

ESSAY

REGULATING 'HEALING': NOTES ON THE ECOLOGY OF AWARENESS AND THE AWARENESS OF ECOLOGY

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INTRODUCTION

Questions concerning the regulation of complementary and alternative medical ("CAM") therapies—such as chiropractic, massage therapy, acupuncture and traditional oriental medicine, Ayurvedic naturopathic, folk medicine, and herbal medicine—have come to the forefront of clinical practice and regulatory concern.¹ The last decade has

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¹ See David M. Eisenberg et al., *Unconventional Medicine in the United States: Prevalence, Costs, and Patterns of Use*, 328 *NEW ENGL. J. MED.* 246, 246 (1993) (providing an early definition of "alternative medicine"); see also Michael H. Cohen & Mary C. Ruggie, *Integrating Complementary and Alternative Medical Therapies in Conventional Medical Settings: Legal Quandaries and Potential Policy Models*, 72 *U. CIN. L. REV.* 671, 675–83 (2003) (describing the history of the movement toward incorporating alternative therapies into conventional clinical care and of the evolution of terminology, such as "CAM" and "integrative medicine"). See generally Ted J. Kaptchuk & David M. Eisenberg, *The Persuasive Appeal of Alternative Medicine*, 129 *ANNALS INTERNAL MED.* 1061, 1061 (1998); Ted J. Kaptchuk & David M. Eisenberg, *Varieties of Healing I: Medical Pluralism in the United States*, 135 *ANNALS INTERNAL MED.* 189, 189–91 (2001) [hereinafter Kaptchuk & Eisenberg, *Varieties I*]; Bonnie B. O'Connor et al., *Defining and Describing Complementary and Alternative Medicine*, 3

seen Congressional establishment of a National Center for Complementary and Alternative Medicine (“NCCAM”) at the National Institutes of Health (“NIH”), with an annual budget of over \$100 million for research grants;² passage of the federal Dietary Supplements Health Education Act (“DSHEA”), allowing consumers access to vitamins, minerals, herbal products, and other “dietary supplements” without prior manufacturer proof of safety and efficacy or pre-market approval by the Food and Drug Administration;³ establishment of a consortium of academic medical centers with departments specifically dedicated to integrating CAM into conventional clinical care and the medical curriculum;⁴ and enactment of legislation in California, Minnesota, and Rhode Island, allowing non-licensed providers of numerous CAM therapies to offer services to the public.⁵

This year, the Institute of Medicine at the National Academy of Sciences has created a Committee on the Use of Complementary and Alternative Medicine. The committee is charged, among other things, with evaluating the “[i]mpact of current regulation/legislation on CAM research and integration.”⁶ A report to the public, the industry, the medical community, and Congress is scheduled for completion within two years.⁷ The creation of this committee within the medical community follows the creation of—and report by—the White House Commission on Complementary and Alternative Medicine Policy.⁸ In addition, numerous

ALTERNATIVE THERAPIES HEALTH & MED. 49 (1997).

² See WHITE HOUSE COMMISSION ON COMPLEMENTARY AND ALTERNATIVE MEDICINE POLICY, FINAL REPORT, at 30–31 (March 2002), available at <http://www.whccamp.hhs.gov/finalreport.html> [hereinafter FINAL REPORT].

³ The DSHEA regulates dietary supplements as “foods” and not “drugs.” Accordingly, manufacturers can market dietary supplements without prior proof of safety and efficacy, so long as the supplement is not “intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.” 21 U.S.C. §§ 321(g)(1), 321(ff) (2000). See MICHAEL H. COHEN, COMPLEMENTARY & ALTERNATIVE MEDICINE: LEGAL BOUNDARIES AND REGULATORY PERSPECTIVES 79–81 (1998) (discussing the debate around the DSHEA’s enactment and its impact on consumer access to herbal medicine); see also *id.* at 81–86 (discussing the legal issues concerning CAM therapies); David M. Studdert et al., *Medical Malpractice Implications of Alternative Medicine*, 280 J. AM. MED. ASS’N 1610 (1998) (same).

⁴ See Ralph Snyderman & Andrew T. Weil, *Integrative Medicine: Bringing Medicine Back to Its Roots*, 162 ARCHIVES INTERNAL MED. 395, 396–97 (2002).

⁵ See CAL BUS. & PROF. CODE §§ 2053.5 to .6 (West 2004); MINN. STAT. § 146A (West 2004); R.I. GEN. LAWS § 23-74-1(3) (2003); see also Michael H. Cohen, *Healing at the Borderland of Medicine and Religion: Regulating Potential Abuse of Authority by Spiritual Healers*, 18 J.L. & RELIGION 373, 410–11 (2003) (describing these statutes in greater detail).

⁶ Institute of Medicine, *Use of Complementary and Alternative Medicine (CAM) by the American Public*, available at <http://www.iom.edu/cam> (last visited Sept. 10, 2004).

⁷ See *id.*

⁸ See FINAL REPORT, *supra* note 2, at 1–2.

states have created similar committees that issue reports to their legislatures on complementary medicine policy.⁹

CAM therapies range from those with more accepted mechanistic explanations, such as the notion that massage therapy improves circulation and increases relaxation, and thus may help alleviate acute lower-back pain, to those considered more “frontier,”¹⁰ such as notions that intentionality and consciousness affect the healing process.¹¹ The latter are particularly controversial, especially in medical contexts in which proof of safety, efficacy, and mechanism are viewed as prerequisites to clinician recommendations involving such therapies. In the eyes of many within the biomedical community, therapies lacking such proof are clinically unacceptable. In regulating physician use of CAM therapies, one state medical board—Kentucky—classifies all of these therapies into three categories: “invalidated,” “nonvalidated,” and “validated,” and includes as “invalidated” any therapy that “[i]s implausible on a priori grounds (because its implied mechanisms or putative effects contradict well established laws, principles, or empirical findings in physics, chemistry or biology).”¹²

Yet, despite the argument that “implausible” therapies cannot be valid, many CAM therapies are in fact premised on epistemological assumptions that challenge current, Western medical canons. The idea that intention matters in healing is linked to notions of “spiritual energy” in many CAM therapies from chiropractic to acupuncture.¹³ Non-Western medical traditions, such as acupuncture and traditional oriental medicine, Tibetan medicine, and Ayurvedic medicine, may be premised on such

⁹ See *id.* at xi.

¹⁰ See Nat'l Ctr. for Complementary and Alternative Med., Nat'l Inst. of Health, *Exploratory Program Grants for Frontier Medicine Research*, in NIH GUIDE FOR GRANTS AND CONTRACTS (June 12, 2000), available at <http://grants1.nih.gov/grants/guide/rfa-files/RFA-AT-00-002.html> (last visited Sept. 10, 2004).

