo, therapeutic jurisprudence is flawed because it wrongly assumes the legitimacy of law (ibid). Arrigo argues that by naively accepting that law can be harnessed as a vehicle to generate therapeutic outcomes, therapeutic jurisprudence fails to recognise that the law itself is the source of the very injustices that it proposes to overcome,

ironically, through law (ibid). However, awareness of the different focuses in therapeutic jurisprudence of "wine" and "bottle", and the aims and approaches carried by their respective epistemologies, allows us to respond more strongly to the critics.

Undoubtably, a large body of therapeutic jurisprudence texts focus on analysing the wine as a branch of legal realism. By its very normative and epistemological nature, legal realism often accepts the status quo with little criticality: it is concerned with the law as it *is*, rather than as it *should* be (Freeman and Lloyd 2001). Similarly, a wine analysis does not require critique of the law's infrastructure, but entails an evaluation of legal spaces where gaps left by statute and policy can be manipulated by judicial discretion (e.g., see wine analysis in Kawalek 2020). Through pragmatism, therapeutic jurisprudence wine analysts might make some practical suggestions for improvement; however, these suggestions do not pertain to law reform, but rather how practitioners can incorporate best practice from social science disciplines. As already touched upon in the proceeding "wine" section, one could go as far as to say that this is not really a legal argument at all, but a social science evaluation of a legal context. As such, though there may be some normatively infused recommendations to improve practice, these are relatively speaking weak on a law reform level, working within the given systemic structures following legal realism. To provide a further example, to suggest that judges *ought* to apply problem-solving skills in court (wine) might rely on state policy implementing problem-solving courts with all the other systematic structures and components in place to support effective operation. To suggest that judges use problem-solving skills in isolation and in small pockets of practice, whilst valuable, might have fewer effects. Therefore, to pose a normative question is actually that the state *ought* to change (bottle) not the practice (wine) to allow the judges to effectively apply problem-solving practice. All of this corroborates Arrigo's point.

However, Arrigo's analysis does not sit right; I have already given several examples of where law reform is suggested in my own work. If all therapeutic jurisprudence scholarship concentrated on the wine, Arrigo's argument may have good footing. However, therapeutic jurisprudence is more complex, advocating for a second layer of analysis that may call for reform that does not willingly accept the legitimacy of law (Wexler 2014, 2015a, b). At bottle level, therapeutic jurisprudence is progeny of sociological jurisprudence (and more specifically new public law), borrowing from it many of its core tenets including the epistemology of critical constructivism. This approach is inherently reformative, activist, and normative, where the bottle seeks changes to government-made legislation to create a more therapeutic legal system, unlike a legally neutral wine analysis, which, if it becomes normative will often become a bottle-level analytical point.

The critical constructivist epistemology used at bottle level has strong overlaps to other traditions as per the Venn diagram. Where therapeutic jurisprudence recommends changes to practice, and generates political commentary, there are clear links to pragmatism. The claim that we can derive understanding through first-hand human experience of the world has some links to empiricism (notably, the sociological critique of broad state structures and law as an expression of the sovereign also links substantively to legal positivism as per Bentham and Austin) (Freeman and Lloyd 2001). Similarly, there are clear hints of critical constructivism in both

legal positivism and legal realism—they consider that law materialises within the subjective consciousnesses of people that encounter it—it is through their eyes that researchers can construe the impacts of law on society and seek reform that brings about more equal or therapeutic social outcomes. As such, like the other two schools, the sociological jurisprudes engage one primary epistemology with hybrid notes of other theories.

Methods

At this final juncture, we consider the research methods to which the above assumptions lend themselves. This discussion both contextualises studies already undertaken in therapeutic jurisprudence or provides directions and possibilities to those wishing to undertake study in the future,

Methods in Wine

By claiming that all science is concerned with the same body of facts, the legal realists first expressly called for the incorporation of insights from economics, sociology, political science, anthropology, and social psychology in legal analysis (ibid). This involves both using the social sciences to inform research frameworks *and* examining the law through use of empirical measurement (notably, empirical methods were traditionally reserved for social science subjects, as seen in the formalist literature) (ibid). As such, use of the social sciences to inform legal analysis contrasts with formalism, whose position on metaphysical law lends itself to law being its own autonomous subject; thus, it should not be mixed with others (Twining 2021). As a footnote, it is worth mentioning that formalists are more likely to advocate doctrinal and purely theoretical jurisprudential methods due the underlying assumption that law is autonomous, internally valid, and logically arranged (Freeman and Lloyd 2001); if objective law is retrieved via the mind and consciousness, there is no need to look beyond these streams to prove or disprove formalist propositions, thus precluding the use of empricial data.

