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Book Review of Re-Understanding the Child's Right to Identity: On Belonging, Responsiveness and Hope, by Ya'ir Ronen

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*REVIEW OF YA'IR RONEN, RE-UNDERSTANDING
THE CHILD'S RIGHT TO IDENTITY:
ON BELONGING, RESPONSIVENESS AND HOPE (2016)*

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(All citations to this work will be to RONEN, p. xx)

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There exists robust therapeutic jurisprudence (“TJ”) literature¹ dealing with many areas of juvenile law on questions of: whether juveniles have a right to counsel in civil commitment hearings,² the extent of rights to be granted to foster children in juvenile and family court proceedings,³ the civil commitment trial itself,⁴ the implications of TJ for juvenile cases involving *Miranda* issues,⁵ whether juveniles can be “waived up” to adult courts in criminal cases,⁶ and on punishment

¹ See generally Bruce J. Winick, CIV. COMMITMENT: A THER. JURIS. MODEL (2005); David B. Wexler, THER. JURIS.: THE LAW AS A THER. AGENT (1990); David B. Wexler & Bruce J. Winick, LAW IN A THER. KEY: RECENT DEV. IN THER. JURIS. (David B. Wexler & Bruce J. Winick eds., 1996); Michael L. Perlin & Heather Ellis Cucolo, MENTAL DISABILITY L.: CIV. & CRIM. § 2-6, at 2-43 to 2-66 (3d ed. 2016); David B. Wexler, *Two Decades of Therapeutic Jurisprudence*, 24 TOURO L. REV. 17 (2008).

² Bruce J. Winick & Ginger Lerner-Wren, *Do Juveniles Facing Civil Commitment Have a Right to Counsel? A Therapeutic Jurisprudence Brief*, 71 U. CIN. L. REV. 115 (2002). See, e.g., *M.W. v. Davis*, 756 So. 2d 90, 108-09 (Fla. 2000); *Amendment to Rules of Juvenile Procedure*, FLA. R. JUV. P. 8.350, 804 So. 2d 1206 (Fla. 2001); *Amendment to Rules of Juvenile Procedure*, FLA. R. JUV. P. 8.350, 842 So. 2d 763 (Fla. 2003) (adopting rule of juvenile procedure requiring counsel and hearings for children objecting to placement in residential treatment centers); *S.C. v. Guardian Ad Litem*, 845 So. 2d 953 (Fla. Dist. Ct. App. 2003).

³ Bernard P. Perlmutter, *George's Story: Voice and Transformation Through the Teaching and Practice of Therapeutic Jurisprudence in a Law School Child Advocacy Clinic*, 17 ST. THOMAS L. REV. 561, 580-81 (2005).

⁴ Jan C. Costello, *Why Have a Hearing for Kids if You're Not Going to Listen?: A Therapeutic Jurisprudence Approach to Mental Disability Proceedings for Minors*, 71 U. CIN. L. REV. 19 (2002).

⁵ Amy D. Ronner, *Songs of Validation, Voice, and Voluntary Participation: Therapeutic Jurisprudence, Miranda and Juveniles*, 71 U. CIN. L. REV. 89 (2002).

⁶ Bruce J. Winick, *Redefining the Role of the Criminal Defense Lawyer at Plea Bargaining and Sentencing: A Therapeutic Jurisprudence/Preventive*

schemes for juveniles.⁷ With a co-author, the author of this review, writing from a TJ perspective, is in the process of writing an article looking at the ways that court processes in juvenile cases – civil commitment cases and criminal cases – shame and humiliate those subject to those processes.⁸ But, with the exception of earlier articles by the author of this volume,⁹ there have been no TJ-cased inquiries into the child's right to an *identity*. In a thoughtful, provocative, and important new work, Ya'ir Ronen has expanded his vistas, and has given us a brilliant book-length investigation into this question.

Ronen, a lawyer, social worker, and professor of social work at Ben Gurion University of the Negev in Israel, states his claim immediately: “[T]he state should have a positive duty to safeguard the child's right to identity,” and that this right is “derivative of [his] human dignity,”¹⁰ although he concedes that “current legal protection of the child's right to human dig-

Law Model, 5 PSYCHOL. PUB. POL'Y & L. 1034, 1078 (1999); Thomas J. Mescall II, *Legally Induced Participation and Waiver of Juvenile Courts: A Therapeutic Jurisprudence Analysis*, 68 REV. JUR. U.P.R. 707 (1999).

⁷ See, e.g., Michael L. Perlin, “Yonder Stands Your Orphan with His Gun”: *The International Human Rights and Therapeutic Jurisprudence Implications of Juvenile Punishment Schemes*, 46 TEX. TECH L. REV. 301 (2013).