¹¹ NCAAM includes within its definition of frontier medicine, “systems that use ‘subtle energy’ fields in and around the body for medical purposes. Examples include Therapeutic Touch, Reiki, Huna, laying-on-of-hands, external Qi-Gong, . . . Homeopathy; or Therapeutic Prayer; Spiritual Healing; Distance Healing; or other examples of prayer and/or spirituality as direct clinical interventions.” *Id.*

¹² KENTUCKY STATE BD. OF MED. LICENSURE, BOARD POLICY STATEMENT – COMPLEMENTARY AND ALTERNATIVE THERAPIES (Sept. 17, 1998), available at <http://www.state.ky.us/agencies/kbml/complement.pdf> (last visited Sept. 10, 2004). The term “invalidated” also includes any therapy that: “(b) [l]acks a scientifically acceptable rationale of its own, (c) [h]as insufficient supporting evidence derived from adequately controlled outcome research, (d) [h]as failed in well-controlled studies done by impartial evaluations and has been unable to rule out competing explanations for why it might seem to work in uncontrolled settings.” *Id.*

¹³ See MICHAEL H. COHEN, BEYOND COMPLEMENTARY MEDICINE: LEGAL AND ETHICAL PERSPECTIVES ON HEALTH CARE AND HUMAN EVOLUTION 71–72 (2000) (citations omitted).

broader notions of an underlying, unifying structure behind and through material reality, and thus claim to occupy a larger sphere than medical science has, to date, been able to prove—e.g., the notion of *chi* in acupuncture being broader than the limited acceptance by biomedicine of acupuncture as safe and effective for the treatment of nausea following chemotherapy.¹⁴ The notion of spiritual energy has correspondences in numerous cultures, using words such as *chi*, *ankh*, *gana*, *ki*, *prana*, *pneuma*, and *wakan*, all referring to a flow of vital force from a realm of Spirit, that infuses the material world with healing capacity.¹⁵

Further, the understanding of CAM therapies involving spirituality has profound implications for regulation and policy. If such therapies are considered medically “implausible” and politically unacceptable, they are less likely to reach consumers through legislative mechanisms, such as licensure, and hospital mechanisms such as credentialing, for relevant providers.¹⁶ On the other hand, to the extent the regulatory system embraces and allows consumer access to such therapies, the consumer’s experience of health care may be transformed in unexpected ways.

Consider, for example, the impact that the development of availability of hospice has had on quality of care and decision making at the end of life or the impact on patients of the use of healing rituals in hospitals.¹⁷ At the least, as regards CAM therapies, adding the notion of “healing” to the goal of “curing” suggests the possibility of expanding definitions of health beyond mechanistic and reductionistic views of human life to embrace transformative aspects of the care process.¹⁸

Such expanded definitions of healing and health are the subject of two important books whose post-millennial themes concern the ecology of

¹⁴ See *id.* at 71.

¹⁵ See *id.*

¹⁶ See FINAL REPORT, *supra* note 2, at 88–89. In observing that the “present state of evidence concerning the safety and effectiveness of various CAM practices precludes any final assessment of their contributions to and limitations in addressing these broader health issues,” the report cautioned that:

The process of gathering evidence is on-going, however, and as evidence increases concerning ways that various CAM approaches do or do not affect health, processes of living and dying, and costs for other care, access to and delivery of some CAM practices and services are likely to become more pressing public policy issues.

Id. at 89.

¹⁷ See, e.g., Ted J. Kaptchuk, *The Placebo Effect in Alternative Medicine: Can the Performance of a Healing Ritual Have Clinical Significance?* 136 ANNALS INTERNAL MED. 817, 817–18 (2002); Sr. Jean Roche, *Creative Ritual in a Hospice: A Bit of Imagination Can Help the Dying, their Families, and Even the Hospice Staff*, 75 HEALTH PROGRESS 45 (1994).

¹⁸ See COHEN, *supra* note 3, at 11–12. “Finally, because healing, as opposed to curing, includes growth or transformation, the relief of symptoms which is provided by biomedicine does not necessarily indicate a successful or complete treatment in holistic terms.” *Id.*

awareness and the awareness of ecology, respectively. In *Healing, Intention and Energy Medicine*,¹⁹ editors Wayne B. Jonas and Cindy C. Crawford bring together extensive research on spiritual healing, mind-body phenomena, and the role of intentionality in health. In so doing, they credit the “frontier” area of spirituality in health care with scientific underpinnings, and thus help validate the notion that spiritual approaches have some efficacy, or at least impact, on the material plane.²⁰ On the other hand, in *A Language Older Than Words*,²¹ Derrick Jensen describes the pre-verbal, universal connectivity that binds all species in the ecology web underpinning our technocratic social order. Jensen, trained in physics and psychology, disclaims the hegemonic power of science to order our conception of reality and freeze our ideology into a consciousness of dominance and exploitation.²²

These two books are contrapuntal, side-by-side: one, using science in service of human healing; the other, disclaiming science in service of planetary healing. Both represent extraordinary contributions to the quest for understanding health and disease at their most fundamental levels—e.g., ecological as well as individual—and for illuminating the possibilities for healing on the planetary as well as individual levels. Both books are particularly relevant to considerations regarding treatment of neurological diseases such as epilepsy, in which links between mind and body—and ways to improve communication or coordination between the domains of each—are of particular concern and study, and in which connections between neurological conditions and mystical states have been proposed.²³

This Essay highlights common themes in both books and frames them in the context of legal regulation of CAM practices. Part I places the research on healing and intention in the context of debates around legal regulation of healing. Part II focuses on Jensen’s contention that the locus of ecological violence is the urge to dominate and subdue, motivated by the fear to confront wounds and vulnerability. Part II further explores Jensen’s notions of ecological and interspecies healing.

Part III offers reflections on links between research into healing and intentionality, Jensen’s description of interspecies communication, and regulatory values in health care. The Essay concludes with broader thoughts about links between spirituality in medicine and in law.

¹⁹ HEALING, INTENTION AND ENERGY MEDICINE (Wayne B. Jonas & Cindy C. Crawford eds., 2003) [hereinafter HEALING].

²⁰ See *Id.* at xv.

²¹ DERRICK JENSEN, A LANGUAGE OLDER THAN WORDS (2000).

²² *Id.* at 2–3.

²³ See Michael H. Cohen, *Regulation, Religious Experience, and Epilepsy: A Lens on Complementary Therapies*, 4 J. EPILEPSY & BEHAVIOR 602, 603–04 (2003).

I. UNDERSTANDING AND DEFINING HEALING

A. *Is Healing "Real?" Does it "Work?"*

Jonas and Crawford preface their edited volume with the observation that healing practices using "direct mental or spiritual techniques, such as prayer, ritual, dreamwork, imagery, direct mental intentions, and laying-on of hands, have been part of all known cultures," yet, the scientific community has largely neglected to investigate such practices and their claims.²⁴ In this light, the editors state that their volume aims to address three important questions:

1. Are the effects of healing 'real' as examined by high-quality, independently reproduced experiments?
2. How big are the effects of healing interventions?
3. What clinical impact does healing have in real-life clinical situations?²⁵

In attempting to answer these questions, the editors cite and highlight relevant literature in six areas they identify as central to the inquiry:

1. Health correlates of spiritual and religious practices
2. Intcessory [sic] or healing prayer
3. 'Energy' healing approaches
4. Therapeutic qigong (Chinese energy healing)
5. Direct mental interaction with living systems
6. Mind-matter interaction studies.²⁶

Regarding these six areas, the book's two major sections are titled "Critical Summaries of Current Research on Healing"²⁷ and "Methods and Challenges for Research on Healing," respectively.²⁸ Chapters in the first section summarize research on such topics as the health impact of religious and spiritual practices, intercessory and healing prayer, remote viewing, therapeutic effects of music, and the impact of healing in a clinical setting,²⁹ while chapters in the second section address such topics as models, measurement descriptors and outcomes measures in healing

²⁴ See HEALING, *supra* note 19, at xv.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 3.

²⁸ *Id.* at 185.

