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Abstract There is a need for a disability rights tribunal in Asia (DRTAP) along with an information center (DRICAP) as part of that tribunal so that litigants can easily access the controlling domestic case law, statutes, and regulations of the participating nations. A successful DRTAP must be premised on therapeutic jurisprudence (TJ) principles, and that its creation would be hollow without dedicated and knowledgeable lawyers representing the population in question. In accordance with TJ principles, it must incorporate "voice, validation and voluntary participation" to insure that litigants have a sense of voice or a chance to tell their story to a decision maker. The tribunal must operate, in part, as a problem-solving court to address the underlying problems—not just the symptoms—of social issues such as substance abuse, domestic violence, child abuse, and mental illness. The idea of such courts has been exported to other nations. If the DRTAP operates in a manner consistent with these principles—following the best examples of domestic mental health courts and community courts—it will more likely fulfill the TJ mandate. The application of TJ will ensure the reshaping of legal rules, procedures, and lawyers' roles to enhance their therapeutic potential without subordinating due process principles.

Keywords Therapeutic jurisprudence · Problem-solving courts · International human rights · Mental disability law · Regional tribunals and courts · Comparative law · Asia and the Pacific · Disability rights

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Introduction

Although there has been considerable academic and practical interest in both the concept of therapeutic jurisprudence (sometimes TJ; *see*, e.g., Wexler, 1990; Wexler & Winick, 1996) and the utility of problem-solving courts in nations beyond the USA (*see*, e.g., Thom & Nakarada-Kordic, 2014; Nolan, 2010), there has been little such interest in the application of TJ to international human rights law (*but see* Perlin, 2016b; Birgden, 2016; Rees, 2003). And what interest there is rarely touches on the application of TJ to interregional human rights tribunals and the extent to which such tribunals can (or should) operate as problem-solving courts.

In the past, we have written—separately, together, and with others—about the need for a Disability Rights Tribunal in Asia and the Pacific (DRTAP) (Perlin, 2012; Perlin & Ikehara, 2011) along with an information center (DRICAP) as part of that tribunal so that litigants can easily access the controlling domestic case law, statutes, and regulations of the participating nations. We consider here how the question before us "plays out" in this context. We believe that when such a tribunal is finally created, it should operate (1) under a TJ mandate, and (2), in part, at least, as a problem-solving court that looks to the best mental health courts and community courts in the USA as its model (for discussions of these courts, *see*, e.g., Perlin, 2016c; Poythress, Petrila, McGaha, & Boothroyd, 2002; Berman & Gulick, 2003). There is currently no such interregional court in the Asia and the Pacific region (as opposed to all other areas of the world where such courts exist); as a result, persons with disabilities have far fewer opportunities to seek redress for violations of their

international human rights than do similarly situated citizens in other regions. This dilemma is exacerbated by the fact that there are no antidiscrimination laws of any sort in many of the nations in that region (Perlin et al., 2015, p. 51; *see generally*, Ikehara, 2010).

We believe that adherence to TJ principles will optimize the likelihood that persons with disabilities in these nations will be treated with dignity—one of TJ's centerpiece values—and that it is far more likely that "litigants…[will] have a sense of voice or a chance to tell their story to a decision maker" (Ronner, 2002, pp. 94–95). Also, as the right to counsel is "the core" of TJ (*see* Ramirez & Ronner, 2004, p. 119), it will enhance the likelihood that lawyers will be provided to the population in question. The creation of a DRTAP would be hollow without dedicated and knowledgeable lawyers representing the population in question (Perlin et al., 2015, p. 7).

We believe further that such a tribunal must operate, in part, as a problem-solving court to address the underlying problems—not just the symptoms—of social issues such as substance abuse, domestic violence, child abuse, and mental illness (Perlin, 2013b, p. 455). The idea of such courts has been exported to other nations—mostly in Western Europe—(*see* Nolan, 2010) but now in Australia and New Zealand as well (*see* Thom & Nakarada-Kordic, 2014; Thom, 2014; Weller, 2011; Fritze, 2015), two nations that may well participate in the DRTAP project (*see* Perlin et al., 2015). We believe that if the DRTAP operates in a manner consistent with these principles, it will more likely fulfill the TJ mandate. In this way, the application of TJ will ensure the reshaping of legal rules, procedures, and lawyers' roles to enhance their therapeutic potential without subordinating due process principles (Perlin, 2012, p. 36).

