The Methodology and Practice of Therapeutic Jurisprudence
The Methodology and Practice of Therapeutic Jurisprudence

Edited by

Nigel Stobbs
Faculty of Law
Queensland University of Technology

Lorana Bartels
Professor of Criminology
Australian National University

Michel Vols
Professor of Law
University of Groningen

CAROLINA ACADEMIC PRESS
Durham, North Carolina
Dedication

This book is dedicated to the memory of Judge Michael D. Jones and Karen Stobbs. Mike was a legend in the international TJ community who had a long and distinguished career as a lawyer and later as a Maricopa County Superior Court judge before taking up an academic career as a faculty member at the Arizona Summit Law School. He is fondly remembered as a passionate advocate for justice, a mentor to many in the legal profession and in academia, and as a cherished friend.

Karen was Nigel’s wife and the love of his life who patiently endured his frequent absences to attend TJ conferences and events, and who taught him the true meaning of compassion and of wisdom.
Contents

Acknowledgments ix
Contributors xi

Chapter 1 • The DNA of Therapeutic Jurisprudence
   David B. Wexler 3

Chapter 2 • Therapeutic Jurisprudence — A Strong Community and Maturing Discipline
   Nigel Stobbs, Lorana Bartels, and Michel Vols 15

Chapter 3 • Therapeutic Jurisprudence as Theoretical and Applied Research
   Nigel Stobbs 29

Chapter 4 • Theory and Methodology of Therapeutic Jurisprudence
   Michel Vols 59

Chapter 5 • Therapeutic Jurisprudence, Intellectual Activism and Legislation
   David C. Yamada 83

Chapter 6 • Paying Attention to the Person: Compassion, Equality, and Therapeutic Jurisprudence
   Anthony Hopkins and Lorana Bartels 107

Chapter 7 • A TJ Approach to Mental Disability Rights Research: On Sexual Autonomy and Sexual Offending
   Michael L. Perlin, Heather Ellis Cucolo, and Alison J. Lynch 129
### CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Author(S)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Death Investigation and Therapeutic Jurisprudence</td>
<td>Ian Freckelton</td>
<td>149</td>
</tr>
<tr>
<td>9</td>
<td>Exploring Therapeutic Jurisprudence in New Zealand Specialist Criminal Courts</td>
<td>Katy Thom and Stella Black</td>
<td>175</td>
</tr>
<tr>
<td>10</td>
<td>The LJ-PJ-TJ-EBP Model in Offender Release and Supervision</td>
<td>Martine Herzog-Evans</td>
<td>197</td>
</tr>
<tr>
<td>11</td>
<td>Policy and Practice: Therapeutic Jurisprudence and Offender Rehabilitation in Australia</td>
<td>Astrid Birgden</td>
<td>227</td>
</tr>
<tr>
<td>12</td>
<td>Free Legal Aid for Women and Therapeutic Jurisprudence: The Indian Model</td>
<td>Debarati Halder</td>
<td>253</td>
</tr>
<tr>
<td>13</td>
<td>Understanding Family Violence in the Court: Applying a TJ Lens to Courtroom Research</td>
<td>Karen Gelb</td>
<td>273</td>
</tr>
<tr>
<td>14</td>
<td>Evaluating the Application of TJ Principles: Lessons from the Drug Court Experience</td>
<td>Caroline S. Cooper</td>
<td>287</td>
</tr>
<tr>
<td>15</td>
<td>Social Control Theory in Mental Health Courts: Reflections on Writing a “TJ” PhD</td>
<td>Liz Richardson</td>
<td>305</td>
</tr>
<tr>
<td>16</td>
<td>Reflections on Sentencing Issues in the Broadcast Trial of Oscar Pistorius</td>
<td>Annette van der Merwe</td>
<td>327</td>
</tr>
<tr>
<td></td>
<td>Index</td>
<td></td>
<td>345</td>
</tr>
</tbody>
</table>
Nigel would like to especially acknowledge the encouragement and mentoring he has received from David Wexler, Michael Perlin, David Yamada and the indefatigable Judge Peggy Hora (ret)—and the generous support by way of funding and resources from the Faculty of Law at the Queensland University of Technology.