⁸ Michael L. Perlin & Alison J. Lynch, “*She's Nobody's Child/The Law Can't Touch Her at All*”: *Seeking to Bring Dignity to Legal Proceedings Involving Juveniles* (work in progress).

⁹ E.g., Ya'ir Ronen, *Redefining the Child's Right to Identity*, 18 8 INT'L J.L. POL'Y & FAM. 147, 147-177 (2004); Ya'ir Ronen, *Child's Right to Identity as a Right to Belong*, 26 TEL AVIV U. L. REV. 935, 935-984 (2003); Ya'ir Ronen, *On the Child's Need to Be One's Self*, 25 BYU J. PUB. L. 233 (2011).

¹⁰ Ya'ir Ronen, *Re-understanding the Child's Right to Identity: On Belonging, Responsiveness and Hope* 1 (Koninklijke Brill ed., 2016). This book flows, in part, from Ronen's earlier article, *Redefining the Child's Right to Identity*, 18 INT'L J.L. POL'Y & FAM. 147, 147-148 (2004).

nity does not guarantee protection of an individualized identity.”¹¹ In assessing this issue, Ronen explores culture as a “context of personal meaning,”¹² and contends that international human rights law “implicitly reaffirm[s]” a commitment to a “dynamic child-constructed identity.”¹³

One of the central principles of therapeutic jurisprudence is a commitment to dignity;¹⁴ Ronen’s decision to begin his work by clarifying this important commitment is of inestimable significance to his project. He incorporates this into his consideration of issues of culture; “suppressing distinctness by a dominant or a majority culture [is] the cardinal sin against authenticity.”¹⁵ Thus, “protecting a child-constructed identity may be construed as . . . a commitment to dignity.”¹⁶ Other scholars have considered the relationship between TJ and culture,¹⁷ but, to the best of my knowledge, virtually none in this specific context.¹⁸

¹¹ *Id.* at 3.

¹² *Id.* at 1.

¹³ *Id.* at 2.

¹⁴ See, e.g., Michael L. Perlin, *Understanding the Intersection between International Human Rights and Mental Disability Law: The Role of Dignity*, THE ROUTLEDGE HANDBOOK OF INT’L CRIME AND JUST. STUD. 191 (Bruce Arrigo & Heather Bersot eds., 2013); see also Ginger Lerner-Wren, *Mental Health Courts: Serving Justice and Promoting Recovery*, 19 ANNALS HEALTH L. 577, 593 (2010) (explaining dignity in the context of mental health courts).

¹⁵ Ronen, *supra* note 10, at 5.

¹⁶ *Id.* (citing, inter alia, Charles Taylor, *The Politics of Recognition*, Multiculturalism: Examining the Politics of Recognition 25 (Amy Gutmann ed. 1994)).

¹⁷ See, e.g., Ian Freckleton, *Therapeutic Jurisprudence Misunderstood and Misrepresented: The Price and Risks of Influence*, 30 T. JEFFERSON L. REV.

Ronen looks long and seriously at international human rights law, specifically articulating where he sees existing United Nation Conventions as providing support for his position and where he feels that those instruments are not comprehensive enough to grant the rights to which he believes all children are entitled.¹⁹ I believe it is absolutely essential that TJ scholars turn to international human rights law as a potential source and future direction of TJ scholarship,²⁰ and Ronen's consideration of these laws in this context is of great importance *beyond* the specific substantive subject on which he has turned his focus. Recently, I expressed my surprise that "puzzlingly little [has been] written about the relationship be-

575, 594 (2008) ("therapeutic jurisprudence has championed an awareness that crosses over discrete areas of law and draws upon insights from a cross-section of social science and critico-legal perspectives, as well as from different cultures"); *see generally* David B. Wexler, *Therapeutic Jurisprudence and the Culture of Critique*, 10 J. CONTEMP. LEGAL ISSUES 263, 267 (1999).

¹⁸ *See, e.g.*, Susan Brooks, *The Case for Adoption Alternatives*, 39 FAM. & CONCILIATION CTS. REV. 43 (2001) (significantly, Brooks and Ronen have been co-authors in the past); *see also* Susan L. Brooks & Ya'ir Ronen, *The Notion of Interdependence and Its Implications for Child and Family Policy*, THE POL. OF THE PERS. IN FEMINIST FAM. THERAPY 23 (Anne M. Pouty ed., 2005).

¹⁹ Ronen, *supra* note 10, at 14-18 (critiquing the United Nations Convention on the Rights of the Child for not providing explicit answers as to a child's right to preserve his cultural identity or respect for his "individualized identity").