²⁹ See *id.* at 3, 13, 151, 175.

research, qualitative methods for healing research, and challenges particular to healing research.³⁰

The articles in each section are rich with mini-observations, such as the notion that introducing a healer into clinical care of chronically ill patients dramatically increases doctor-patient openness and communication,³¹ and that “emotionally engaging situations are the source of an ‘active information field’ which may be actualized as reduced entropy in appropriately designed random physical systems”³² (translation: emotionally charged intention can affect random number generators).

There are also many provocative conclusions, such as those in a chapter on “anomalous cognition,” or “AC,” a term used to describe “information transmitted from one person to another (commonly known as telepathy), from a non-living source to a person (commonly known as clairvoyance), and from the future to the present (commonly known as precognition),”³³ to the effect that, “[d]istance does not dampen AC performance,” and “AC performance peaks at about 13.5 hours local sidereal time, when the location of the experiment is orthogonal to the center of the galaxy, and dips at about 18 hours local sidereal time, when the location of the experiment is pointed toward the galactic center.”³⁴

Finally, the book includes an unusually extensive annotated bibliography of clinical research on healing³⁵ and a “comprehensive” bibliography of “spiritual healing, ‘energy’ medicine, and intentionality research.”³⁶ Even these bibliographies contain material of potential interest to anthropologists, sociologists, philosophers, students of religion, and other scholars in the humanities, as well as those interested in medicine, public health, ethics, and health care regulation and policy. For example, one trial was designed to answer the question: “Does intercessory prayer to the Judeo-Christian God have any effect on the patient’s medical condition and recovery while in the hospital?”³⁷

³⁰ See *id.* at 211, 225, 283, 293.

³¹ See Tim Harlow, *The Impact of Healing in a Clinical Setting*, in HEALING, *supra* note 19, at 175, 175.

³² Roger Nelson & Dean Radin, *Research on Mind-Matter Interactions (MMI): Group Attention*, in HEALING, *supra* note 19, at 49, 56.

³³ Jessica Utts & Edwin May, *Non-sensory Access to Information: Remote Viewing*, in HEALING, *supra* note 19, at 59, 60.

³⁴ *Id.* at 70.

³⁵ See Cindy C. Crawford & Wayne B. Jonas, *Annotated Bibliography of Controlled Clinical Trials with Quality Scores*, in HEALING, *supra* note 19, at 309, 309–39.

³⁶ Cindy C. Crawford & Wayne B. Jonas, *A Comprehensive Bibliography of Spiritual Healing, “Energy” Medicine, and Intentionality Research*, in HEALING, *supra* note 19, at 343, 343–91.

³⁷ Crawford & Jonas, *supra* note 35, at 312 (citations omitted).

The conclusion was that “there seemed to be an effect in favor of supplemental prayer, and that effect was beneficial.”³⁸ Among other things, “[f]ewer patients in the prayer group required ventilatory support, antibiotics, or diuretics.”³⁹ Similarly, another trial was designed to “determine the effect of therapeutic touch on people stressed by a hurricane or its after-effects”—the results showed a “decrease in perceived stress.”⁴⁰

Is healing “real?” Does it work? In their preface, Jonas and Crawford summarize the literature as “over 2200 published reports, including . . . 122 laboratory studies, 80 randomized controlled trials, 128 summaries or reviews, 95 reports of observational studies and non-randomized trials, 271 descriptive studies, case reports, and surveys, [and] 1268 other writings . . .”⁴¹ Their key observations included: (1) “a positive relationship between religious practices and reduced mortality, better physical health, improved quality of life, and less mental illness and drug abuse;”⁴² (2) 46% of randomized controlled trials on prayer reported “significant effects on at least one health outcome;”⁴³ and (3) “[58%] of . . . randomized controlled trials on ‘energy’ healing (usually therapeutic touch) . . . reported positive effects.”⁴⁴

Beyond simply presenting these figures, Jonas and Crawford assign ratings to, and comment on, the level of evidence for each of these conclusions, offering caveats to any potentially misleading interpretation of results.⁴⁵ Significantly, they conclude that “[t]here is evidence to suggest that mind and matter interact in a way that is consistent with the assumptions of distant healing. Mental intention has effects on non-living random systems . . . and may have effects on living systems.”⁴⁶ They further conclude that the preliminary studies “suggest that chronically ill patients may benefit from spiritual healing,” adding that the belief in energy healing by *both* patient and practitioner contribute “significantly” to a healing effect.⁴⁷

Finally, Jonas and Crawford suggest that further research be pursued.⁴⁸ Specifically, they recognize an urgent need to “[e]stablish

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 320 (citations omitted).

⁴¹ HEALING, *supra* note 19, at xv.

⁴² *Id.* at xv–xvi.

⁴³ *Id.* at xvi.

⁴⁴ *Id.*

⁴⁵ *See id.* at xv–xvii.

⁴⁶ *Id.* at xvii.

⁴⁷ *Id.*

⁴⁸ *See id.*

consciousness and healing research laboratories” with multidisciplinary scientific expertise, to “[d]evelop a biological model for exploring healing effects,” and to “[c]onduct a multicenter healing impact study,” including “[p]artner[ing] with organizations interested in healing research.”⁴⁹

B. Understanding Healing and Energy Medicine

The term “energy medicine” lacks a uniform definition, a single, unifying body of scientific knowledge, and a coherent professional community that agrees on its meaning. “Energy medicine” sometimes is used to describe approaches to health and healing that rely on the use of vital (or “subtle”) energies such as the transfer of intention to heal into actual physical healing.⁵⁰ In other contexts, the term “energy healing” may be used to describe a specific collection of therapies, such as Therapeutic Touch and Reiki, as opposed to the larger set of approaches including intercessory prayer.⁵¹

In linking “healing,” “intention,” and “energy medicine” in their title, Jonas and Crawford note the interrelationship between the domains of research outlined, notions of what “healing” means, the role of one’s conscious intention in giving and receiving healing, and the mysterious notion of healing “energy.” The definition of “energy” in “energy medicine” is not clear. As Jonas explains: “The concept is ambiguous, holding itself at a mid-point between mind and matter The concept . . . often has characteristics similar to consciousness or spirit, yet is also treated like a physical substance that can be stored, enhanced, projected, and withdrawn.”⁵²

Jonas and colleagues also use another term: “focused intention.” They explain that the “focused intention” that healers use in the practice of energy healing itself is known by a number of terms, including: “paranormal healing, psychic healing, psychokinesis (PK), laying-on of hands, bio-PK, external hands-on healing, non-contact therapeutic touch, healing and therapeutic touch, healing with intent, spiritual healing, bioenergy, biofield therapy, telekinesis, natural healing, distant or remote mental influence on living systems (DMILS) or Reiki . . . [or] ‘bioenergy.’”⁵³ The chapter’s authors note that many cultures believe that

⁴⁹ *Id.* at xviii–xix.

⁵⁰ See COHEN, *supra* note 13, at 80.

⁵¹ See *id.* at 71–72.

⁵² Wayne B. Jonas, *Introduction* to Sara L. Warber et al., ‘Energy’ Healing Research, in HEALING, *supra* note 19, at 83, 83–84.

⁵³ Andrew G. Sparber, Cindy C. Crawford & Wayne B. Jonas, *Laboratory Research on Bioenergy Healing*, in HEALING, *supra* note 19, at 139, 140.

“certain individuals mediate ‘supernatural’ healing powers”⁵⁴—yet another way of describing the phenomenon.