According to Winick, therapeutic jurisprudence 'calls for the study of… [therapeutic and anti-therapeutic] consequences with the tools of the behavioural sciences' (Winick 2003). As such, by cultivating socio-legal research that draws law and the social sciences together, law can be evaluated using the measurement systems from the surrounding disciplines. This means transposing relevant psychometric tests, raw scales, and constructs, informed by humanist or behavioural evidence, to measure and analyse the law or legal practices. This method of importing one discipline (e.g., psychology) into the other (law) means that although law and other social science subjects are distinct, they are distinguished by a dotted line rather than solid line.

By way of example, in therapeutic jurisprudence wine, Petrucci's (2002) research sought to measure key aspects of "respect" from social psychology in court settings. My tool lifted key interactional styles from therapy sessions (such as empathy, respect, positivity, active listening) to measure judge's behaviours (Kawalek 2020).

Suggested further research may involve taking Hogan's (1969) empathy scale from psychology to measure judges' empathy levels in problem-solving courts; or perhaps Ryff and Keye's (1995) wellbeing scale to compare wellbeing progress prior to and upon exit of a court programme; or it could consider Crosswell and Lockwood's (2020) stress tool to measure a practitioner's experience of practicing in a problem-solving court compared to a mainstream court. The point is that psycho-social metrics from other disciplines can be used to measure wine legal contexts through a therapeutic jurisprudence lens, which is only made possible by putting law under the same subject heading as the social sciences.

Owing to the ontological and epistemological assumptions adhered to by therapeutic jurisprudence wine analysts, researchers assume that the law can be known and understood through the eyes of its subjects (ontological subjectivism) and the success of their practical application is the core means of measuring, analysing, and conceptualising these findings (pragmatist epistemology). What this looks like in practice is quantitative or qualitative research asking direct questions to participants about their experiences to understand the law's therapeutic and/or anti-therapeutic effects. This may take the form of a survey, observation (quantitative or qualitative), interview, focus group, or doctrinal research pre-empting impacts of certain laws on people, where change to practice may be recommended in line with the social science literature using the above-referenced scaling systems for example. Findings may be uncovered by triangulating results gleaned from multi or mixed methods or single methods of *any* variety. However, despite tolerance of all method types, the focus on real-life experiences and material consequences creates a tendency to prioritise empirical data in applied contexts.

Using the above-mentioned methods, some of the research questions that might be asked at therapeutic jurisprudence wine level are:

- How do practitioners convey empathy during their interactions?
- How does a court review session make a service-user feel?
- How is a court session motivational?
- What techniques do judges use to invoke compliance?
- How do court sessions impact practitioners?

Though this limited list of wine questions offers nothing new or surprising to those familiar with therapeutic jurisprudence research, this paper provides a strengthened understanding of the theoretical commitments made by researchers before arriving at them.

Methods in Bottle

Bottle researchers assume that the law is situated in human experiences shaped by social, political, historical, or cultural contexts or influences (ontological subjectivism). As such, critiques of sociological infrastructures help to construct perspectives of the world and their impact on people (epistemological critical constructivism).

If the epistemological foundation of legal knowledge is sociological context, this means using methods that encourage a critical dialogue between law and society to explain individual (therapeutic or otherwise) effects.

As discussed, during a wine analysis, law becomes a social science subject in part because it is analysed empirically. Following sociological jurisprudence, bottle analyses may "look", at least on face value, like traditional legal research—for instance, it may typically take a doctrinal approach to law and policy analysis by carrying out desk-based research. In practice, this may take the form of critiques of legal instruments, thematic analysis of case law decisions, policy arguments, papers advocating for the insertion of certain words or provisions into legislation, or persuasive theoretical propositions seeking to change and challenge existing law based on critical theory (Pound 1911). As such, bottle analysts typically develop literature that is not necessarily informed by empirical data or through measurements taken by social science instruments. That said, some claims may be facilitated by empirical information. For instance, a bottle analysis might be informed by empirical analysis of the wine (see my above example regarding legislative change (bottle) influencing magistrates' training (wine)). Or it might collect "bottle only" empirical data; for instance, further research might carry out a large survey and statistical analysis to gauge structure of public opinion around the impact of a given law to make a broad scale sociological claim. The point is that a bottle analysis it not limited to doctrinal pieces, though this is how it would typically look.

However, in line with the modernisation of legal research, as per Rubin's development of the new public law movement, there are also key differences. Bottle analyses are typically written for an audience of policymakers, administrators, or legislators (as opposed to judges) who have greater agency to make broader systemic changes. When appealing to this audience, the epistemological assumptions from critical constructivism carry an inherently normative approach, where its "criticality" seeks reform in line with the goals from its given analytical framework. This type of research is also—untraditionally—bolstered by social science insights. For instance, the benchmark by which something is considered to be operating well or should be changed is in line with a construct from a surrounding discipline, such as mental health, autonomy and choice, dignity, emotional labour, or drug recovery rates. These are not inherently "law" concepts, nor are they typical means by which law is evaluated, but following the sociological jurisprudes, they are used in therapeutic jurisprudence bottle analyses to evaluate the proficiency of law through socio-legal lenses, again bringing law closer to the social sciences.