Our paper will proceed in this manner. First, we will discuss the lack of availability of an international regional court to adjudicate disability-based cases in Asia and the Pacific, looking both at some of the important disability rights cases that have been litigated in other interregional courts. Next, we will consider the basic tenets of therapeutic jurisprudence. In this context, we specifically will focus on how TJ applies in the context of problem-solving courts, especially mental health courts. We then look more closely at mental health courts, explaining how they differ radically from the traditional civil commitment courts that exist in most states, with a special eye toward the valid and reliable research that demonstrates that recidivism rates of the population in question are far lower in jurisdictions where dignity-enforcing mental health courts are present. Next, we set out our arguments as to why the DRTAP should operate, in part, at least, as a problem-solving court, based on the principles established in mental health courts and other progressive problem-solving community courts. We conclude by offering some modest conclusions.

Lack of Availability of International Regional Courts to Adjudicate Disability-Based Cases in Asia

Asia and the Pacific region lag behind the rest of the world in terms of disability-based human rights documents and regional courts (Perlin, 2012, p. 1). In fact, Asia is the only continent that does not have a regional human rights court or commission (Perlin, 2012, p. 3). The Association of Southeast Asian Nations (ASEAN) Charter refers to human rights but that is not an effective enforcement mechanism (Perlin, 2012, p. 1). The astonishing fact that only seven governments in this region reported to the U.N. Economic and Social Commission for Asia and the Pacific (UNESCAP) that they had antidiscrimination laws (Perlin, 2012; UNESCAP, 2010, p. 16) is a clear reminder that persons in this region cannot rely on domestic sources as a basis of legal redress.

Without a tribunal with the power to adjudicate cases involving persons with disabilities, the concept of international human rights is effectively meaningless in Asia and the Pacific because there is no one to report to and nowhere to go to court to help resolve an issue or noncompliance (Perlin, 2012, p. 1). Regional human rights courts and commissions are an "essential element in the enforcement of international human rights in those regions of the world where such tribunals exist" (Perlin, 2012, p. 1).

One argument given for why there is currently not a regional system in place is the "Asian Values" debate (*see* Perlin, 2011b, c, pp. 174–180; *see also*, *generally*, Tomuschat, 2011; Ruskola, 2011, pp. 885–889). This argument is centered on the basic premise that an indigenous Asian tradition exists with its own "culturally distinct notions of rights, duties, and sovereignty, which differ from those of Western liberalism" (Engle, 2000, pp. 291, 311). This argument is both outdated and inaccurate. Rather than being a homogenous group of nations with similar cultures and identities, Asia is a continent full of diversity; its national borders are not necessarily divided by cultural units (Ruskola, 2011, p. 881). The "Asian Values" debate is also no more than an excuse not to comply with basic international law and human rights principles (Perlin, 2012, pp. 16–18).

This stands in stark contrast to other regions in which international human rights tribunals can and should adjudicate questions involving detention of patients that leads to arbitrary deprivation of their liberty (*see* Perlin, 2007, p. 335; *see also*, e.g., Winick, 2002b). In this context, there is a "remarkably robust body of case law" in the area of mental disability law from the European Court of Human Rights (ECtHR), some important decisions from the Inter-American Court of Human Rights, and at least one significant case from the African Commission on Human and Peoples' Rights (Perlin, 2012, p. 1). Some of these cases will be explained in more detail below. However, Asia does not as of yet have a regional tribunal. There is no such body of case law like what can be found in the European, Inter-

American, and African systems in Asia and the Pacific region (*see generally*, Perlin et al., 2015).

The DRTAP should also play a role in enforcing and expanding existing law, a role that grows in importance for two overlapping reasons (see Weinstein, 2010). First, in many of the nations in this region, there is simply *no* coherent body of mental disability law (*see*, e.g., Perlin et al., 2015). Second, as many of the nations in this region are civil law, *stare decisis* is not part of such systems (Van Alstine, 2012, p. 961, n. 90). As a result, civil law does not recognize judicial precedent as an independent source of law (Blackmore, 2004, p. 495; Lundmark, 1998, p. 214). But, regional courts *do* apply *stare decisis*; as one scholar has noted, in such courts, "precedent is ubiquitous" (Cohen, 2013, p. 1028; *see also*, Id.) The application of *stare decisis* in such a tribunal would make it far more likely that a coherent regional body of law in this area would be developed.