One of the chapters in the book by Jonas & Crawford describe energy medicine within the larger context of the relationship between science and spirituality. In this chapter, David Hufford purports to explain why it is so difficult to describe energy medicine and spirituality within conventional scientific parameters.⁵⁵ He proposes that scientific inquiry may be biased against findings that spirituality can affect material events, because of the notion that “all paranormal effects . . . break natural law;” he argues that this is a “large claim, and often repeated, though one that is quite dubious.”⁵⁶

According to Hufford, healing “has been associated . . . with spirituality and religion” and thereby unfairly considered “obsolete and/or disreputable by mainstream science.”⁵⁷ Hufford contends that healing must develop “a solid infrastructure of scholarship in order for theory and practice to grow in a thoughtful manner” and to counter the “negative stereotypes” that perpetuate misunderstanding—e.g., that healing is based on obsolete historical notions such as mesmerism, or relies on ideas that are beyond theoretical plausibility.⁵⁸

While Hufford does not entirely resolve the split between science and spirituality, his discussion augments the effort by Jonas and Crawford to describe the role of healing as a common thread between spirituality in medicine and “energy” therapies. As Jonas and colleagues assert in various ways, both fields have been marginalized at worst and neglected at best.⁵⁹ When one considers the larger field of CAM therapies, the “energy” therapies fall at the more “frontier” end of the spectrum in terms of scientific understanding and acceptance. On the other hand, while there are many typologies for classifying CAM therapies,⁶⁰ one useful way to think of these therapies is in terms of those that are more likely to fall within biomedicine—e.g., proven as safe and effective in biomedical terms—those falling within energy medicine, and those straddling both.⁶¹

⁵⁴ *Id.*

⁵⁵ David Hufford, *Challenges for Healing and Intentionality Research: Social Dynamics Involved in Entering the Mainstream*, in HEALING, *supra* note 19, at 293.

⁵⁶ *Id.* at 298.

⁵⁷ *Id.*

⁵⁸ *Id.* at 300.

⁵⁹ See ALTERNATIVE MEDICINE SOURCEBOOK 517 (Allan R. Cook, ed., 1999); Cohen, *supra* note 3, at 10; Marshall Mandell, M.D., *Foreword* to BRETT JASON SINCLAIR, ALTERNATIVE HEALTH CARE RESOURCES: A DIRECTORY AND GUIDE, at iii (1992).

⁶⁰ See, e.g., Ted J. Kaptchuk & David M. Eisenberg, *Varieties of Healing II: A Taxonomy of Unconventional Healing Practices*, 135 ANNALS INTERNAL MED. 196 (2001).

⁶¹ COHEN, *supra* note 13, at 81.

CAM therapies such as nutritional approaches to healing, for example, might cross over into the biomedical arena, whereas the healing benefits described for the Native American sweat lodge rely on spirituality and would be difficult to test or to understand in a mechanistic fashion.

As suggested, these distinctions are more than academic. They shape scientific research agendas, the politics and ideologies around CAM therapies, acceptance and use within hospitals, decisions regarding third-party reimbursement, and issues of credentialing and licensure.⁶² In bringing together a body of scientific research and knowledge concerning therapies involving "healing, intention, and energy medicine," Jonas and Crawford help sculpt a potentially new field within health care, and draw together its potential implications for clinical care across medical disciplines, as well as for medical research within its numerous domains. The question is whether enhancing the credibility of energy therapies through a careful collection of scientific research and commentary can surmount a history of marginalizing such therapies and attenuate attention to the importance of intentionality within the healing process and therapeutic relationship.

II. HEALING AND THE ENVIRONMENT

A. *Healing Ecological Violence*

Jensen's book, while published less recently, offers, as suggested, an intriguing counterpoint to the careful accumulation of scientific research by Jonas and Crawford. In his own way, Jensen's anguished outpouring concerning ecological violence—and the awareness required for planetary healing—echos the focus by Jonas and Crawford on the effects of healing, intention, and energy. Two aspects of Jensen's work in particular reflect on the potential critique CAM offers biomedicine generally and on the potential contribution of healing and energy medicine to an emerging synthesis of CAM and biomedicine that touches on neurological and other diseases involving mind-body and brain-body connections.

First is Jensen's criticism of Cartesian dualism as a kind of original emotional sin—a deviation from humanness that has led to ecocide and dehumanizing behavior with regard to the environment. Jensen observes that Descartes' famous dictum, "I think, therefore I am," led to a philosophical splitting of mind and body, and even more importantly, of thinking and feeling.⁶³ More fundamentally, Descartes located the center

⁶² *Id.* at 80, 87.

⁶³ See Jensen, *supra* note 21, at 8–10.

of existence in the abstract world of mentation, rather than the living world of felt interconnectedness with all that is.⁶⁴ Jensen writes that, had he been present when Descartes

came up with his famous quip, . . . I would have put my arms around his shoulder and gently tapped, or I would have punched him in the nose, or I might have taken his hands in mine, kissed him full on the lips, and said, "Rene, my friend, don't you *feel* anything?"⁶⁵

Jensen further laments, "Why hadn't he said, 'I love, therefore I am,' or 'I breathe, therefore I have lungs,' or 'I defecate, therefore I must have eaten,' or 'I feel the weight of the quill on my fingers and rejoice in the fact that I am alive, therefore I must be?'"⁶⁶ According to Jensen, this failure to recognize the embodiment of the living soul within flesh, heart, saliva, and alimentary canal represents the fundamental "narcissism" of Western culture, and leads to "a disturbing disrespect for direct experience and a negation of the body."⁶⁷ Descartes "philosophized [human beings] out of subjective existence," and as a result, his progenitors "eventually agreed that subjective personhood should . . . not be granted to those . . . whose voices they chose not to hear,"⁶⁸ and who therefore could be exterminated, robbed, enslaved, exploited.⁶⁹ Jensen concluded with an ominous epitaph:

Searching for certainty, Rene Descartes became the father of modern science and philosophy. . . . By substituting the illusion of disembodied thought for the experience . . . and most importantly by substituting control, or the attempt to control, for the full participation in the wild and unpredictable process of living, Descartes became the prototypical modern man.⁷⁰

Philosophically, Cartesian dualism opened the way for biomedical mechanism—the tendency to view the body as a machine, composed of isolated parts; and reductionism—the tendency to reduce the complex phenomenon and experience of illness to a diagnostic category.⁷¹ From the perspective of health care policy and regulation of CAM therapies, an understanding of Cartesian reductionism can help frame the movement toward greater acknowledgment of holism (a stated feature of CAM)—the

⁶⁴ *Id.* at 10.

⁶⁵ *Id.* at 8.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 9.

⁶⁹ *Id.* at 10.