Some of the research questions that might be asked at bottle level are:

- What provisions in a piece of legislation could be modified to enhance a therapeutic provision?
- How can we read a piece of legislation alongside a therapeutic jurisprudence rationale to identify therapeutic jurisprudence friendly and unfriendly areas?
- How does the legislation governing a court setting allow judges to carry out international best practice principles in line with therapeutic jurisprudence?

Again, these are not novel research questions to therapeutic jurisprudence scholars, but in this paper, I have sought to elucidate the theoretical commitments made by researchers before arriving at them. Overall, I hope the paper helps structure the thinking of therapeutic jurisprudence researchers and helps to provide a greater appreciation of where particular research questions (e.g., wine/bottle) sit and the theory behind making such claims. I urge researchers in therapeutic jurisprudence to think carefully about where their analyses fit with these discussions to ensure a consistent, contextualised, and well-justified approach.

Conclusion

In sum, as a body of scholarship, therapeutic jurisprudence has been critiqued for being atheoretical due to tensions within some of its core propositions. At surface level this may look to be the case: it is cited as being the progeny of both legal realism and sociological jurisprudence—although these are similar bodies of scholarship, there are also key differences in their core methodological commitments (as illustrated by the Venn diagram) and their stances on normativism. How can it be that therapeutic jurisprudence be the progeny of both schools and be both non-normative and normative all at once? Does this mean that therapeutic jurisprudence is theoretically unsound, scattered, inconsistent, and 'all things to all people' (Wilson 2021, pp. 5, 13, 14)? This paper has shown not: rather, therapeutic jurisprudence offers a dual mechanism of analysis, with two core layers that work in tandem; it thus proposes a rich and complex framework for understanding and analysing the law. Therapeutic jurisprudence *is* each and all of these things, and the reason that this works is because of the two tiers of analysis it offers, each making respective propositions and normative assumptions.

The therapeutic jurisprudence scholarship at both wine and bottle levels makes a theoretical commitment to reality being subjectively construed within the external world (ontology). At epistemological level, this splits off where wine commits to pragmatism (and is legally non-normative) whilst the bottle leans on critical constructivism (and is normative). The overlaps within legal realism and sociological jurisprudence themselves (as per the Venn diagram) enables therapeutic jurisprudence scholarship to successfully generate literature with two distinct, but related, focuses (at wine and bottle) that can successfully work together. Bottle analyses (or therapeutic design of the law) examines structural factors, such as: statutes, provisions, rules governing legal institutions, policies and procedural norms and values—these cannot easily be changed, developed, or manipulated in everyday practice. Wine analyses focus on practitioners' techniques, skills, or approaches, filling gaps left by the bottle, where judicial discretion can be used to infiltrate and influence practice.

In this paper, I have shown that each tier of analysis commits to different theories respectively as a branch of either legal realism (wine) or sociological jurisprudence (bottle). This lends itself to an array of research questions, toolkits, theorisations, measurement systems, and interpretations. It also leads to differences in where normative propositions are made—with the wine having a relatively weak reformist agenda therefore rendering "ought" questions less applicable, but bottle

analyses possess a more powerful and convincing arguments taking the form of "ought" propositions. Though to a critical onlooker this may look like a mass of contradictions, the theoretical commitments made by therapeutic jurisprudence are consistent at respective levels, and in fact, as a whole body of scholarship, therapeutic jurisprudence offers is a rich and complex framework for analysis. I hope this paper responded to some of the critiques of therapeutic jurisprudence and will help structure the thinking of those undertaking projects in therapeutic jurisprudence.

References

Alston, W.P. 1998. *Empiricism*. Routledge Encyclopaedia of Philosophy. Taylor and Francis.https://doi.org/10.4324/9780415249126-P014-1.

Arrigo, B.A. 2004. The Ethics of Therapeutic Jurisprudence: A Critical and Theoretical Enquiry of Law. *Psychology and Crime, Psychiatry, Psychology and Law* 11 (1): 23–43. https://doi.org/10.1375/pplt.2004.11.1.23.

Bartels, L. 2017a. *Swift, Certain and Fair Swift, Certain and Fair: Does Project HOPE Provide a Therapeutic Paradigm for Managing Offenders?* New York: Palgrave Macmillan. https://doi.org/10.1007/978-3-319-58445-4_3.

