

# Relationship-Centered Lawyering

---

*Social Science Theory for  
Transforming Legal Practice*

Edited by

Susan L. Brooks & Robert G. Madden

CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2010  
Susan L. Brooks and Robert G. Madden  
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Brooks, Susan L.

Relationship-centered lawyering : social science theory for transforming  
legal practice / Susan L. Brooks, Robert G. Madden.

p. cm.

ISBN 978-1-59460-073-9 (alk. paper)

1. Attorney and client--United States--Psychological aspects. 2. Practice of  
law--United States--Psychological aspects. 3. Interpersonal relations--  
United States. 4. Therapeutic jurisprudence--United States. I. Madden,  
Robert G. II. Title.

KF311.B76 2010

340.023'73--dc22

2009044109

Carolina Academic Press  
700 Kent Street  
Durham, NC 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

# CONTENTS

Foreword · Relationship-Centered Lawyering: A Transformational Tweak <i>David B. Wexler &amp; Bruce J. Winick</i>	ix
Acknowledgments	xiii
Introduction · Relationship-Centered Lawyering: The Emerging 'Science' of Professionalism <i>Susan L. Brooks &amp; Robert G. Madden</i>	3
Chapter 1 · Foundational Perspectives Consistent with a Relationship-Centered Approach Part 1: Therapeutic Jurisprudence and Preventive Law	19
Reflections on the Scope of Therapeutic Jurisprudence <i>David B. Wexler</i>	20
Therapeutic Jurisprudence: Five Dilemmas to Ponder <i>Christopher Slobogin</i>	28
Constructing a Normative Framework for Therapeutic Jurisprudence Using Social Work Principles as a Model <i>Robert G. Madden &amp; Ramie Wayne</i>	41
Preventive Law Before and After Therapeutic Jurisprudence <i>Edward A. Dauer</i>	50
The Expanding Scope of Preventive Law <i>Bruce J. Winick</i>	57
Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering <i>Dennis P. Stolle, David B. Wexler, Bruce J. Winick, &amp; Edward A. Dauer</i>	64

<b>Chapter 2 · Foundational Perspectives Consistent with a Relationship-Centered Approach Part 2: Restorative Justice and Alternative Dispute Resolution</b>	<b>83</b>
Intentional Conversations about Restorative Justice, Mediation, and the Practice of Law	84
<i>James Coben &amp; Penelope Harley</i>	
Restorative Justice and De-Professionalization	89
<i>John Braithwaite</i>	
Clarifying the Theoretical Underpinnings of Mediation: Implications for Practice and Policy	95
<i>Dorothy J. Della Noce, Robert A. Baruch Bush, &amp; Joseph P. Folger</i>	
Forms of Mediation and Law: Cultures of Dispute Resolution	106
<i>Michal Alberstein</i>	
Which Way to True Justice? Appropriate Dispute Resolution and Adversarial Legalism	125
<i>Dorothy W. Nelson</i>	
<b>Chapter 3 · Social Science Perspectives: Contextualized Approaches to Human Behavior and Development</b>	<b>139</b>
<b>Family Systems Theory</b>	
From Theory to Practice: A Family Systems Approach to the Law	140
<i>Robert G. Madden</i>	
Applications of Family Systems Theory to the Study of Adulthood	157
<i>Karen L. Fingerman &amp; Eric Bermann</i>	
Family Resilience: A Framework for Clinical Practice	161
<i>Froma Walsh</i>	
<b>Human Development</b>	
Human Developmental Science and Its Implications for Enhancing Legal Decisions Regarding Children and Families	167
<i>Patrick Nickoletti</i>	
<b>Attachment Theory</b>	
The Legacy of Early Attachments	179
<i>Ross A. Thompson</i>	
The Network Perspective: An Integration of Attachment and Family Systems Theories	187
<i>Kasia Kozłowska &amp; Lesley Hanney</i>	