⁷⁰ *Id.*

⁷¹ See COHEN, *supra* note 3, at 2–3.

tendency to view human health—and the process of disease—as a whole system involving mind, body, spirit, relationships, and environment.⁷²

The second important contribution Jensen makes to the consideration of healing, whether ecological or medical, is his emphasis on the need to reverse the consciousness of exploitation and dominance that he claims is embedded in our culture.⁷³ Jensen irreverently muses on whether he should assassinate two senators “whose work may be charitably described as unremittingly genocidal and ecocidal.”⁷⁴ He then compares this “thought experiment” to an argument about whether it would have been appropriate to attempt to assassinate Hitler.⁷⁵ On the latter point, he concludes that there is no right answer: “If we fail to fight them we die, and if we fight them we run the risk of becoming them.”⁷⁶ On the former, he concludes that even were he to assassinate the two senators, “they would simply be replaced by two more people with the same worldview,” since “the shared nature of the destructive impulse” embodied in their psyches “would continue, making their replacement as easy as buying a hoe.”⁷⁷ Jensen morosely concludes that there is “no way” to transition to a culture that is compassionate to the environment—that is, one in which the two senators would not be replaced instantaneously, like the heads of the mythological Greek hydra.⁷⁸ “The best we can hope for,” he argues, “is that we begin to throttle down our overblown technology, to bring ourselves to a soft landing instead of a full crash.”⁷⁹

Jensen consoled his grief, nursing himself through his pessimistic side, by asserting his essential connection with all of nature. He did so by noticing that when he opened himself up to the presence of the pine trees, the flies, the ants, to “every grasshopper, every struggling salmon, every unhatched chick, every cell of every blue whale,” he realized “it is no longer possible to be lonely.”⁸⁰ For Jensen, who was deeply in kinship with Emerson and the transcendentalists, healing meant to “hurl ourselves against and through the literal and metaphorical concrete that contains and constrains us, that keeps us from talking about what is most important to us, that keeps us from living the way our bones know we can, that bars us

⁷² See *id.* at 3–4.

⁷³ See JENSEN, *supra* note 21, at 2–3.

⁷⁴ *Id.* at 220.

⁷⁵ See *id.* at 220–22.

⁷⁶ *Id.* at 222.

⁷⁷ *Id.* at 220.

⁷⁸ See *id.* at 74.

⁷⁹ *Id.*

⁸⁰ *Id.* at 75.

from our home.”⁸¹ Healing, for Jensen, is more than pursuing a specific political agenda or course of environmental activism; it is about recognizing the soul’s wholeness in its recognition of relationship with every other subject—and object—in the environment. In other words, sustaining a positive healing intention means recognition of a shared interdependence and interconnection; it is living in the web of life rather than seeking to use and exploit it. In Jensen’s view, we are part of the world, realizing ourselves within and through it, and “it is only our own fear that sets us apart.”⁸²

Jensen’s focus on humans’ interconnection with nature parallels the scientific research on healing and intentionality and the potential applications of healing and intentionality to therapeutic processes. Jensen is addressing the macro level—humanity amidst the planetary ecosystem—while the contributions of Jonas and Crawford, at least initially, seemed to address the micro level—healing of the individual within the fragile ecosystem of his or her mind, body, and spirit.

B. *Healing and Interspecies Communication*

One of the more provocative meditations in Jensen’s book is his insistence, within the framework of his environmental activism and awareness, that interspecies communication not only is an authentic possibility for the spiritually gifted or aware but may be available to all.⁸³ Jensen’s writing suggests that the ability to communicate deeply with nature is an inherent part of the human birthright, available to anyone who intentionally directs attention to our fellow travelers in the animal and mineral worlds.⁸⁴

The genesis of his book, he acknowledges, was a conversation between him and the coyotes surrounding his farm. While at first he was a skeptic, and later wondered whether he was crazy, he came to conclude that “[p]igs, dogs, coyotes, squirrels, even rivers, trees, and rocks: all these . . . were speaking *and listening* if only we too would enter into conversation.”⁸⁵ The possibility of such interspecies communication has profound implications for diagnostic and therapeutic processes, as well as environmental policy. Already extensive research supports the therapeutic benefits of such activities as pet therapy, suggesting the healing effects of

⁸¹ *Id.*

⁸² *Id.*

⁸³ *See id.* at 64.

⁸⁴ *See id.*

⁸⁵ *Id.* at vii.

the strong bonds between species.⁸⁶ And, if other species can make their wishes and gifts known to us in direct ways, then our relationship with them may have the capacity to heal at deeper levels than previously assumed. In other words, the relationship between humans and the environment may be therapeutic because of a more equal exchange, and not merely a passive, one-way communication between dominant species and mute witnesses to human supremacy.

Jensen emphasizes the importance of such a bilateral relationship, observing that “ownership as practiced by our culture is an expression of a will and capacity to control, and even to destroy.”⁸⁷ The Western view of nature typically follows the biblical example in which Adam, the progenitor, was invited to name the animals, and thereby have dominion over them. This is hardly a stance of interspecies equality. Jensen, on the other hand, provocatively suggests that “we stand the notion of ownership on its head,” by asking:

What if I do not own the barn, but instead it owns me, or better, we own each other? What if I do not view it as my right to kill mice simply because I can, and because a piece of paper tells me I own their habitation? What if, because their habitation is near my own, I am responsible for their well-being?⁸⁸

He calls this a “relationship of mutual care” that involves mutual respect—a view of life as “a web of immeasurably complex and respectful relationships.”⁸⁹ In this view, the “evolutionary purpose [of life] is for each of us to take responsibility for all those around us, to respect their own deepest needs, to esteem and be esteemed by them, to feed and feed off them, to be sustained by their bodies and eventually to sustain them with our own.”⁹⁰

Within this paradigm, Jensen observes that the “evidence of interspecies communication and the fundamental *beingness* of nonhumans is so obvious as to render my previous skepticism embarrassing.”⁹¹ He even urges that to “attempt a proof” of interspecies communication would be “degrading” as well as “silly” and that the proof consists of two directives: “*pay attention*” and “*listen*.”⁹² He offers many instances in

⁸⁶ See ALAN BECK & AARON KATCHER, BETWEEN PETS AND PEOPLE 159–60 (1983); Shirley D. Hooker et al., *Pet Therapy Research: A Historical Review*, 17 HOLISTIC NURSING PRACTICE 17, 17 (2002).

⁸⁷ JENSEN, *supra* note 21, at 113.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 113–14.

⁹¹ *Id.* at 248.

⁹² *Id.*

which he receives information from his animal and insect companions—information revealing their keen awareness of their environment and his role and interaction, as well as theirs, within that environment.⁹³ The examples include kinship and cooperation within nature, as well as his perceptions of direct messages or signals from nature to him.⁹⁴

One could critique Jensen as anthropomorphizing nature. However, his observations went far beyond the kind of mythological attribution of human traits to the non-human. Jensen summarizes:

There is another kind of revolution, one that does not emerge from the culture, from philosophy, from theory, from thought abstracted from sense, but instead from our bodies, and from the land. It, too, is a part of this language older than words. . . .

It is not the attempt to seize power or the industrial 'means of production,' but it is actions based upon the instinctual drive to survive, and to live with dignity.⁹⁵

Later, he adds:

There is a language older by far and deeper than words. It is the language of the earth, and it is the language of our bodies. It is the language of dreams, and of action. It is the language of meaning, and of metaphor. . . . To follow this language of metaphor is to trace words back to our bodies, back to the earth.⁹⁶

Restating his message, he reports a conversation in which philosopher Thomas Berry told him: "The universe is composed of subjects to be communed with, not objects to be exploited. Everything has its own voice. Thunder and lightning and stars and planets, flowers, birds, animals, trees—all these have voices, and they constitute a community of existence that is profoundly related."⁹⁷

Jensen combines information, statistics, economics, philosophy, narrative, psychology, and memoir, dropping effortlessly into personal experience to create his web of ideas and stories. But what does Jensen truly mean by "interspecies communication," other than receiving a kind of metaphorical concordance or synchronicity between events in nature—for example, a stormy sky—and one's moods?

To answer this question, I will echo the style of Jensen's narrative by stepping out of the role of scholar and relate an anecdote of my own. In the past I might have embarrassed to shift that "objective" to "subjective,"

⁹³ See *id.* at 81, 248–49.

⁹⁴ See *id.* at 248–53.