Bartels, L. 2017b. HOPE Probation: A New Path to Desistance? *European Journal of Probation* 9 (3): 248–266. https://doi.org/10.1177/2066220317741882.

Bartels, L. 2019. HOPE-ful Bottles: Examining the Potential for Hawaii's Opportunity Probation with Enforcement (HOPE) to help Mainstream Therapeutic Jurisprudence. *International Journal of Law and Psychiatry*. https://doi.org/10.1016/j.ijlp.2018.06.004.

Belenko, S. 1998. Research on Drug Courts: A Critical Review. *National Drug Court Institute Review* 1 (1): 1–42.

Benditt, T. 1978. *Law as Rule and Principle*. Stanford, CA: Stanford University Press.

Berger, P.L., and T. Luckmann. 1966. *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*. New York: Doubleday & Company.

Birgden, A. 2004a. Therapeutic Jurisprudence and Responsivity: Finding the Will and the Way in Offender Rehabilitation. *Psychology, Crime & Law* 10 (3): 283–295. https://doi.org/10.1080/10683160410001662771.

Birgden, A. 2004b. Therapeutic Jurisprudence and Sex Offenders: A Psycho-Legal Approach to Protection. *Sex Abuse*. https://doi.org/10.1023/B:SEBU.0000043328.06116.ee.

Birgden, A. 2009. Therapeutic Jurisprudence and Offender Rights: A Normative Stance is Required. *Revista Jurídica De La Universidad De Puerto Rico* 78: 43.

Blanshard, B. 2020. Rationalism. *Encyclopaedia Britannica* 17 Nov 2020, https://www.britannica.com/topic/rationalism. Accessed 13 July 2022.

Brakel, S.J. 2007. Searching for the Therapy in Therapeutic Jurisprudence. *New England Journal on Criminal and Civil Confinement* 33: 455.

Brody D.C, and H. McMillin. 2001. Combating Fetal Substance Abuse and Governmental Foolhardiness through Collaborative Linkages, Therapeutic Jurisprudence and Common Sense: Helping Women Help Themselves, 12 Hastings Women's L.J. 243. https://repository.uclawsf.edu/hwlj/vol12/iss2/2

Cattaneo, L.B., and L.A. Goodman. 2000. Through the Lens of Therapeutic Jurisprudence the Relationship Between Empowerment in the Court System and Well-Being for Intimate Partner Violence Victims. *Journal of Interpersonal Violence* 25 (3): 481–502. https://doi.org/10.1177/0886260509334282.

Cooper, C.S. 2019. Evaluating the Application of therapeutic jurisprudence principles: Lessons from the drug court experience. In *The Methodology and Practice of Therapeutic Jurisprudence*, ed. N. Stobbs, L. Bartels, and M. Vols. Durham: Carolina Academic Press.

Crosswell, A.D., and K.G. Lockwood. 2020. Best Practices for Stress Measurement: How to Measure Psychological Stress in Health Research. *Health Psychology Open*. https://doi.org/10.1177/2055102920933072.

Dahlin, M., P. Leviner, A. Kaldal, and C. Gumpert. 2010. Swedish Legal Scholarship Concerning Protection of Vulnerable Groups: Therapeutic and Proactive Dimensions. *International Journal of Law and Psychiatry* 33 (5–6): 398–405. https://doi.org/10.1016/j.ijlp.2010.09.010.

Diesen, C. 2006. Therapeutic jurisprudence: An introduction from a Swedish perspective. *Scandinavian Studies in Law*. Available from: https://scandinavianlaw.se/pdf/51-6.pdf.

Dworkin, R. 1986. *Law's Empire*. Cambridge: Harvard University Press.

Frank, Jerome. 1963. *Law and the Modern Mind*. New York: Doubleday and Company.

Finkelman, D., and T. Grisso. 1994. Therapeutic Jurisprudence: From Idea to Application. *NEw England Journal on Criminal and Civil Confinement* 20: 243.

Freckelton, I. 2008. Therapeutic Jurisprudence Misunderstood and Misrepresented Price and Risks of Influence. *Thomas Jefferson Law Review* 30: 575–596.

Freeman, M., and D. Lloyd. 2001. *Lloyd's Introduction to Jurisprudence*. London: Sweet and Maxwell.

Green, L., and T. Adams. 2019. Legal Positivism. In *The Stanford Encyclopedia of Philosophy (Winter Edition)*, ed. Edward N. Zalta. https://plato.stanford.edu/archives/win2019/entries/legal-positivism/. Accessed 12 July 2022.

Hogan, R. 1969. Development of an empathy scale. *Journal of Consulting and Clinical Psychology* 33 (3): 307–316. https://doi.org/10.1037/h0027580.