<b>Chapter 4 · Process-Oriented Perspectives: Enhancing Justice and Effectiveness</b>	201
<b>Procedural Justice</b>	
Trust and Law Abidingness: A Proactive Model of Social Regulation <i>Tom R. Tyler</i>	202
Procedural Context and Culture: Variation in the Antecedents of Procedural Justice Judgments <i>E. Allan Lind, Tom R. Tyler, &amp; Yuen Huo</i>	211
Procedural Fairness: A Key Ingredient in Public Satisfaction <i>Judge Kevin Burke &amp; Judge Steve Leben</i>	215
Toward an Ecological Jurisprudence Rooted in Concepts of Justice and Empirical Research <i>Mark R. Fondacaro</i>	223
<b>Chapter 5 · Affective and Interpersonal Perspectives Part 1: Culture</b>	237
Popular Legal Culture: Law as Microaggression <i>Peggy C. Davis</i>	239
Racial Microaggressions in Everyday Life: Implications for Clinical Practice <i>Derald Wing Sue, Christina M. Capodilupo, Gina C. Torino,         Jennifer M. Bucceri, Aisha M.B. Holder, Kevin L. Nadal, &amp;         Marta Esquilin</i>	253
Practicing Culturally Competent Therapeutic Jurisprudence: A Collaboration Between Social Work and Law <i>Carolyn Copps Hartley &amp; Carrie J. Petrucci</i>	272
<b>Chapter 6 · Affective and Interpersonal Perspectives Part 2:     Empowerment, Strengths and Emotions</b>	287
Empowerment, Self-Determination, and Shared Decision-Making: A Model for Empowerment Practice <i>Ruth J. Parsons, Lorraine M. Gutierrez, &amp; Enid Opal Cox</i>	288
How to Interview for Client Strengths <i>Peter De Jong &amp; Scott D. Miller</i>	294
Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship <i>Marjorie A. Silver</i>	303
The Discourse Beneath: Emotional Epistemology in Legal Deliberation and Negotiation <i>Erin Ryan</i>	307

Good Lawyers Should Be Good Psychologists: Insights for Interviewing and Counseling Clients	320
<i>Jean R. Sternlight &amp; Jennifer Robbennolt</i>	
<b>Chapter 7 · Applications and Implications for Future Legal Practice and Scholarship: Applying the Framework to ‘Real-World’ Lawyering</b>	331
Representing Children in Families	332
<i>Susan L. Brooks</i>	
Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients and Communities	350
<i>Susan L. Brooks</i>	
Visions and Recommendations for Improving Legal Outcomes through the Application of Relationship-Centered Lawyering	362
<i>Susan L. Brooks &amp; Robert G. Madden</i>	
Index	375

## FOREWORD

# RELATIONSHIP-CENTERED LAWYERING: A TRANSFORMATIONAL TWEAK

*David B. Wexler\* & Bruce J. Winick\*\**

Make no mistake about it: this superb volume in no way challenges the core concept of “client-centered” counseling. At the same time, it promises truly to transform the lawyer-client relationship. Analytically-able lawyers can easily reconcile the above seemingly disparate statements: This book offers a dramatically new and improved version of the traditional concept, a version that is far more robust, holistic, and psychologically, sociologically, and culturally aware.

The new, improved vision is largely derived from legal writing of an interdisciplinary nature, most notably legal scholarship closely connected to advances in psychology and social work. This scholarship for the most part developed after the formation of the client-centered approach, and now enables us to embellish and enrich the approach in very major ways. Here is a concrete example: in 1991, the leading work on legal counseling strongly urged lawyers to anticipate and consider the ‘nonlegal’ consequences—including psychological ones—that invariably accompany legal measures. But, at the same time, the book noted that “nonlegal consequences are often difficult to predict” (Binder, D., et al, 1991, p.12).

We are still far from being psychological soothsayers. But now it can be stated with some confidence that “recent efforts to integrate preventive law with therapeutic jurisprudence can ease the task of predicting psychological

---

\* Professor of Law and Director, International Network on Therapeutic Jurisprudence, University of Puerto Rico, and Distinguished Research Professor of Law and Professor of Psychology, University of Arizona.