Existing international human rights law can be articulated and applied through the court via a coherent body of court decisions. There are examples of other regional tribunals doing exactly this. The Inter-American Court of Human Rights has held that Brazil had a responsibility to monitor the health care of its patients, and prevent vulnerability even with regard to a private (not state-operated) institution in *Ximenes-Lopes v. Brazil* (2006, p. 30, para. 100). The Inter-American Court of Human Rights' ruling shows the importance of regional monitoring mechanisms and remedies when states fail to implement and enforce policies to protect the rights of people with mental disabilities.

Another important example comes from the African Commission on Human and Peoples' Rights (ACHPR). *Purohit and Moore v. Gambia* (2013) was a suit filed on behalf of current and future patients claiming that Gambian legislation (the Lunatic Detention Act) was outdated and not in conformity with the African Charter on Human and Peoples' Rights (*Purohit and Moore v. Gambia*, 2013, paras. 1–4). The ACHPR found that redress was not available or realistic for complainants via the domestic law and held that it is the state's obligation to undertake the responsibility to bring domestic laws in line with international or regional documents that they have ratified (Id., para. 43).

In *Stanev v. Bulgaria* (2012), the European Court of Human Rights recognized that poor conditions of confinement constitute "inhuman or degrading" treatment (paras. 206, 213). The Court held that detainment in a dilapidated facility that lacked adequate food, running water, access to toilets, privacy, or almost any form of meaningful activity (Id., paras. 76–81) amounted to "degrading" treatment and found that his long-term detainment in the facility without a court hearing constituted a deprivation of his liberty (Id., paras. 212–213). This is the first case in which the ECtHR found a violation of Article 3 of the European Commission on Human Rights, calling for an absolute prohibition on torture, inhuman or degrading treatment or punishment, in an institution for people with disabilities (Lewis, 2012, pp. 1, 3).

This all becomes even more urgent in the context of the ratification of the United Nations' Convention on the Rights of Persons with Disabilities (CRPD). The CRPD "is regarded as having finally empowered the 'world's largest minority' to claim their rights, and to participate in international and national affairs on an equal basis with others who have achieved specific treaty recognition and protection." (Kayess & French, 2008, p. 17, n. 4). The CRPD furthers the human rights approach to disability and recognizes the right of people with disabilities to equality in almost every aspect of life (Dhir, 2005, p. 182). It firmly endorses a social model of disability—a clear and direct repudiation of the medical model that traditionally was part-and-parcel of mental disability law (Perlin, 2011a, p. 139),

The CRPD provides a framework for ensuring that mental health laws "fully recognize the rights of those with mental illness" (McSherry, 2008, p. 8). There is no question that it has "ushered in a new era of disability rights policy" (Harpur, 2011, p. 1295).

A tribunal in Asia—one with "a healthy dose of international human rights law and therapeutic jurisprudence" (Winick, 2002b, p. 572)—would tardily bring that region into line with the rest of the world on this question, and would aid in bringing "a more humane and therapeutic" (Id.) mental health system into place.

Therapeutic Jurisprudence

TJ presents a new model for assessing the impact of case law and legislation, recognizing that, as a therapeutic agent, the application of the law can have therapeutic or antitherapeutic consequences (Perlin, 2009b, p. 912; Perlin & Lynch, 2016, 2017). It asks whether legal rules, procedures, and lawyer roles can or should be reshaped to enhance their therapeutic potential while not subordinating due process principles (Perlin, 2008b).

TJ has been described as "… a sea-change in ethical thinking about the role of law…a movement towards a more distinctly relational approach to the practice of law…which emphasises psychological wellness over adversarial triumphalism" (Brookbanks, 2001, pp. 329–330). In doing this, it supports an ethic of care.

One of the central principles of TJ is a commitment to dignity (Perlin, 2013c, pp. 214–215). Professor Amy Ronner describes the "three Vs": voice, validation, and voluntariness, arguing:

> … Litigants must have a sense of voice or a chance to tell their story to a decision maker. If that litigant feels that the tribunal has genuinely listened to, heard, and

> taken seriously the litigant's story, the litigant feels a sense of validation. When litigants emerge from a legal proceeding with a sense of voice and validation, they are more at peace with the outcome. Voice and validation create a sense of voluntary participation, one in which the litigant experiences the proceeding as less coercive....In general, human beings prosper when they feel that they are making, or at least participating in, their own decisions (Ronner, 2002, pp. 94–95; *see also*, Ronner, 2008, p. 627).