Holmes, O.W. 1963. *The Common Law* (edited by Howe., M). The John Harvard Library.

Hopkins, A., S. Dodd, M. Nolan, and L. Bartels. 2022. At the heart of sentencing: Exploring whether more compassionate delivery of sentencing remarks increases public concern for people who offend. *Psychiatry, Psychology and Law*. https://doi.org/10.1080/13218719.2022.2040398.

Hora, P. 2002. A dozen years of drug treatment courts: Uncovering our theoretical foundation and the construction of a mainstream paradigm. *Substance Use and Misuse* 37 (12 & 13): 1469–1488.

Hora, P. 2011. Courting new solutions using problem-solving justice: Key components, guiding principles, strategies, responses, models, approaches, blueprints and tool kits. *Chapman Journal of Criminal Justice* 2 (1): 7–52.

Hora, P., W. Schma, and J. Rosenthal. 2011. Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System 's Response to Drug Abuse and Crime in America. *Notre Dame Law Review,* Volume 74, Issue 2. Retrieved from: https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1629&context=ndlr

Hull, N.E.H. 1987. Some Realism about the Llewellyn-Pound Exchange over Realism: The Newly Uncovered Private Correspondence 1927–1931. *Wisconsin Law Review* 921. Retrieved from:https://api.law.wisc.edu/repository-pdf/uwlaw-library-repositoryomekav3/original/deb3920bc5455ebf11288805951c57277d18dabd.pdf

Hull, N.E.H. 1989. Reconstructing the Origins of Realistic Jurisprudence: A Prequel to the Llewellyn-Pound Exchange over Legal Realism. *Duke Law Journal* 5: 1302–1334. https://doi.org/10.2307/1372519.

Ingersoll, D.E. 1981. American legal realism and sociological jurisprudence: The methodological roots of a science of law. *Journal of the History of the Behavioral Sciences* 17: 490–503. https://doi.org/10.1002/1520-6696(198110)17:4%3c490::AID-JHBS2300170405%3e3.0.CO;2-A.

Jütersonke, O. 2016. Realist Approaches to International Law. In *The Oxford Handbook of the Theory of International Law*, ed. A. Orford and D. Hoffmann. Oxford: Oxford University Press. https://doi.org/10.1093/law/9780198701958.003.0017.

Kaushik, V., and C. Walsh. 2019. Pragmatism as a Research Paradigm and Its Implications for Social Work Research. *Social Sciences* 8: 255. https://doi.org/10.3390/socsci8090255.

Kawalek, A. 2018. *Therapeutic jurisprudence: The application to an England and Wales review court* (PhD thesis) *SHURA*. https://doi.org/10.7190/shu-thesis-00139

Kawałek, A. 2020. A Tool for Measuring Therapeutic Jurisprudence Values During Empirical Research. *International Journal of Law and Psychiatry* 71: 101581. https://doi.org/10.1016/j.ijlp.2020.101581.

Kawałek, A. 2021. *Problem-Solving Courts, Criminal Justice, and the International Gold Standard: Reframing the English and Welsh Drug Courts*. Abingdon: Routledge.

Kawalek, A., J. Phillips, and A. Greenslade. 2022. The Significance of the Judge within the Choices and Consequences and Prolific Intensive Schemes. *International Journal for Court Administration* 13 (2): 6. https://doi.org/10.36745/ijca.442.

Kelly, L., and M. Cordeiro. 2020. Three principles of pragmatism for research on organizational processes. *Methodological Innovations*. https://doi.org/10.1177/2059799120937242.

Kimball, B., and D.R. Coquillette. 2020. Legal Realism and Pound's Decline, 1928–1931. In *The Intellectual Sword: Harvard Law School, the Second Century*, ed. B. Kimball and D.R. Coquillette, 226–252. Cambridge, MA: Harvard University Press. https://doi.org/10.4159/9780674245730-009.

Kincheloe, J.L. 2005. *Critical Constructivism*. New York: Primer.

King, M. 2003. Applying Therapeutic Jurisprudence from the Bench: Challenges and Opportunities. *Alternative Law Journal* 8 (4): 172–176. https://doi.org/10.1177/1037969X0302800406.

King, M., A. Freiberg, B. Batagol, and R. Hyams. 2014. *Non-adversarial Justice*, 2nd ed. Annandale, NSW: Federation Press.

Klotz, J., D. Wexler, B. Sales, and J. Becker. 1991. Cognitive Restructuring through Law: A Therapeutic Jurisprudence Approach to Sex Offenders and the Plea Process. *University of Puget Sound Law Review* 15: 579.

KPMG Consulting. 2014. Evaluation of the Drug Court of Victoria. Government Advisory Services. Final Report. *Magistrates' Court of Victoria*, 18.