Lorana would like to acknowledge the support of the TJ “family,” especially David Wexler, Michael Perlin and Pauline Spencer. She would also like to acknowledge the patience and support of her partner and children, Tim, Maxie and Amelia.

Michel would like to acknowledge the support of David Wexler and Jan Brouwer. He would also like to thank Alex Belloir, Mareike Hoffmann, Roely Postma, Linzy Sieljes and Andrew Zuidema for their help in editing this volume. Michel acknowledges the financial support of a VENI-grant from NWO, the Netherlands Organization for Scientific Research (#451-15-013). He wants to express his profound gratitude to Simone Kobes for being such a cheerful and wonderful person.

Michel, Lorana and Nigel also acknowledge and thank all of the research assistants on five continents, as well as the editorial expertise of Ilana Morgan, who devoted many hours of their time and expertise in helping this project come to fruition.
Contributors

**Lorana Bartels** is Professor of Criminology at the Australian National University. She was previously Professor of Law at the University of Canberra, where she was Head of the School of Law and Justice from 2016 to 2018. She is also an Adjunct Professor at the University of Tasmania and a Fellow of the Australian Academy of Law. Her research focuses on sentencing, corrections and the treatment of Indigenous peoples and women in the criminal justice system. She is a member of the editorial boards of the *Alternative Law Journal*, *Criminal Law Journal* and *International Journal of Offender Therapy and Comparative Criminology* and the International Society for Therapeutic Jurisprudence Global Advisory Council.

**Astrid Birgden** is a consultant forensic psychologist and Adjunct Clinical Associate Professor at Deakin University. She develops policy and designs service delivery systems to meet the needs of complex clients in correctional services, court services and disability services. Her international work includes designing a citizen-police mediation program in New Orleans, working with police and military in torture prevention in Asia, and advising on court ordered treatment of drug-related offenders in the Seychelles. She studied therapeutic jurisprudence with Professor Wexler at the University of Puerto Rico in 2000. Dr. Birgden is published in the areas of therapeutic jurisprudence, human rights and the Good Lives Model of offender rehabilitation.

**Stella Black** is of Ngāi Tūhoe, Ngāti Whakaue descent, she is a Māori researcher and PhD candidate at the University of Auckland. Stella has a particular passion in working with Māori young and old across a range of topics. She has worked on a number of research projects in the fields of mental
health, addictions, palliative and end of life care and community based co-design interventions. Her recent collaboration with Katey Thom, investigates Aotearoa New Zealand’s specialist courts, with a particular focus on Ngā Kōti Rangatahi (Māori oriented and located youth courts).

**Caroline Cooper** is a researcher and practitioner working in a wide range of judicial improvement efforts. For many years she was a Research Faculty member of American University’s School of Public Affairs (SPA) and Director of SPA’s Justice Programs Office and the US Department of Justice Drug Court Technical Assistance Project. She is a practicing attorney, has served as an assistant public defender, written numerous publications addressing the management and evaluation of criminal, civil, juvenile and family matters, including drug courts, Veterans Treatment Courts, and the interface of justice and public health system partnerships She has worked extensively within the US and abroad on a range of judicial improvement initiatives, including with the Supreme Court of Ireland, the Government of Bermuda, the Public Defender of Israel, the Buenos Aires Magistrates Council, and the National Public Defender of Chile.

**Heather Cuocolo** is an Adjunct Professor at New York Law School and facilitator of the joint JD/MA program with John Jay College of Criminal Justice. She is also the co-founder of Mental Disability Law and Policy Associates and the director of the International Society of Therapeutic Jurisprudence. In furtherance of her academic career, Heather has published and lectured—both domestically and internationally—in the areas of mental disability law, criminal law and sex offender law. In legal practice, Heather has dedicated her career to representing individuals facing civil commitment under New Jersey’s Mental Hygiene Law and Sexually Violent Predators Act.