This must be read in the context of the value of *dignity*. Professor Carol Sanger has suggested dignity means that people "'possess an intrinsic worth that should be recognized and respected,' and that they should not be subjected to treatment by the state that is inconsistent with their intrinsic worth" (2009, p. 415).

TJ also has great value as a means of combatting "sanism"—an "irrational prejudice of the same quality and character of other irrational prejudices that cause (and are reflected in) prevailing social attitudes of racism, sexism, homophobia, and ethnic bigotry"—that infects the entire legal process (Perlin & Lynch, 2015, p. 216). Sanism pervades mental disability law in Asia (*see*, e.g., Perlin, 2008a), and left unchecked, it would contaminate proceedings at a disability rights tribunal (*see* Perlin, 2012, pp. 31–32). TJ is the best tonic available to cure this disease (*see* Wexler, 1999, p. 268, n. 50, quoting Dr. Paul Appelbaum, using this metaphor).

As noted above, there has not been significant scholarly attention paid to the intersection between TJ and international human rights law (*see* Perlin, 2014). In two recent papers, one of the co-authors (MLP) has sought to make this connection explicitly in the context of (1) (flawed) arguments that have been proposed that argue the CRPD requires the abolition of the incompetency status and the insanity defense (*see* Perlin, 2016a), and (2) the need for forensic psychologists to take seriously international human rights in the work they do in forensic psychiatric institutions (*see generally*, Perlin, 2016b; on the CRPD generally, see Perlin, 2009a). And in another, he has argued, specifically, that "the creation of a DRTAP is also consistent with the aims of therapeutic jurisprudence" (Perlin, 2012, p. 35). Yet, these arguments have not yet been widely considered (*but see* King, Freiberg, Batagol, & Hyams, 2014, noting the relationship between a DRTAP and TJ).

To seek an answer to the question posed in this paper, we need next consider how mental health courts—if they are to operate properly—must embrace the tenets of TJ in the context of international human rights law (*see* Perlin, 2013c). The CRPD empowers persons with mental disabilities, and one of the major aims of therapeutic jurisprudence is explicitly the empowerment of those whose lives are regulated by the legal system (Perlin, 2012, p. 36). In this context, consider what Judge Ginger Lerner-Wren has stressed: "The guiding principles and values articulated in the United Nations Convention on the Rights of Persons with Disabilities should be implemented and fully integrated into every mental health court process in order to ensure the promotion of dignity, civil rights and human rights" (2010, p. 593; on why the ratification of the CRPD alone is not enough to ensure meaningful and universal change in the way persons with disabilities are treated, *see* Lang, 2009). We believe that the approach we suggest in this article is the best path to that empowerment.

Mental Health Courts

How do problem-solving courts "fit" into this construct? Such courts focus on dignity (*see generally*, Lerner-Wren, 2010), embrace TJ, focus on procedural justice, and the courts' use of the principles of restorative justice (Steadman, Davidson, & Brown, 2001, p. 457; Perlin, 2013a, p. 64). They optimally "attempt to get at the root of the individual and social problems that motivate criminal behavior" (Mirchandani, 2008, p. 853), and must reflect a high level of cultural competency (*see generally*, Vigil, 2016). Importantly, it is "the desire to achieve social justice, which is a human right, [that] motivates advocacy for and participation in problem-solving courts" (Cusack, 2013, p. 159). In this context, we must take seriously the potential ameliorative impact of such courts—especially those created as mental health courts (MHCs)—on the disposition of cases involving individuals with mental disabilities in Asia and the Pacific.

The modern era of problem-solving courts began in 1989 in a Dade County Florida drug court, premised on the idea that, rather than sending drug-addicted criminal defendants to jail and then back on the streets to commit another crime, they should be sent to supervised drug treatment programs (Berman & Feinblatt, 2001, p. 126). The idea soon expanded—domestically and internationally—to other courts—including, but not limited to, mental health courts, veterans courts, homelessness courts, and domestic violence courts (*see generally*, Perlin, 2013b; Berman & Feinblatt, 2001, p. 129). Problem-solving courts seek to change "the future behavior of litigants [while] ensuring the future well-being of communities" (Id., p. 126).