Kress, K. 1999. Therapeutic Jurisprudence and the Resolution of Value Conflicts: What We Can Realistically Expect, in Practice, from Theory. *Behavioural Sciences and the Law* 17: 555–588.

La Fond, J.Q. 1999. Can Therapeutic Jurisprudence Be Normatively Neutral-Sexual Predator Laws: Their Impact on Participants and Policy. *Arizona Law Review* 41: 375.

Leiter, B. 2001. Legal Realism and Legal Positivism Reconsidered. *Ethics* 111 (2): 278–301. https://doi.org/10.1086/233474.

Llewellyn, K. 1930. A Realistic Jurisprudence: The Next Step. *Columbia Law Review* 30: 431.

Llewellyn, K. 1931. Some Realism about Realism: Responding to Dean Pound. *Harvard Law Review.* 44 (8): 1222–1264. https://doi.org/10.2307/1332182.JSTOR1332182.

Llewellyn, K. 1940. The Normative, the Legal, and the Law-Jobs: The Problem of Juristic Method. *The Yale Law Journal* 49 (8): 1355.

Llewellyn, K. 1951. *The Bramble Bush: On Our Law and Its Study*. New York: Oceana Publications.

Llewellyn, K., and E. Adamson Hoebel. 1941. *The Cheyenne Way; Conflict and Case Law in Primitive Jurisprudence*. Norman: University of Oklahoma Press.

Lobban, M. 2018. Legal Formalism. In *The Oxford Handbook of Legal History*, ed. Markus D. Dubber and Christopher Tomlins. Oxford: Oxford University Press.

Madden, R.G., and R.H. Wayne. 2003. Social Work and the Law: A Therapeutic Jurisprudence Perspective. *Social Work* 48 (3): 338–347. https://doi.org/10.1093/sw/48.3.338.

McIvor, G. 2009. Therapeutic Jurisprudence and Procedural Justice in Scottish Drug Courts. *Criminology and Criminal Justice* 9 (1): 29–49.

Morgan, D.L. 2014. Pragmatism as a Paradigm for Social Research. *Qualitative Inquiry* 20 (8): 1045–1053.

Olowu, Dejo. 2007. Therapeutic Jurisprudence: An Inquiry into Its Significance for International Criminal Justice. *Revista Jurídica De La Universidad De Puerto Rico* 76: 129.

Patton, M. 2005. *Qualitative Research and Evaluation Methods*, 4th ed. Los Angeles, CA: SAGE.

Pepson, M.D. 2008. Therapeutic Jurisprudence in Philosophical Perspective. *Journal of Law, Philosophy and Culture* 2: 239–245.

Perlin, M. 2011. *International Human Rights and Mental Disability Law: When the Silenced are Heard*. New York: Oxford University Press.

Perlin, M., and H. Cucolo. 2021. "Something's Happening Her But You Don't Know What It Is": How Jurors (Mis)Construe Autism in the Criminal Trial Process. NYLS Legal Studies Research Paper No. 3664705.

Perlin, M.L. 2013. "The Judge, He Cast His Robe Aside": Mental Health Courts, Dignity and Due Process. *Mental Health Law & Policy Journal* 3: 1.

Petrucci, C. 2002. Respect as a Component in the Judge-Defendant Interaction in a Specialized Domestic Violence Court that Utilizes Therapeutic Jurisprudence. *Criminal Law Bulletin* 38: 263–295.

Petrucci, C. 2021. If We Measure It, They Will Come: A Realist Evaluation Approach in a Therapeutic Jurisprudence Context. *Family Court Review: An Interdisciplinary Journal*. https://doi.org/10.1111/fcre.12592.

Petrucci, C.J, B.J. Winick and D.B. Wexler. 2005. Therapeutic Jurisprudence: An Invitation to Social Scientists. In Carson, D., and Bull, R.,(eds.), H*andbook of Psychology in Legal Contexts* 2nd ed. (John Wiley & Sons Ltd, 2nd Edition). https://doi.org/10.1002/0470013397

Pildes, R.H. 1999. Forms of Formalism. *University of Chicago Law Review* 66(3), Article 5 [607]. Available at: https://chicagounbound.uchicago.edu/uclrev/vol66/iss3/5.

Plato. 1911. *Plato's Phaedo*. Oxford: Clarendon Press.

Plato. 1943. *Plato's The Republic*. New York: Books Inc.

Pound, R. 1908. Mechanical Jurisprudence. *Columbia Law Review* 8 (8): 605–623. https://doi.org/10.2307/1108954.

Pound, R. 1910. Law in Books and Law in Action. *American University Law Review* 44: 12.

Pound, P. 1930. The Call for a Realist Jurisprudence. *Harvard Law Review* 44: 69.