**Ian Freckelton** is a Queen’s Counsel practicing as a barrister in Australia. He is a Judge of the Supreme Court of Nauru, Professor of Law and Psychiatry at the University of Melbourne, Adjunct Professor of Forensic Medicine at Monash University, and Adjunct Professor of Law at La Trobe University, Queensland University of Technology, and Auckland University of Technology. He is a Fellow of the Academy of Social Sciences Australia, Australian Academy of Law and Australasian College of Legal Medicine. He is a member of the Mental Health Tribunal of Victoria and Coronial Council of Victoria. He is the Editor of the *Journal of Law and Medicine*, Editor-in-Chief of *Psychiatry, Psychology and Law* and author of over 40 books, more than 600 peer reviewed articles and co-author of *Death Investigation and the Coroner’s Inquest*.

**Karen Gelb** is a Consultant Criminologist and a Lecturer at the University of Melbourne, Department of Criminology in Australia. Her areas of expertise
CONTRIBUTORS

include courts, family violence, sex offenders, remand and public opinion on
criminal justice issues. Karen is the editor of a book on sentencing councils
and sentencing policy and is the author of more than 30 major research reports
and articles. She previously spent eight years as Senior Criminologist with the
Victorian Sentencing Advisory Council. Karen is passionate about the need
for informed, evidence-based policy to underpin practice in the criminal
justice arena.

Debarati Halder is Professor of Law in the Unitedworld School of Law, Kar-
navati University in Gujarat, India. She is the founder and Honorary Managing
Director of the Centre for Cyber Victim Counselling (www.cybervictims.org).
She is also the founder secretary of the South Asian Society of Criminology
and Victimology (www.sascv.org). Debarati has worked extensively on laws to
do with online crimes against women and children, revenge porn law and in
Therapeutic Jurisprudence. She is a resource person for UNICEF, Facebook
and several Indian government organisations including the National Commis-
sion for women and the National Commission for Protection of Child Rights.
She is a member of the Global Advisory Committee of the International Society
of Therapeutic Jurisprudence.

Martine Herzog-Evans teaches law and criminology at Reims University,
France. Her main research subjects are probation and prison, with legitimacy
of justice-therapeutic jurisprudence as theoretical compasses. She has published
extensively, including French reentry courts and rehabilitation, Mister Jourdain
of desistance, Offender release and supervision and The role of courts and the use
of discretion. She is a member of the International Society for Therapeutic Ju-
risprudence. She has been a co-redactor of the Recommendation CM/
Rec(2012)12 (Council of Europe) re foreign prisoners. She has been an expert
in the development of the Bobigny Drug Court, and the leading expert for the
development of a treatment programme for violent extremists.

Anthony Hopkins is a Barrister and Senior Lecturer at the ANU Law School,
where he teaches criminal law, evidence and supervises students in the Indige-
nous Community Law Clinic. He began his career as a criminal defence lawyer
in Alice Springs, working for Aboriginal Legal Aid. Anthony’s research is
focused on the question of inequality in the criminal justice system, and on
the importance of understanding the experience of ‘others.’ More recently he
has focused on exploring the links between equality and compassion, where
compassion is understood as the foundation that enables turning towards those
who are caught in the criminal justice system.

Alison J. Lynch is a staff attorney at Disability Rights New York. She works
under the Protection and Advocacy for Individuals with Mental Illness (PAIMI)
program, and focuses her practice on institutional mental health issues in jails, prisons and hospitals around New York State. Alison received her J.D. in 2013, and her M.A. in Mental Disability Law in 2015 from New York Law School. Prior to attending law school, she studied neuroscience and uses this background to integrate scientific evidence and information into her practice and publications. Alison is also an associate with Mental Disability Law and Policy Associates.