Problem-solving courts aid in preventing recidivism and recurring court involvement and seek to address the causes of the underlying problems (Winick, 2002a, p. 1055) by taking a more holistic approach than do traditional courts (Dorf & Sabel, 2000, pp. 833–834). Such courts look to alternatives that actually help offenders in the long term, such as drug treatment centers or domestic violence counseling instead of incarceration (Winick, 2002a, pp. 1056–1057). This method looks at litigants as people with needs rather than simply individuals to be incarcerated under circumstances instilling feelings of distrust and anger toward the justice system (*see* Berman & Feinblatt, 2001, p. 129, citing Berman, 2000, p.

80). This aligns with the central idea of TJ in that the needs of litigants are taken into consideration on an individual, case-by-case basis, and with Ronner's "3V's" argument that focuses on maintaining the dignity of litigants (*see* Ronner, 2002, pp. 94–95; *see also*, Ronner, 2008, p. 627).

Problem-solving courts use a public health approach to social and behavioral problems "by targeting recurring problems that seem to be the product of behavioral, psychological, or psychiatric difficulties or disorders, and intervening to prevent their reoccurrence" (Winick, 2002a, p. 1061; on therapeutic jurisprudence and public health, *see* Davidovitch & Albertson, 2008). They also make the justice system "more accountable and responsive to their primary customers—the citizens who use courts every day, either as victims, jurors, witnesses, litigants, or defendants" (Berman & Feinblatt, 2001, p. 126).

Judges also play a large role in TJ in how they treat individuals appearing before them. Thus, courts—particularly those dealing solely with disability issues—can also benefit from TJ regarding how they should be structured and administered to help maximize their therapeutic potential (Winick, 2002a, p. 1064).

Consider specifically mental health courts. Such courts are premised on team approaches (Lurigio & Snowden, 2009, p. 198); representatives from justice and treatment agencies assist the judge in screening offenders to determine whether they would present a risk of violence if released to the community, in devising appropriate treatment plans, and in supervising and monitoring the individual's performance in treatment (*see generally*, Winick, 2002a). The mental health court judge functions as part of a mental health team that formulates a treatment plan; a court-employed case manager and court monitor track participation in the treatment program, and submit periodic reports to the judge concerning progress. Participants must report to the court periodically so that the judge can monitor treatment compliance, and additional status review hearings are held on an as-needed basis (Stefan & Winick, 2005, p. 524).

According to former Judge Randal Fritzler, a successful mental health court needs (1) a therapeutic environment and dedicated team, (2) an environment free from stigmatizing labels, (3) opportunities for deferred sentences and diversion away from the criminal system, (4) the least restrictive alternatives, (5) decision-making that is interdependent, (6) coordinated treatment, and (7) a review process that is meaningful (Fritzler, 2003a, b).

MHCs, by increasing the likelihood of a person with mental disability being diverted out of the criminal justice system (where he is likely to be treated as a third- or fourth-class citizen, if those terms have any meaningful content or context), make it less likely that the person with mental disabilities will suffer at the hands of others because of that status (Carney, Tait, Chappell, & Beaupert, 2007, pp. 53–54; Slate, 2003, pp. 15–16). A study of Judge Ginger Lerner-Wren's MHC in Broward County concluded that participants in that court self-reported coercion levels lower than almost any score on a comparable measure of perceived coercion previously reported in the literature (Poythress, Petrila, McGaha, & Boothroyd, 2002, pp. 529–530). The actual, real-life experiences of the litigants in cases before Judge Lerner-Wren thus demonstrate that an MHC *can* be a noncoercive, dignified experience that provides procedural justice and therapeutic jurisprudence to those before it. Judge Lerner-Wren has stressed that the creation of the court was intended as a "social justice and *human rights* strategy" (2010, p. 589). As former NY State Chief Judge Judith Kaye has noted, "mental health courts, which… divert defendants from jail to treatment, reconnect them, where possible, with family and friends who care whether they live or die,…restore their greatest loss—their sense of human dignity" (2007, p. 748).

Empirically, these courts are a great success. Participants had significantly lower arrest rates after enrollment than before enrollment and lower postenrollment arrest rates than comparison groups and, in fact, were more successful at reducing recidivism—reducing recidivism rates to 10–15%—than were drug courts (Goodale, Callahan, & Steadman, 2013, p. 299; on similar findings in *juvenile* mental health courts, *see generally*, Heretick & Russell, 2013).

