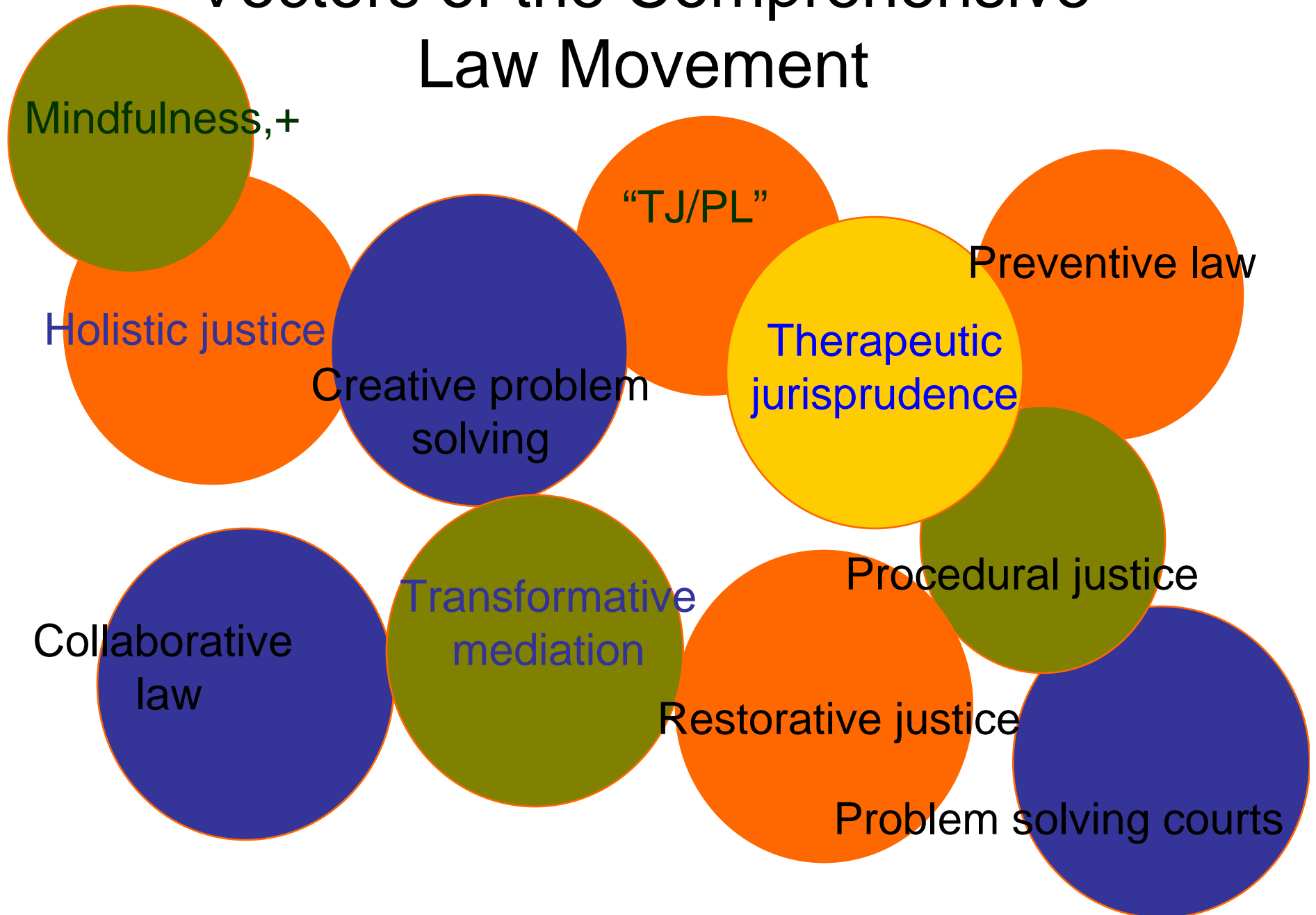


The Comprehensive Law Movement: Integration Into Legal Education



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Vectors of the Comprehensive Law Movement