Priel, D. 2012. Jurisprudence Between Science and the Humanities. *Washington University Jurisprudence Review* 4 (2): 269–332.

Richardson, L. 2019. Social Control Theory in Mental Health Courts: Reflects on Writing a "Therapeutic Jurisprudence" PhD. In *The Methodology and Practice of Therapeutic Jurisprudence*, ed. N. Stobbs, L. Bartels, and M. Vols. Durham: Carolina Academic Press.

Roderick, D., and Susan T. Krumholz. 2006. Much Ado About Nothing? A Critical Examination of Therapeutic Jurisprudence. *University of Massachusetts Law Review* 1(1), Article 9. Available at: https://scholarship.law.umassd.edu/umlr/vol1/iss1/9.

Ross, R. 2020. *On Law and Justice (Edited by Holtermann, J., translated by Bindreiter)*. Oxford: Oxford University Press.

Rubin, E.L. 1991. The Concept of Law and the New Public Law Scholarship. *Michigan Law Review* 89: 792.

Rumble, W.E. 1965. Legal Realism, Sociological Jurisprudence and Mr. Justice Holmes. *Journal of the History of Ideas* 26 (4): 547. https://doi.org/10.2307/2708499.

Ryff, C.D., and C.L.M. Keyes. 1995. The structure of psychological well-being revisited. *Journal of Personality and Social Psychology* 69 (4): 719.

Saks, E.R. 2000. Mental Health Law: Three Scholarly Traditions. *Southern California Law Review* 74 (1): 295–310.

Schopp, R.F. 1995. Sexual Predators and the Structure of the Mental Health System: Expanding the Normative Focus of Therapeutic Jurisprudence. *Psychology, Public Policy, and Law* 1 (1): 161–192. https://doi.org/10.1037/1076-8971.1.1.161.

Schopp, R.F. 1999. Therapeutic Jurisprudence: Integrated Inquiry and Instrumental Prescriptions. *Behavioral Sciences & the Law* 17 (5): 589–605.

Sebok, A. 1995. Misunderstanding Positivism. *Michigan Law Review* 93: 2054–2132.

Slobogin, C. 1995. Therapeutic Jurisprudence: Five Dilemmas to Ponder. *Psychology, Public Policy, and Law* 1 (1): 193–219. https://doi.org/10.1037/1076-8971.1.1.193.

Stobbs, N. 2019. Therapeutic Jurisprudence as Theoretical and Applied Research. In *The Methodology and Practice of Therapeutic Jurisprudence*, ed. N. Stobbs, L. Bartels, and M. Vols. Durham: Carolina Academic Press.

Stobbs, N. 2020. Therapeutic Jurisprudence in International and Comparative Perspective. *Oxford Research Encyclopaedia of Criminology*. https://doi.org/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-663.

Stobbs, N., L. Bartels, and M. Vols. 2019. *The Methodology and Practice of Therapeutic Jurisprudence*. Durham: Carolina Academic Press.

Stobbs, N., L. Bartels, and M. Vols. 2019. Therapeutic Jurisprudence: A Strong Community and Maturing Discipline. In *The Methodology and Practice of Therapeutic Jurisprudence*, ed. N. Stobbs, L. Bartels, and M. Vols. Durham: Carolina Academic Press.

Tebbit, M. 2017. *Philosophy of Law: An Introduction*, 3rd ed. London: Routledge. https://doi.org/10.4324/9781315281018.

Telman, J. 2014. International Legal Positivism and Legal Realism. In *International Legal Positivism in a Post-Modern World*, ed. J. Kammerhofer and J. Dspremont, 241–263. Cambridge: Cambridge University Press. https://doi.org/10.1017/CBO9781139094245.012.

Twining, W. 1993. The Idea of Juristic Method: A Tribute to Karl Llewellyn. *University of Miami Law Review* 48: 119.

Twining, W. 2021. The Significance of Realism. In: *Karl Llewellyn and the Realist Movement* (2nd ed., Law in Context). Cambridge: Cambridge University Press. https://doi.org/10.1017/CBO9781139151085.

Vols, M. 2019. Theory and Methodology of Therapeutic Jurisprudence. In *The Methodology and Practice of Therapeutic Jurisprudence*, ed. N. Stobbs, L. Bartels, and M. Vols. Durham: Carolina Academic Press.

Warren, R. 2003. Public Trust and Procedural Justice. In *Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts*, ed. D.B. Wexler and B.J. Winick. Durham, NC: Carolina Academic Press.

Wexler, D.B. 1990. *Therapeutic Jurisprudence: The Law as a Therapeutic Agent*. Durham: Carolina Academic Press.