These courts operate in radically different ways than do traditional involuntary civil commitment courts in which the characterization of commitment hearings as being a "greased runway" to the state institution has never been disputed (Schoenberger, 1981, pp. 30–31; Scallet, 1977, p. 81). "Traditional" mental health courts are—virtually across the board—the antithesis of TJ, whereas mental health courts of the sort presided over by Judge Lerner-Wren (and others)—when structured properly and when chaired by a judge who "buys in" to the TJ model—are perfect exemplars of the practical utility of TJ (Perlin, 2013c, p. 214; *see also*, Diesfeld & McKenna, 2006, 2007).

Importantly, there has been *great* interest shown in the relationship between TJ and the work of problem-solving courts (*see*, e.g., Schma, Kverjic, & Petrucci, 2005; Chase & Hora, 2009; Lerner-Wren, 2010; King, 2011; Jones, 2012). We believe these insights should apply to the DRTAP as well.

Why DRTAP Should Operate as a Problem-Solving Court

It is essential that the DRTAP operate—in certain aspects—as a problem-solving court to fully address the needs of people with disabilities. This will ensure that the underlying problems—not just the symptoms—of social issues are addressed, including substance abuse, domestic violence, child abuse, and mental illness (Perlin, 2013b, p. 455). When the DRTAP was first conceptualized, many open questions about its structure remained, including its jurisdictional competency (Perlin, 2012, p. 8), whether it will hear both private and public cases (Id.; *see also*, Geer, 1998, p. 336), and the scope of potential remedies (Perlin, 2012, p. 9; *see also*, *generally*, Starr, 2008; Fasoli, 2008). We believe that, by adhering to principles of problem-solving courts in the manner suggested by Judge

Jami Vigil—by "safeguarding and advancing the constitutional rights of all citizens to due process and equal protection under the law" (2016, p. 51)—the DRTAP will best be able to fulfill its aspirational mandate of becoming "the only realistic way that disability rights will ever be enforced" in Asia and the Pacific (Perlin et al., 2015, pp. 5–6).

Most, but not all, problem-solving courts serve as alternatives to the criminal justice system (*see* Dorf & Fagan, 2003; Cooper & Bartlett, 1998). As Professor Raymond Brescia reminds us, "the philosophy of problem-solving courts has also spread to the domestic violence setting, in which integrated domestic violence courts handle criminal and civil matters where domestic violence is present" (2009, p. 313; *see also*, Burdick, 2013, p. 44). Also, by way of example, the Cleveland (Ohio) Housing Court has evolved into a problem-solving court (*see generally*, Pianka, 2012, 2016). In addition, there are many child-support, child welfare, and child care-and-protection courts that operate as problem-solving courts, in the USA, in South Africa, in Pakistan, and in Canada (*see generally*, e.g., Lee, 2012; Chase & Hora, 2009; Osman, 2016; Munir, 2016; Deitsch, 2016; Hills et al., 2004). So there is no theoretical reason why the DRTAP cannot become a problem-solving court for some civil cases.

DRTAP will, at least in part, hear cases involving violations of the CRPD and other individual disability rights cases (Perlin, Cucolo, & Ikehara, 2013, p. 21). Certainly, there are examples of cases involving domestic relations issues that implicate disability rights (*see*, e.g., *Rose v. Rose* (1987) (veteran with a disability in contempt of court for failing to pay child support); *Fenstermaker v. Fenstermaker* (2015) (award of child-support payments from a father to his former wife for the support of an adult child with disability)) and housing issues (*see*, e.g., *Brooklyn Ctr. For Independence of the Disabled v. Bloomberg* (2013) (implicating New York City's violation of Title II of the Americans with Disabilities Act for failing to provide people with disabilities meaningful access to its emergency preparedness program); *Kennedy House, Inc. v. Phila. Comm'n on Human Rels.* (2016) (finding error in the trial court's holding that residential cooperative building had violated a local ordinance by denying a waiver request of the building's no-dog policy for a woman with a disability)). If one piece of the DRTAP were to be specifically denominated as a problem-solving court, it could, initially, be granted jurisdiction over these sorts of cases. But, we also believe there are other areas amenable to resolution through a problem-solving court-type mechanism. These include issues of employment discrimination, access to information, education and services for people with disabilities on an equal basis as others, and discrimination against persons with disabilities in relation to home life and family planning (such as the right to marry and to have a family).