A Tripartite Impetus

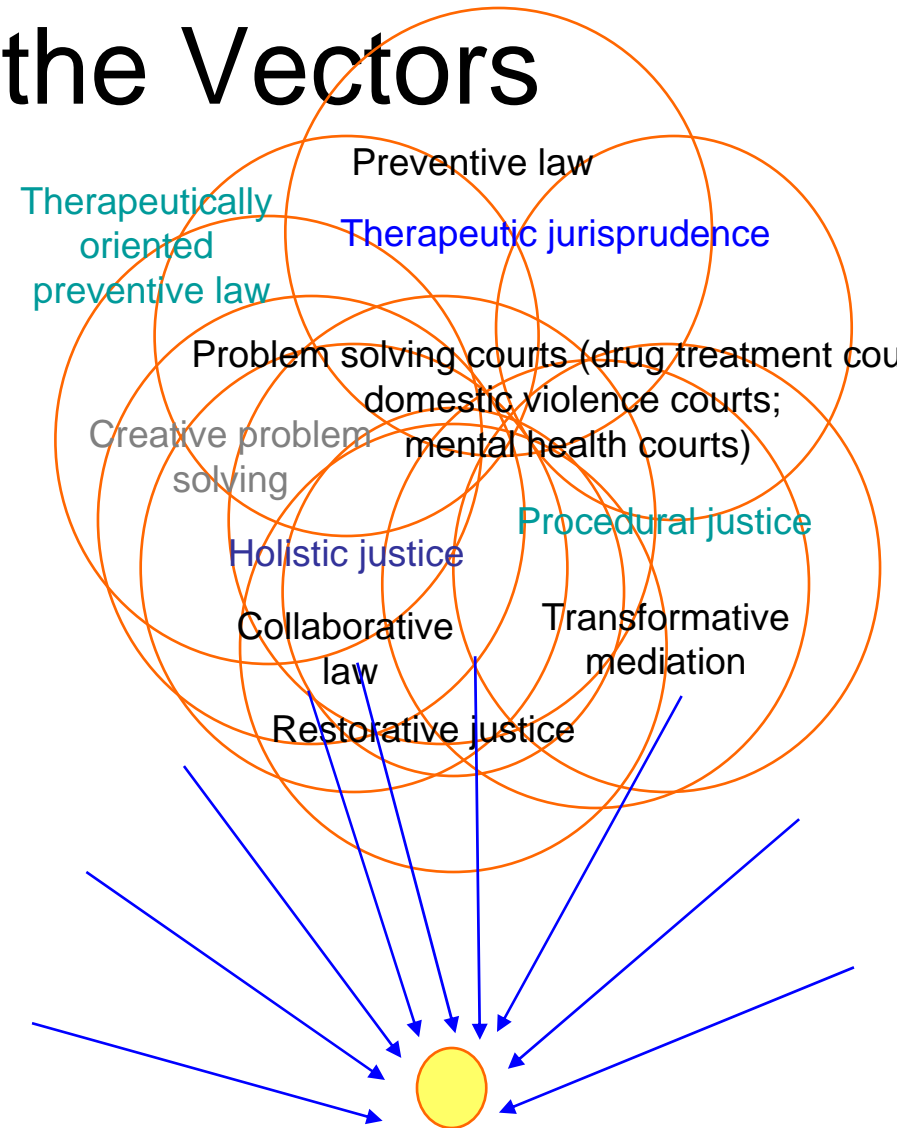
- Societal dissatisfaction with law, lawyers, and the legal system
- Lawyers' and judges' dissatisfaction with their work -- and psychic distress
- Clients' dissatisfaction with lawyers and the legal system

Precursors: Why now?

- Shift to Post-Enlightenment philosophical values (connectedness, community, globalization)
- End of the Cold War (them vs. us mentality)
- Tripartite crisis in legal profession
- Societal overuse of litigation to solve problems
- Influx of diverse individuals into legal profession

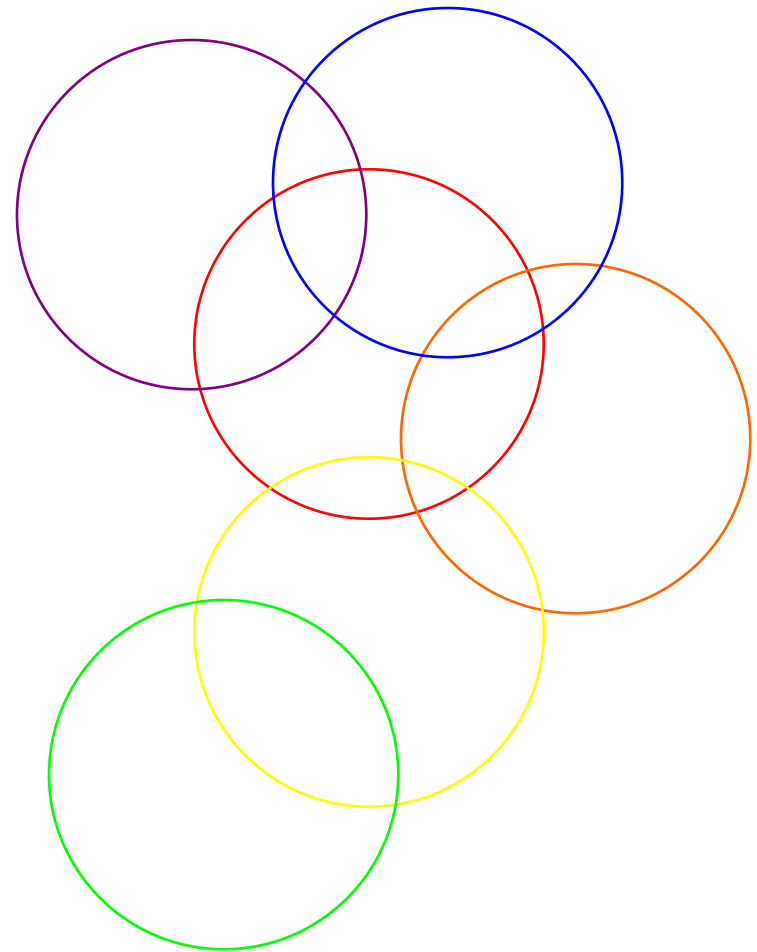
Common Ground: Intersection of the Vectors