⁹⁵ *Id.* at 286–87.

⁹⁶ *Id.* at 311.

⁹⁷ *Id.* at 361.

although I have argued that these lay on a continuum, and narrative from experience is in keeping with both critical accounts of how consciousness expands.

Some years ago I returned from a meditation retreat to the law school where I was employed as a professor. The shift from a weekend of silence, immersed in ecstatic states of being, to the politics and paranoia of a faculty, left me feeling angry and disturbed. At night, traveling to my mountain retreat home, I began to prepare a stir-fry for the wok. I was still deeply connected to the wisdom of my meditation experience and the purity of its silence, yet I continued to process the intrigue and craziness of the office environment. And so I began to chop the garlic with haste—perhaps even, to anthropomorphize the garlic—rudeness.

Suddenly, I heard a voice: “Stop! You’re hurting me!”

I realized the message was not coming from within me or around me, but rather, from the garlic itself. My brusque movements were, in fact, conveying a certain quality of energy or intentionality to the garlic, and my enlivened consciousness, awakened through silent meditation, was in a state of receptivity to another consciousness within nature, one that expressed itself in a language older than words, which my mind then translated into a verbal thought.

I immediately apologized to the garlic, and softened my peeling and chopping, recognizing in that moment the unification of being, my connection to my food, and the cycle of life.

My experience, which may seem unusual to some readers, is not so far from the kind of awareness that many indigenous cultures carry when their members are able to receive such messages from trees, ants, spiders, even foods. In animistic cultures, particularly, everything is alive and carries consciousness; thus, intentionality can be negotiated among species, through a language older than words that may be mediated by words, sacred chants, or ritual.⁹⁸ Even within our culture, ordinary consciousness has been called “consensus trance,” a term that acknowledges the consensual agreement to maintain a certain spectrum of common awareness while blocking others.⁹⁹ Hence, the use of the term “altered states of consciousness” (“ASC’s”) describes places of receptivity within the mind that are outside the usual consensus state. In my case, the relationship with food seemed a perfect starting point for such differentiated awareness.

⁹⁸ See Philippe Descola, *Societies of Nature and the Nature of Society*, in *CONCEPTUALIZING SOCIETY*, 107, 114 (Adam Kuper ed., 1992).

⁹⁹ See CHARLES T. TART, *WAKING UP* 85 (1986).

Jensen understands the importance of food to our identity within the totality of our environment, our awareness, and our values. He writes a lot about food, about the inability of our techno-society to enable either individuals or communities to become sustainable and self-reliant in supplying their own food,¹⁰⁰ and about the way the processes behind any meal in a restaurant are “tied inescapably to pernicious activities across the globe,” from “the unspeakable cruelty and debasement of factory farming, and water pollution,” to depletion of natural resources, to “the indescribable immiseration and debasement of labor exploitation” internationally, to toxic mining wastes, chemical pollution, and other phenomena.¹⁰¹ He writes movingly of animals he has killed for food, of the tender relationship between killer and the being that has become the sacrifice, and of the final moments of connection between the two souls:

I finally caught him, and held his large body close, one wing trapped against my chest, the other under my right arm. I remember his eyes were wide, and I could see the black of pupil, blue of iris, white of fear, red of lid, white of feathers, and red of hen's blood.¹⁰²

Jensen's descriptions are vivid, graphic, and powerful. He writes with compassion and self-inquiry regarding his involvement in killing. In so doing, Jensen shares his ambivalence and perhaps latent guilt. While maintaining that the relationship between the one offering the sacrifice and the one receiving the fruits of the sacrifice, Jensen explains that sacrifice for feeding is an inevitable part of the chain of life. Accordingly, the task is to ensure that the process has dignity and manifests respect for the beings involved.¹⁰³

Jensen could be critiqued, or dismissed, as anthropomorphic in his description of the vivid encounters between human and animal; he writes, however, not metaphor but memoir, not invention, but experience. He does not ascribe human qualities to animals, but rather, brings out the essential commonality between the human and animal in the shared spiritual and emotional dimension of the sacrificial moment. The healing and understanding of the possibility for energy medicine that Jonas and Crawford carefully put together through scientific explanations found vivid expression in Jensen's intimate portraits of his encounters with life.

¹⁰⁰ See JENSEN, *supra* note 21, at 279.

¹⁰¹ *Id.* at 280–81.

¹⁰² *Id.* at 195–96.

¹⁰³ See *id.* at 32. He wrote that the killing for food, with respect for the creature sacrificed, “can be accepted and even celebrated, with respect, and in full cognizance of the loss, as a requisite part of a beautiful dance which necessarily ends in death for all of us.” *Id.* Such act, he wrote, is “deeply emotional . . . a form of intimacy” in which the life taken is celebrated and seen in its significance. *Id.* at 35–36.

III. REGULATING HEALING

A. *Evolution of Regulatory Goals*

As research continues into healing and intentionality, Jensen's description of the need for a different kind of sensitivity to our environment becomes increasingly relevant to understanding how we regulate healing. Personal experience and narrative, as well as scientific evidence, can enrich the consideration of regulatory objectives. To date, regulatory efforts surrounding therapies that involve a broader notion of healing than curing have focused primarily on the regulatory interest in controlling deviance by preventing fraud.¹⁰⁴ This notion of "fraud" control has included such areas as licensing (using licensure rules to prevent ignorant and deviant individuals from preying on patient vulnerabilities) and medical discipline (using the power of the state medical board to sanction physicians treating patients through therapies outside medical orthodoxy).¹⁰⁵

Fraud control is an appropriate goal, and relevant regulation can be effective where truly fraudulent activity is involved.¹⁰⁶ In addition to fraud control, additional policy goals could include the following: quality assurance, health care freedom, functional integration, and human transformation.¹⁰⁷ "[Q]uality assurance" means "promoting professional standards so that products and therapies are relatively safe for public use and consumption;"¹⁰⁸ "health care freedom" refers to "safeguarding the flow of information so that consumers can feel that they belong to a system in which they are allowed to make intelligent, autonomous health care choices;"¹⁰⁹ "functional integration" means "advancing the safe, effective, and appropriate clinical integration of all world systems of knowledge about healing;"¹¹⁰ and "transformation" involves "promoting healing of mind-body-spirit, igniting individuation, advancing human wholeness, and moving toward individual and collective enlightenment on the scale of planetary evolution."¹¹¹

¹⁰⁴ MICHAEL H. COHEN, *FUTURE MEDICINE: ETHICAL DILEMMAS, REGULATORY CHALLENGES, AND THERAPEUTIC PATHWAYS TO HEALTH CARE AND HEALING IN HUMAN TRANSFORMATION* 84–85 (2003).

¹⁰⁵ *Id.*

¹⁰⁶ COHEN, *supra* note 3, at 107–08.

¹⁰⁷ COHEN, *supra* note 104, at 86.

¹⁰⁸ *Id.* at 87.

¹⁰⁹ *Id.* at 87–88.

¹¹⁰ *Id.* at 89.

¹¹¹ *Id.* at 91.