²⁰ *See, e.g.*, Michael L. Perlin, *The Ladder of the Law Has No Top and No Bottom: How Therapeutic Jurisprudence Can Give Life to International Human Rights*, 37 INT'L J. L. & PSYCHIATRY 535 (2014).

tween TJ and international human rights law.”²¹ Ronen’s focus here, is a welcome corrective to that generic lack of interest.²²

Ronen bores in on a disconnect that we all too often ignore: “There is no sufficiently deep-rooted recognition that for the youths on trial, [and] their liberty, as well as their dignity, is important,”²³ noting further that we still often refuse to believe children when they complain about injustices caused by their families.²⁴ I noted in a recent paper that “shame and humiliation ... are often exacerbated in [juvenile] cases involving racial minorities and those who are economically impoverished.”²⁵ A palliative here, according to Ronen, is the “politicization of empathy and committing ourselves to psychological mindedness.”²⁶ I agree, and hope that those in the juvenile justice systems read this book carefully and take his words to heart.

²¹ *Id.* at 535.

²² I have turned my attention to this multiple times in recent years. *See, e.g.*, Michael L. Perlin & Meghan Gallagher, *Why a Disability Rights Tribunal Must Be Premised on Therapeutic Jurisprudence Principles*, PSYCHOL. INJ. & L. (Dec. 2016); Perlin, *supra* note 7; Michael L. Perlin, *Abandoned Love: The Impact of Wyatt v. Stickney on the Intersection Between International Human Rights and Domestic Mental Disability Law*, 35 L. & PSYCHOL. REV. 121 (2011); Michael L. Perlin, *Striking for the Guardians and Protectors of the Mind: The Convention on the Rights of Persons with Disabilities and the Future of Guardianship Law*, 117 PENN. ST. L. REV. 1159 (2013); Michael L. Perlin & Alison J. Lynch, *The Distant Ships of Liberty: Why Criminology Needs to Take Seriously International Human Rights Laws that Apply to Persons with Disabilities*, SSRN (Nov. 19, 2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2692109.

²³ Ronen, *supra* note 10, at 48.

²⁴ *Id.*

²⁵ Perlin & Lynch, *supra* note 8, manuscript at 4.

²⁶ Ronen, *supra* note 10, at 90.

The heart of Ronen's work is the potential emancipatory impact of therapeutic jurisprudence on all he writes about. "Therapeutic jurisprudence," he writes, "heals the law of its alienation to human experience."²⁷ He approaches the topics in question in this vein "to shine a beam of empathy on children" and to "empower children both legally and socially."²⁸ TJ demands that the "humane objectives of law and lawyering be returned, from being abstractions that drive public policy to become the daily rewards of lawyers and their clients."²⁹ His aim is thus to create a "child-centered therapeutic jurisprudence."³⁰ TJ humanizes law, he concludes, in contrast to the "violence, cynicism, and alienation" that pervade everyday life,³¹ and the life of the law.³² It further offers a more "psychologically healing approach,"³³ one essential to the areas of law on which Ronen focuses here.

²⁷ *Id.* at 32. See Michael L. Perlin, *A Law of Healing*, 68 U. CIN. L. REV. 407 (2000).

²⁸ Ronen, *supra* note 10, at 32 (citing Wexler, *supra* note 17).

²⁹ Ronen, *supra* note 10, at 33 (citing Wexler, *supra* note 17, and Perlin, *supra* note 27).

³⁰ Ronen, *supra* note 10, at 33.

³¹ *Id.* at 65.

³² Over thirty years ago, Professor Robert Cover famously wrote that the "principle by which legal meaning proliferates in all communities never exists in isolation from violence." Robert M. Cover, *The Supreme Court 1982 Term, Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 40 (1983). I discuss this in the context of shame and humiliation in the law in Michael L. Perlin & Naomi Weinstein, "Friend to the Martyr, a Friend to the Woman of Shame": *Thinking About the Law, Shame and Humiliation*, 24 S. CAL. REV. L. & SOC. JUST. 1, 3-5 (2014).

³³ Ronen, *supra* note 10, at 75.

These are not easy questions, he is quick to acknowledge; “it is important to recognize the inherent ambiguity and complexity in the lives of children at risk and their families,”³⁴ but it is precisely the recognition of this ambiguity and complexity that “opens the door to hope.”³⁵ Ronen ties this up with his earlier focus on human rights: “The creation of a human rights regime with a strong declared commitment to the well-being of children followed the overdue recognition of the Other’s vulnerability in societies that have considered themselves civilized and enlightened.”³⁶ We can best understand the child’s right to identity, he concludes, by creating “hope [that] can empower individuals and families who are in emotional and behavioral distress as well as the helping professionals involved with them professionally.”³⁷

³⁴ *Id.* at 103.