1. SEEK TO OPTIMIZE HUMAN WELLBEING (psychological functioning, harmony, health, reconciliation, moral growth...)
2. "RIGHTS PLUS:" FOCUS ON EXTRALEGAL CONCERNS (needs, goals, beliefs, morals, resources, relationships, community, psychological state of mind ...)



SubIntersections

- Avoid Interpersonal Conflict & “Hardball” Litigation
- Share Equal Power
- Collaborative
- Therapeutic
- Interdisciplinary
- Can Be Consistent w/ Lawyers’ Own Morals



“Organizational Chart” of the Movement

Lenses:

Traditional/
Adversarial
(win/lose – binary)

Therapeutic
Jurisprudence

Holistic
Justice

Preventive Law

Religious/
Spiritual

Creative Problem Solving

Procedural Justice

Processes:

Problem
Solving Courts

Negotiation/Settlement

Collaborative
Law

Evaluative
Mediation

Restorative Justice

Facilitative Mediation TJ/PL

Arbitration

Transformative
Mediation

Preventive Law

Litigation & other
judicial processes

Reform Movements

First they ignore you, then they laugh at you, then they fight you, then you win. – Mahatma Gandhi

Every truth passes through three stages before it is recognized. In the first it is ridiculed, in the second it is opposed, in the third it is regarded as self-evident. – Arthur Schopenhauer

Infancy – Adolescence – Maturity

Integrated vs. Parallel Question: *Parallel Movements*

- Complementary and Alternative Medicine (CAM)
- Montessori Education



Integration Options

- INTEGRATED DEVELOPMENT

Every lawyer/judge does it

- PARALLEL DEVELOPMENT

Specialized lawyers/courts/legal educators do it

– in boutique law firms, specialized courts,
departments of larger firms, elective courses

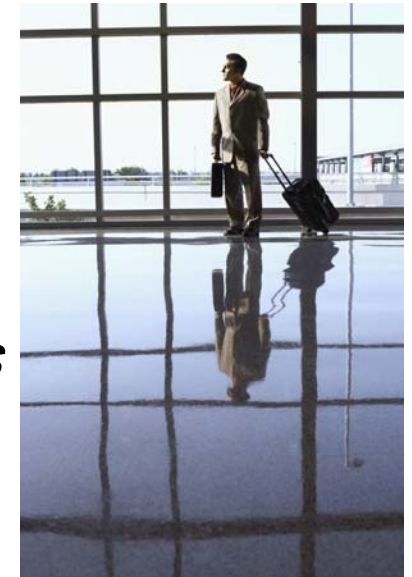
- HYBRID/BOTH?

Advantages & Disadvantages

| <i>Integrated</i> | <i>Parallel</i> |
|---|--|
| Universal Mainstreamed TJ becomes a “best practice” Equal access to all services | Specialized Better delivery of TJ services |
| Obstacles Need for retraining Misuse Paternalism “Ups” malpractice standard | Marginalization Lower fees Unequal access to traditional & TJ services |

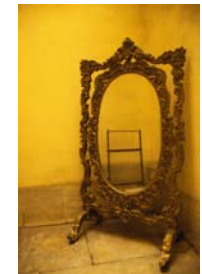
Why Integrate?

- *Better, more comprehensive client services*
- *Better access to a full range of legal services*
- *Better outcomes for more legal matters*
- *Optimized client wellbeing and relationships*



(1) Law practice and judging that mirrors what has been modeled in a humanized law school:

- | | |
|---|-----------------------|
| – Collaboration | -- Respect |
| – Autonomy | -- Care |
| – Feedback | -- Interaction |
| – Excellent interpersonal skills | |
| – Morality | -- Balance |



Why Integrate?