A movement toward greater emphasis on “health care freedom” can be found in new laws, for example, in California, Minnesota, and Rhode Island, allowing non-licensed health care providers to offer a range of CAM therapies, so long as they make appropriate disclosures to health care consumers and meet other requirements.¹¹² Similarly, such statutes emphasize the importance of medical pluralism.¹¹³ By shifting the focus from prohibiting access to therapies that lack a significant medical evidence base to allowing access assuming proper disclosures are made, these statutes express a different balancing of medical paternalism and patient autonomy than was previously found in licensing laws based exclusively on an anti-fraud rationale. In fact, all five regulatory goals can be acknowledged in a kind of hierarchy analogous to Abraham Maslow’s hierarchy of needs; all five goals are important, and each predominates depending on the primary regulatory need in any given environment.¹¹⁴

Such a larger set of goals may be highly relevant to the contemplation of matters raised by Jonas and Crawford, as well as Jensen, regarding interspecies communication, long-distance healing, and the primacy of intention and relationship in all communication. Jonas and Crawford hinted at, and Jensen insisted on, the necessary and urgent evolution of human consciousness to move into states in which interrelationship with nature becomes a *de facto* way of being.¹¹⁵ In short, the focus is not only healing existing dysfunction and disease—mental, emotional, and spiritual, as well as physical—but even more, evolving to a place in which we become that which we already are, but perhaps are too deluded or preoccupied, particularly in an age in which computerized technology dominates much of our culture to notice: condensed spirit and spiritual energy on the material plane.

A regulatory focus on the baser aspects of human nature, and their potential for distorting therapeutic relationships, may be too limiting to address these larger notions of human connectivity with larger ecosystems. As Jonas observes:

While all healing systems involve the use of consciousness . . . [m]odern Western medicine sees most energy emanating off the body as an epiphenomenon of biochemical activity in cells and of no therapeutic value in itself. Spiritual, psychic, and bioenergy healers imagine this energy as directly interacting with the person to facilitate healing.¹¹⁶

¹¹² See Cohen, *supra* note 5, at 410–11 (citing and describing statutes).

¹¹³ See generally Kaptchuk & Eisenberg, *Varieties I*, *supra* note 1, at 189–91.

¹¹⁴ COHEN, *supra* note 104, at 96–99.

¹¹⁵ See JENSEN, *supra* note 21, at 75–76.

¹¹⁶ Jonas, *supra* note 52, at 83.

Both Jonas and Jensen suggested the importance of transformation in connection to the environment and human relationships. From a regulatory perspective, transformation connotes the intent to protect all aspects of human health, including environmental and spiritual values, as well as biological integrity.¹¹⁷ Further, to acknowledge bioenergetic exchanges as a part of health care could have revolutionary consequences for health care, including procedures from surgery to intensive care. In fact, acknowledging a regulatory goal of transformation would suggest the importance of using consciousness as a healing facility.¹¹⁸

Jensen was much more direct, as he generalized beyond medical care to care for the environment, and ultimately, the soul of our species: "There is another kind of revolution, one that does not emerge from the culture, from philosophy, from thought abstracted from sense, but instead from our bodies, and from the land. It, too, is a part of this language older than words."¹¹⁹ Jensen clarified that this is neither political theory, nor philosophy, nor religion.¹²⁰ Rather, "it is remembering what it is to be a human being—an animal. It is remembering what it means to love, and to be alive."¹²¹

B. Regulation and the Evolution of Consciousness

How can legal rules and regulation encourage or facilitate the revolution of consciousness of which Jonas and Crawford, as well as Jensen spoke, if such encouragement or facilitation is desirable, as the former hinted, and the latter urged?¹²² Certainly, environmental law can determine the fates of various animals, plants, landscapes, humans, microbes, insects, and other dwellers of the planet, and thereby either encourage or discourage interspecies relations, and either preserve or destroy. Environmentalists and industrialists have differing agendas and perspectives on the tradeoffs between commercial development and notions of planetary well-being. From another perspective, legal rules governing separation of church and state, as well as freedom of expression of religion, aim to balance values so that the ability of individuals and groups to express the spirit they perceive flowing through them is safeguarded in an appropriate manner.

¹¹⁷ COHEN, *supra* note 104, at 91–93.

¹¹⁸ COHEN, *supra* note 13, at 120.

¹¹⁹ JENSEN, *supra* note 21, at 286.

¹²⁰ *Id.* at 287; *see also* Cohen, *supra* note 5, at 377–81 (distinguishing between religion and spirituality).

¹²¹ JENSEN, *supra* note 21, at 287.

¹²² *See supra* notes 116–20 and accompanying text.

In health care, to the extent that an evolution in consciousness may develop from the movement beyond mechanism and reductionism in biomedicine, toward incorporating other insights, approaches, and philosophies from various CAM modalities—for example, notions of *chi* in acupuncture and traditional oriental medicine, or ideas about a bioenergy field in energy healing—health care regulation in general will have a significant effect on the extent to which such practices—and any corresponding expansion in consciousness—flourish or wither.

Recently, the legal profession has seen a movement toward greater inclusion of spiritual practice, or at least, secularized practices from the spiritual domain (such as mindfulness-based stress reduction, or “MSBR”) to help lawyers practice with increased clarity and compassion.¹²³ Similarly, the medical profession has seen explicit acknowledgement of the role of spirituality in clinical care, along with recommendations and guidelines for handling sensitive discussions with patients regarding spirituality.¹²⁴ Arguably, a focus on healing thematically unites these disparate movements—the question to understand the role of positive intention (or at least, in the case of MSBR, the destructive effect of unacknowledged negative emotion) in facilitating and deepening relationships, and enhancing positive outcomes—whether within a clinical setting or a negotiation.

Healing and Words both focus on this common element of healing. The noble qualities of both sets of authors shines forth in their quest for planetary improvement in the ecology of being, and not simply for health as defined in quantitative terms. The implications of both books for health care and health care policy are enormous: both books implicitly argue for a certain shift in consciousness—from a mechanistic, reductionistic, and dualistic view of world, in which humanity is seen as the highest rung in order of nature, born to subdue and dominate all, toward a more unified, integrated harmonization of human creative energies with those of other species as well as the ‘inanimate’ environment.¹²⁵

¹²³ See Cohen, *supra* note 5, at 385–87 (2003); Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients*, 7 HARV. NEGOT. L. REV. 1, 33–36 (2002).

¹²⁴ See, e.g., HAROLD G. KOENIG, SPIRITUALITY IN PATIENT CARE: WHY, HOW, WHEN, AND WHAT 33–44 (2002).

¹²⁵ Jensen, echoing indigenous and shamanistic perspectives, argued that the Western perspective, dichotomizing animate and inanimate, is fundamentally flawed. He quoted his friend, a traditional Okanagan Indian, in arguing that “listening to the land is . . . not a metaphor. It’s how the world is.” JENSEN, *supra* note 21, at 24. He critiqued the understanding of experience as metaphor as follows: “the *other* remains a case study onto which we project whatever we need to learn. That’s an entirely different circumstance than listening to the other as it has its say, reveals its intents . . . and does all this *on its own terms*.” *Id.* at 24–25.