³⁵ *Id.*

³⁶ *Id.* at 106. On “The Other,” see Sander Gilman, *Difference and Pathology: Stereotypes of Sexuality, Race, and Madness* (1985).

³⁷ *Id.* at 110.

This hope must be considered in the context of what Professor Amy Ronner has characterized as the “three Vs” of TJ:

What “the three Vs” commend is pretty basic: 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. Specifically, the feeling on the part of litigants that they voluntarily partook in the very process that engendered the end result or the very judicial pronouncement that affects their own lives can initiate healing and bring about improved behavior in the future. In general, human beings prosper when they feel that they are making, or at least participating in, their own decisions.³⁸

This is what Ronen demands for juveniles so that they can claim (or reclaim) their right to identity. It is the core of therapeutic jurisprudence, and the core of his arguments. He brings dignity to disempowered children, demands the kids to be treated as authentic and with authenticity, and offers his

³⁸ Ronner, *supra* note 5, at 94-95 (footnotes omitted).

hope for emancipatory change. What he seeks is precisely what TJ demands of all of us.

I have only one criticism of the book, and that involves the two pages that Ronen did not write. The foreword, by Professor M.D.A. Freeman, alleges that “we hear much less today of therapeutic jurisprudence than was once the case.”³⁹ This is, to be blunt, dead wrong. TJ is flourishing and prospering worldwide.⁴⁰ Significantly, given the fact that Professor Ronen is an Israeli academic, much of the new and invigorating literature is by Israeli academics.⁴¹ However, there is TJ literature by British scholars,⁴² which refutes the assertion in question.⁴³

³⁹ Ronen, *supra* note 10, at xii.

⁴⁰ See, e.g., <https://law2.arizona.edu/depts/upr-intj/bibliography/>.

⁴¹ See, e.g., Tali Gal & David B. Wexler, *Synergizing Therapeutic Jurisprudence and Positive Criminology*, POSITIVE CRIMINOLOGY 85-97 (Natti Ronen & Dana Segev eds., 2015); Hadar Dancig-Rosenberg & Tali Gal, *Criminal Law Multitasking*, 18 LEWIS & CLARK L. REV. 893 (2014); Karni Perlman, *It Takes Two for TJ: Correlation Between Bench and Bar Attitudes Toward Therapeutic Jurisprudence--An Israeli Perspective*, 30 T. JEFFERSON L. REV. 351 (2008); Hadar Dancig-Rosenberg & Dana Pugach, *Pain, Love, and Voice: The Role of Domestic Violence Victims in Sentencing*, 18 MICH. J. GENDER & L. 423 (2012).

⁴² Apparently, the author of the forward teaches in the United Kingdom.

⁴³ E.g., Dana Segev, *The TJ Mainstreaming Project: An Evaluation of the Israeli Youth Act*, 7 ARIZ. SUMMIT L. REV. 527 (2014); Jane Donoghue, *Transforming Criminal Justice? Problem-Solving and Court Specialisation* (2014); David Patton, *The Need for New Emotionally Intelligent Criminal Justice & Criminological Approaches to Help End the 'War on Terror'* (Sept. 12, 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2860881; Christopher Diesen & Hans Koch, *Contemporary 21st Century Therapeutic Jurisprudence in Civil Cases: Building Bridges Between Law and Psychology*, 2 ETHICS, MED. & PUB. HEALTH 13 (2016); Judith Harwin & Mary Ryan, *The Role of the Court in Cases Concerning Parental Substance Misuse and Children at Risk of Harm*, 29 J. SOC'L WELF. & FAM. L.

Nonetheless, this was not the doing of the author. Ronen's book is brisk, bracing, and refreshing. This book deserves to be read by all who care about important topics covered.

277 (2008). See also, Anna Grace Kalawek & James Marson, *Analysis of the Helena Kennedy Centre Refugee Law Clinic through TJ Lenses* (last visited Mar. 7, 2017) <https://www.researchgate.net/project/Analysis-of-the-Helena-Kennedy-Centre-Refugee-Law-Clinic-through-TJ-lenses>.

TJ has, in fact, become a worldwide phenomenon in recent years. See e.g., David Wexler et al, *Editorial: Current Issues in Therapeutic Jurisprudence*, 16 QUT L. REV. 1 (2016); Constance Backhouse, *An Introduction to David Wexler, the Person Behind Therapeutic Jurisprudence*, 1 INT'L J. THER. JURIS. 1 (2016); Mike Jones, Pauline Spencer & David Wexler, *Therapeutic Jurisprudence in the Mainstream*, MAINSTREAM TJ (last visited Mar. 8, 2017), <https://mainstreamtj.wordpress.com/about/>.

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