Wexler, D.B. 1992. Putting Mental Health into Mental Health Law. *Law and Human Behavior* 16 (1): 27–38.

Wexler, D.B. 1993. Therapeutic Jurisprudence and Changing Conceptions of Legal Scholarship. *Behavioral Sciences & the Law* 11 (1): 17–29. https://doi.org/10.1002/bsl.2370110103.

Wexler, D.B. 1995. Reflections on the Scope of Therapeutic Jurisprudence. *Psychology, Public Policy, and Law* 1 (1): 220–236. https://doi.org/10.1037/1076-8971.1.1.220.

Wexler, D.B. 2000. Therapeutic Jurisprudence: An Overview. *Thomas m. Cooley Law Review* 17: 125.

Wexler, D.B. 2008. Two Decades of Therapeutic Jurisprudence. *Touro Law Review* 24: 17.

Wexler, D.B. 2011. From Theory to Practice and Back Again in Therapeutic Jurisprudence: Now Comes the Hard Part. *Monash University Law Review* 37 (1): 33–42.

Wexler, D.B. 2014. New Wine in New Bottles: The Need to Sketch a Therapeutic Jurisprudence 'Code' of Proposed Criminal Processes and Practices. Arizona Summit Law Review 463, Arizona Legal Studies Discussion Paper No. 12-16. Available at SSRN: https://ssrn.com/abstract=2065454 or https://doi.org/10.2139/ssrn.2065454.

Wexler, D.B. 2015a. Moving Forward on Mainstreaming Therapeutic Jurisprudence: An Ongoing Process to Facilitate the Therapeutic Design and Application of the Law. In: *Therapeutic Jurisprudence: New Zealand Perspectives*, ed. Warren Brookbanks. Arizona Legal Studies Discussion Paper No. 15-10. Available at SSRN: https://ssrn.com/abstract=2564613.

Wexler, D.B. 2015b. Wine and Bottles: A Metaphor and a Methodology for Mainstreaming therapeutic jurisprudence. Arizona Legal Studies Discussion Paper No. 15-05. Available at SSRN: https://ssrn.com/abstract=2553868.

Wexler, D.B. 2016. Guiding Court Conversation Along Pathways Conducive to Rehabilitation: Integrating Procedural Justice and Therapeutic Jurisprudence. International Journal of Therapeutic Jurisprudence 367, Arizona Legal Studies Discussion Paper No. 15-33. Available at SSRN: https://ssrn.com/abstract=2677431 or https://doi.org/10.2139/ssrn.2677431.

Wexler, D.B. 2018a. Mental Health Law and the Seeds of Therapeutic Jurisprudence. In: *The Roots of Modern Psychology and Law: A Narrative History*, ed. Grisso, T. and S. Brodsky, Arizona Legal Studies Discussion Paper No. 18-05, Available at SSRN: https://ssrn.com/abstract=3129093.

Wexler, D.B. 2018b. The Therapeutic Application of the Law and the Need for Amicus Justitia Briefs. Arizona Legal Studies. Discussion Paper No. 18-18, Available at SSRN: https://ssrn.com/abstract=3168768.

Wexler, D.B., and B.J. Winick. 1991. Therapeutic Jurisprudence as a New Approach to Mental Health Law Policy Analysis and Research. *University of Miami Law Review* 979: 45.

Wexler, D.B., and B.J. Winick. 2003. *Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts*. Durham, NC: Carolina Academic Press.

White, J.A. 1972. From Sociological Jurisprudence to Realism: Jurisprudence and Social Change in Early Twentieth-Century America. *Virginia Law Review* 58 (6): 999–1028. https://doi.org/10.2307/1072084.

Wilson, A. 2021. Therapeutic Jurisprudence in Criminal Justice: The Price of Letting One Hundred Flowers Bloom. *European Journal of Legal Studies* 25 (1): 30.

Winick, B. 1997a. *Therapeutic Jurisprudence Applied: Essays on Mental Health Law*. Durham: Carolina Academic Press.

Winick, B. 2003. A Therapeutic Jurisprudence Model for Civil Commitment Model for civil commitment. In *Involuntary Detention and Therapeutic jurisprudence International Perspectives on Civil Commitment*, ed. K. Diesfeld and I. Freckelton, 25–26. London: Routledge.

Winick, B.J. 1997. The jurisprudence of therapeutic jurisprudence. *Psychology, Public Policy, and Law* 3 (1): 184–206. https://doi.org/10.1037/1076-8971.3.1.184.
Yamada, D.C. 2001. Teaching Therapeutic Jurisprudence. *University of Baltimore Law Review* 50: 425.
Yamada, D.C. 2021. Therapeutic Jurisprudence: Foundations, Expansion, and Assessment. *University of Miami Law Review* 75: 660.