The authors, as noted, take different positions on the role of science in facilitating this shift in consciousness. As to whether science is a good thing or a bad thing, perhaps the adage of Hamlet will suffice: “there is nothing either good or bad, but thinking makes it so.”¹²⁶ In other words, to echo the research of Jonas and Crawford, intentionality does matter. The intention to use science to subdue, dominate and control produces one result, whereas the intention to use science in service of openness, acceptance of our fragmented, wounded vulnerability, and in recognition of a shared connection with all things, produces another. As Jensen puts it, “our culture’s narcissism . . . leads to a disturbing disrespect for direct experience and a negation of the body.”¹²⁷ But, he urged, “a real world still awaits us, one that is ready to speak to us if only we would remember how to listen.”¹²⁸ As many philosophers have noted, this is the genius of free will: humans have the choice to make or break the world—to make or break our environment and each other through the ways we choose to interact with ourselves, with each other, and with all that is.¹²⁹

Particularly in an age in which our increasing technological sophistication makes us vulnerable to the very machinery we have built (the not too covert subtext of the film trilogy called *The Matrix*), it becomes increasingly important to examine our intentionality in an honest way. Jonas and Crawford inform us that what we think and feel does make a difference, and Jensen repeatedly points out the lies we tell ourselves in order to survive—the psychic accommodation we make at the cost of our souls.¹³⁰

As Jensen observes, the pain of honesty and self-awareness leads many to self-numb. He reported that as he began to open up to his emotions—which he had suppressed for years—he grew “deeply convinced that awareness, and feeling, led inevitably to decreased happiness.”¹³¹ He dreamt about baby cranes:

¹²⁶ WILLIAM SHAKESPEARE, *HAMLET*, act 2, sc. 2.

¹²⁷ JENSEN, *supra* note 21, at 8. This is the “culture’s overemphasis of the logical and physiological and its denial of the analogical and psychological . . . a collective consciousness that medicalizes life and death and denies the language of the body, the wisdom of feeling, the truth of inner experience.” COHEN, *supra* note 13, at 139.

¹²⁸ JENSEN, *supra* note 21, at 7. I have termed this: “transcending hierarchical relations and dependencies through the immediate, body-and-feeling-centered awareness of our shared vulnerability.” COHEN, *supra* note 13, at 143.

¹²⁹ Regarding the difference between the approaches of Jensen and of Jonas and Crawford, my own approach is to synthesize, the task being to “validate subjectivity, intuition, and mystery in equipoise to science and law.” COHEN, *supra* note 13, at 144.

¹³⁰ See JENSEN, *supra* note 21, at 2.

¹³¹ *Id.* at 60.

They took off and crashed, took off and crashed. I stopped the car and got out. "That looks like it hurts. Why do you do it?"

One of the cranes looked me square in the eye. "We may not fly very well yet, but at least we aren't walking."

I awoke, happy. From that moment, there has been no turning back.¹³²

Jensen's description of his dream, and instruction from the cranes, is reminiscent of the story about the traveler on the road who saw the radiant Buddha approaching. The astonished individual asked, "What are you, a man or a god?" "Neither," the Buddha replied. "I am awake."

In Jensen's terms, awakening means having the fortitude to suffer awareness of the many lies we have told ourselves to numb, psychically protect, and defend against the many "atrocities" we inflict on our world.¹³³ Within the framework of Jonas and Crawford, scientists can join "the good the company of adventure seeking missionaries, venturing travelers and anthropologists" to help bring knowledge of healing "to the bedside, alleviating the symptoms and progression of disease, improving quality of life, and accelerating the recuperation time from illness."¹³⁴

Echoing the desire to translate healing knowledge into universal information, Jensen writes that he dreams of a world in which a Buddha or a Jesus would present their state of consciousness to the crowd in the marketplace, only there would be no astonishment, because each individual would have already incorporated the teaching.¹³⁵ In this world, everyone is awake; and everyone shares the "language older than words." This wish for healing expressed a vision unifying mystics of divergent religious tradition—uniting both those who claim to express spirituality through a particular path, and those who hope to embody the qualities associated with "spirituality," simply as factors coterminous with their humanity.

¹³² *Id.*

¹³³ *Id.* at 4. Jensen wrote:

In order for us to maintain our way of living, we must, in a broad sense, tell lies to each other, and especially to ourselves. . . . The lies act as barriers to truth. These barriers to truth are necessary because without them many deplorable acts would become impossibilities. . . . When we do allow self-evident truths to percolate past our defenses and into our consciousness . . . [w]e try to stay out of harm's way, afraid they will go off, shatter our delusions, and leave us exposed to what we have done to the world and to ourselves, exposed as the hollow people we have become. And so we avoid these truths, these self-evident truths, and continue the dance of world destruction.

Id. at 2.

¹³⁴ Sparber, Crawford & Jonas, *supra* note 53, at 149.

¹³⁵ See JENSEN, *supra* note 21, at 78.

Are CAM therapies pointing to an evolutionary development and assumption of these qualities—individually and collectively—with health care and its regulation as vehicles? And can the legal rules of healing support and sustain these processes? Alternatively, are broader aspects of both healing and law implicated by these works? Ultimately, by raising these questions, legislators, judges, attorneys, scholars of medicine and public health, clinicians, and others can address the potential future world envisioned by the combination of Jensen's vision and the research collected by Jonas and Crawford.

CONCLUSION

Legal authority sanctions a specific version of health, and in so doing, creates a “coercive vision of professional health care.”¹³⁶ Legal authority, like medical authority—e.g., forced C-sections, compulsory vaccination, forced anti-psychotic medication—can impose its own violence.¹³⁷ Legal authority, like medical authority, can also foster an environment in which healing between individuals, between communities, between nations, and between species, is possible.

Jensen, focusing on violence sanctioned by law, gives the example of a Congressman who calls the police to remove ecological activists from his office; the police promptly spray pepper into the eyes of the “handcuffed and helpless women from a range of less than three inches.”¹³⁸ He continues, “Over the women's screams they then forced open their eyes and daubed a concentrated liquid form of this substance directly onto their eyeballs.”¹³⁹ He further reports that the police defended their actions as “cost-effective,” and that a judge, denying an injunction against the use of pepper spray or its concentrate, observed that “the hardship to law enforcement in being deprived of the ability to use pepper spray on recalcitrant demonstrators was greater than the discomfort suffered and the risk incurred by those on whom it is used.”¹⁴⁰

Jonas and Crawford, focusing on healing created by intention, also provide examples. They devote their collection of research to the opposite of violence at close range—the use of healing at a distance. One of the studies in their book suggests that there is empirical evidence that a remote healing intention can have physiological changes in a distant subject.¹⁴¹

¹³⁶ COHEN, *supra* note 3, at xi.

¹³⁷ *See id.* at 23–25.

¹³⁸ JENSEN, *supra* note 21, at 366.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 367.

¹⁴¹ Stefan Schmidt, *Direct Mental Interactions With Living Systems*, in HEALING, *supra*

Another study concludes that: “there is at present moderate scientific evidence supporting the efficacy of various distant healing/intercessory prayer approaches in medicine.”¹⁴²

Jensen offers innumerable examples of silently perpetuated violence as an awakening to the potential for recognition, acknowledgment, reconciliation, and healing, while Jonas and Crawford offer examples of research of therapeutic effects of intentionality as an antidote to the violence of the world, and of a medical model in which consciousness is neglected.¹⁴³ Both take the reader from the suffering world we collectively inhabit and unconsciously recreate, to the potential bliss-world in which the transcendental ideals are actualized in mundane life. Like their forbearers and fellow travelers, Jonas and Crawford, as well as Jensen, acknowledge and encourage the unseen links between matter and spirit, between the incarnate and the disincarnate, between human and other, between silence and the breath.

note 19, at 23, 23–35.

¹⁴² John A. Astin, *Intercessory Prayer and Healing Prayer*, in *HEALING* *supra* note 19, at 13, 21.

¹⁴³ See JENSEN, *supra* note 20, at 6–7 (discussing how pretenses, such as the idea that animals that feel no pain, that women who are raped are unaffected, and that violence is inevitable, are destroying life); see, e.g., Sparber, Crawford, & Jonas, *supra* note 53, at 139.