Michael L. Perlin is Professor of Law Emeritus at New York Law School (NYLS), founding director of NYLS’s Online Mental Disability Law Program, and founding director of NYLS’s International Mental Disability Law Reform Project in its Justice Action Center. He is co-founder of Mental Disability Law and Policy Associates. He was the Deputy Public Defender in charge of the Mercer County Trial Region in New Jersey, and the director of the Division of Mental Health Advocacy in the NJ Department of the Public Advocate. He has represented persons with mental disabilities in individual and class actions at every court level from police court to the US Supreme Court, and has taught and worked with advocacy projects internationally.

Liz Richardson is Deputy Director and Senior Research Fellow at the Australian Centre for Justice Innovation at Monash University Law Faculty, Melbourne, Australia and also works for the Australasian Institute of Judicial Administration. Her research interests include problem-oriented courts, therapeutic jurisprudence, diversion and court intervention programs, social control theory, civil and criminal law, self-represented litigants, procedural justice, non-adversarial justice, justice innovation and other issues relating to court and judicial administration. She holds a Masters of Criminology (University of Melbourne, JV Barry Medal 2003) and received her PhD, entitled ‘Envisioning next generation mental health courts for Australia’, from Monash University in January 2017.

Nigel Stobbs is a Senior Lecturer and Researcher at the Queensland University of Technology. He teaches and researches in the areas of criminal law, sentencing, evidence, therapeutic jurisprudence and Chinese law. He completed his PhD on therapeutic jurisprudence at Bond University and is a foundation member of the Board of Trustees of the International Society for Therapeutic Jurisprudence. He is member of the Queensland Law Reform Commission and has practiced as a criminal defence barrister. He is fluent in Mandarin and works as a consultant and expert witness in Australian courts dealing with litigation involving Chinese law.

Katey Thom is a senior lecturer and researcher at the Centre for Non-Adversarial Justice, Auckland University of Technology. With a background in sociology and health sciences, Katey’s current research has a strong focus on
social justice issues in mental health and addictions, covering various aspects of mental health law, human rights and more recently therapeutic initiatives within the criminal justice system. She has recently completed ethnographic research on the specialist court movement in Aotearoa/New Zealand. Her previous research has investigated advanced directives in mental health, police responses to mental health emergencies and various projects exploring mental health law in practice.

Annette van der Merwe is Professor of Law at the University of Limpopo, South Africa. After following an initial career of public prosecutor for a few years, she entered academia. She has been involved, in South Africa and elsewhere (Namibia, Zambia and Fiji), with practical legal training of prosecutors and magistrates/ judges with regards to matters involving children in court—either as victims/witnesses or as offenders. She is a consultant to the Child Witness Institute and board member of the International Society for Therapeutic Jurisprudence. Her research has been cited twice by the Supreme Court of Appeal with reference to the recognition of victims during the sentencing phase.

Michel Vols is a Professor of Law at the University of Groningen. His main fields of research are housing law and problem-solving justice. He received his PhD from the University of Groningen. Prof Vols was a visiting scholar at the University of Ghent (Belgium), the University of Bristol (UK), the University of Puerto Rico (USA), Cape Town (South Africa), and Bar Ilan University (Israel). He is also board member of the International Society for Therapeutic Jurisprudence. He is one of the chairs of the Housing Law Research Network within the European Network on Housing Research.

David B. Wexler is Professor of Law at the University of Puerto Rico and Distinguished Research Professor of Law Emeritus at the University of Arizona. He named and conceptualized therapeutic jurisprudence (TJ) in a paper delivered to a National Institute of Mental Health (NIMH) Law-Mental Health Workshop in 1987. He is an Honorary President of the International Society for Therapeutic Jurisprudence and is Honorary President of the Asociacion Iberoamericana de Justicia Terapeutica. Wexler has worked internationally in TJ and his work has been translated to Spanish, Portuguese, Italian, Japanese, Hebrew, Urdu, and Slovenian.

David C. Yamada is a Professor of Law and Director of the New Workplace Institute at Suffolk University Law School in Boston, where he is a globally recognized authority on workplace bullying, mobbing and abuse. David is the founding board chairperson of the International Society for Therapeutic Jurisprudence. He received his JD degree from New York University School of Law.