(2) Lawyers and law students need ways to fulfill their **intrinsic values**, such as:

- Making a difference
- Optimizing human wellbeing
- Preserving/restoring relationships, harmony
- Problemsolving
- Creativity

An Integrated Model





An Integrated Model



- **Intrapersonal:** Enhanced self-awareness skills
 - **Interpersonal:** Enhanced communication skills
 - **Counseling:** Integration in legal strategizing
 - **Dispute Resolution:** Enhanced dispute resolution processes
 - **Adjudication:** Enhanced disposition options
-
- **Legal Education:** Integration in law schools



An Integrated Model



- **Intra: Self-awareness**
 - Countertransference – Silver (2007)
- **Inter: Communication skills**
 - With clients – Brooks (2006), Dauer (2005)
 - With lawyers and judges
- **Counseling/Decisionmaking w/client**
 - Viewing traditional approaches as one of many “lenses” & “processes”
 - Psycho-legal soft spots – Stolle, Wexler, Winick, Dauer (1997)
 - Lawyering with an ethic of care, or rehabilitative or interdisciplinary focus in criminal cases – Winick (2006)
 - Utilizing procedural justice or tx compliance concepts in client planning – Wexler
 - Ex: Strategizing about the value of confessions in criminal cases – Ronner (2006)
- **Dispute resolution**
 - Considering TJ “processes” as options for dispute resolution
 - Ex: Use of apology – Scott (2005), Cohen
- **Disposition/Adjudication**
 - Circle processes, problem solving courts, etc.
 - Judging with an interdisciplinary, problemsolving, collaborative, bold, engaged, and action-oriented approach instead of a more traditional one of restraint, disinterest, and modesty – Boldt & Singer (2006); Schma (2005)
- **Legal education** - Winick (2005) (18 U.S. law schools with TJ-type courses – Silver (2006))

A New Law School Curriculum

- New **Intrapersonal Skills**
 - Countertransference
 - Boundary management
 - Selfawareness and selfknowledge
 - Appropriate self-disclosure
- New **Interpersonal Skills**
 - Listening
 - Apology
 - Social science knowledge (e.g., procedural justice)
 - Rewind/fast forward
 - Leadership & teambuilding
 - Problem solving
- New **Dispute Resolution Skills**
 - Collaborative law, transformative mediation
 - Restorative justice (circle process)
 - Problem solving courts (DTCs, UFCs, etc.)
- New **Judging Skills**
 - Interdisciplinary competence
 - Collaboration
 - “tough love”

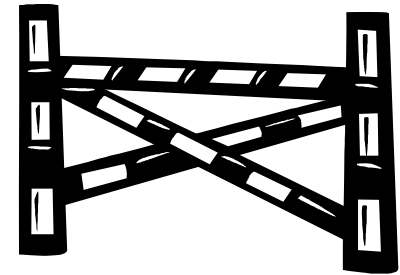


A New Law School Curriculum

- Teach the *entire* lawyer's toolkit
- Teach lenses & processes, explicitly
- Encourage a diversity of approaches
- Teach lawyering skills by including the 4 or 5 "layers" of comprehensive lawyering skills, as defined above
- Perhaps in 2d and 3d year, teach substantive law via problem method, using the "org'l chart" and "4-5 layer approach," outlined above

Obstacles to Implementation

- current emphasis of legal education
 - extrinsic rewards – Krieger & Sheldon (2000, 2007)
 - “thinking like a lawyer”
- current climate of private law firms
 - emphasis on billable hours & “bottom line”
- lawyers’ and judges’ perceptions of the ethics codes
 - zealous advocacy – MR 1.1, 1.3 vs. MR 2.1
- personality attributes of attorneys
 - “Thinking” on the MBTI – Richard (1994)
 - low interpersonal & emotional intelligence
 - dominance “mask” – Reich (1976)
 - discomfort with emotional, relational matters





Overcoming Obstacles

- Modeling excellent comprehensive competencies for lawyers, judges, law students
- Recasting comprehensive law as “best lawyering practice” or “leadership”
- Noting:
 - Clients’ dissatisfaction w/ legal system
 - Judges’ dissatisfaction w/criminal recidivism
 - Lawyers’ dissatisfaction with their work
- Collecting client satisfaction data
- Collecting outcome measures (e.g., cost, recidivism, satisfaction, compliance)
- Educating public re: availability of vectors
- Seeking explicit ethics guidance/opinions, if necessary
- Being conscious about integrated/parallel development
- Utilizing Carnegie & Best Practices reports to propel curricular development