A role model could be the Red Hook Community Court in Brooklyn, NY, a "shining example of an innovative community based program" (American Bar Association, 2009, p. 75). Red Hook is a multijurisdictional court where one judge has jurisdiction over all of the issues facing a criminal defendant, including housing and domestic matters (Id.). According to Judge Alex Calabrese, the court "take[s] a problem-solving approach," and has "empowered the community" (Calabrese, 2016), a community that *perceives it* as a problem-solving community resource (Malkin, 2003, p. 1573; *see* Berman & Fox, 2005, discussing the central role of the local community in planning, developing, and managing the court). There are important parallels that can be drawn between these experiences in Red Hook and the role of the disability community—and its banner, "[N]othing about us, without us" (Perlin, 2008c, pp. 417–418, quoting Kayess & French, 2008, p. 4, n. 15)—in support of the ratification of the CRPD, in many ways the progenitor of the idea of a DRTAP (*see* Perlin, 2012, p. 2).

Conclusion

The creation of a DRTAP would be a bold and transformative moment in the history of disability rights in that region of the world and would be the best means of ensuring that the "paradigm-shattering instrument" of the CRPD be given "true effect" (Perlin, 2012, pp. 2–3), and that the Convention not remain "mere words without action" (Perlin, 2001–2002, p. 381 (remarks of Jean Bliss)). We believe that—to best "empower clients and raise their voices" (Perlin et al., 2015, p. 16)—the DRTAP must be "infuse[d with a] therapeutic jurisprudence perspective" (Perlin, 2012, p. 37; *see also*, Id. p. 36). The DRTAP should thus be structured as a problem-solving court as a way of maximizing both the likelihood that it be a court premised on "social justice and human rights" (Lerner-Wren, 2010, p. 589), and the likelihood that it will "chang[e] the future behavior of litigants and ensur[e] the future well-being of communities" (Berman & Feinblatt, 2001, p. 126).

It is imperative that judges be engaged in a "collaborative, interdisciplinary approach to problem solving where [he or she] plays a leading role…by [ensuring] active judicial involvement, and the explicit use of judicial authority to motivate individuals to accept needed services and to monitor their compliance and progress" (Winick, 2002a, p. 1060). In this way, judges play an active role in educating the community and raising community consciousness (*see*, e.g., Hora, Schma, & Rosenthal, 1999, pp. 462–468; Karan, Keilitz, & Denaro, 1999, p. 75; Winick, 2000, p. 37; Winick, 2003). Additionally, judges transform into advocates for the populations they deal with and also aid in getting increased community resources to help resolve problems (*see*, e.g., Hora et al., 1999, pp. 476–477; Winick, 2000, p. 453; *see also*, *generally*, Winick, 2003). They also "work closely with community agencies and treatment providers, and, in the process, monitor and improve their effectiveness" (Dorf & Sabel, 2000, pp. 833–834).

TJ and problem-solving courts share a common goal of redesigning legal rules, judicial practices, and court structures

and administration to "facilitate the rehabilitative process" (Winick, 2002a, p. 1090). Also, by using the principles of TJ, problem-solving courts "can become an important force for dealing with several of the most vexing social and psychological problems that affect our communities" (Id.). Thus, a DRTAP problem-solving court centered on TJ would not only be beneficial to litigants—particularly those with mental disabilities—but also to the community as a whole.

Documents like the CRPD shine light on the rights of persons with disabilities. However, these rights are essentially meaningless without enforcement mechanisms. That is why a DRTAP—centered on TJ and incorporating the key elements of problem-solving courts—is essential to ensuring that the rights of people with disabilities are enforced in Asia and the Pacific, the only remaining region without a regional human rights court or commission. Such a tribunal—along with a coinciding information center allowing litigants easy access to the controlling domestic case law, statutes, and regulations of the participating nations (*see generally*, Perlin et al., 2015, discussing the creation of the DRICAP)—will not only ensure that the rights of people with disabilities are protected but will also protect against sanism and promote the inclusion of people with disabilities in the judicial decision-making process. In an earlier article, one of the co-authors (MLP) noted that the CRPD was, effectively, the "first day of the rest of our lives" for persons with disabilities, and that the creation of a DRTAP was "timely, inevitable, and essential if the CRPD is to be given true effect" (Perlin, 2012, pp. 2–3). By creating the DRTAP in this way, it is our hope that this will authentically happen.

Compliance with Ethical Standards

Conflict of Interest The authors declare that they have no conflict of interest.

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