\*\* Silver-Rubenstein Distinguished Professor of Law, Professor of Psychiatry and Behavioral Sciences, Director, Therapeutic Jurisprudence Center, University of Miami, and chair of the AALS Balance in Legal Education Section

consequences, and can give real substance and structure to the area of legal counseling.” (Stolle, D., et al, 2000, p.70; see also Winick, B.J. et al, 1999; *St Thomas University Law Review*, 2005); Winick, B.J., & Wexler, D.B., 2006). In other words, since the inception of client-centered counseling, there has been an explosion of interest in perspectives such as therapeutic jurisprudence, preventive law, restorative justice, and transformational mediation, to mention only some of the areas of activity heavily relied upon by editors Susan Brooks and Robert Madden in the present work. Those perspectives are part of what has become known in the United States as the “Comprehensive Law Movement”, and by our Australian colleagues Down Under as “Nonadversarial Justice.” (King, M., et al, 2009). In the words of Susan Daicoff, this new era, whatever its name, is “one in which law and legal practice may be more humane, therapeutic, beneficial, humanistic, healing, restorative, curative, collaborative, and comprehensive.” (Daicoff, S., in Stolle, D., et al, 2000, p.465).

In tandem with the above developments in interdisciplinary scholarship has been a growing interest in how the law and lawyering might profit from insights from psychology, social work, and other behavioral sciences—matters such as family systems theory, strength-based approaches, emotional intelligence, cultural competence, and the like. The result is that a modern, well-trained lawyer is now far more equipped than before to consider his or her client in a broader social, familial, cultural context. And a lawyer is able to engage a client in robust conversations regarding potential courses of legal action and the consequences of such action in the overall context of the client’s situation and complex web of relationships.

Brooks and Madden have reviewed the relevant legal and social science writings and have woven them together to formulate and explicate this broader, more psychologically-sensitive approach, which they understandably dub “relationship-centered” lawyering. The editors are uniquely equipped to undertake this task. Both have formal training in both law and social work, and one (Brooks) is affiliated principally with a law faculty while the other (Madden) is primarily attached to a department of social work. They are both accomplished scholars and have themselves written leading essays that are now incorporated in this volume. For example, Madden and his co-author Raymie Wayne published a piece urging therapeutic jurisprudence—and its practitioners—to draw on the normative social work framework in their work with clients. And Brooks has written on how social work training can be imported into a law school clinical program. Both of them have seriously explored family systems theory and its potential relevance in a legal context.



Most impressively, the editors employ their own prior work and the work of others in therapeutic jurisprudence and the comprehensive law movement as foundational building blocks in crafting their approach to lawyering and the lawyer-client relationship. The editors do not stray from the core ethical and professional concepts of client-centered lawyering, but they so enrich it with social, psychological and cultural sensitivity that a practitioner embracing their approach will emerge as a very different kind of lawyer—one infused with an ethic of care and operating as a helping and healing professional. Such a lawyer is likely to find great satisfaction in professional life and will in all likelihood be warmly received by the clients and communities served. We hope this book—which has taken client-centered lawyering and added a new dimension to it—will be the major stepping stone it deserves to be in creating a new breed of legal counselor and in truly transforming the legal profession.

## ACKNOWLEDGMENTS

We received tremendous support and assistance in putting together this volume. The irony is not lost on us that this project would not have been possible without help from our personal and professional networks: This book truly has been a *relationship-centered* project.

First, we thank all of the authors whose work we included (as well as their publishers) for being so gracious in allowing us to use their publications. We are deeply and supremely indebted to two in particular: David Wexler and Bruce Winick, without whom this book would never have come into being. David and Bruce also generously gave of their time in reviewing the manuscript and in co-writing the Foreword. We also thank Carrie Petrucci for reviewing the manuscript and for offering thoughtful comments. Additionally, Patrick Nickoletti wrote an original article on human development solely for the purpose of this book.

Marjorie Silver reviewed the Introduction at an early stage, and provided inspiration and support throughout the development of this project. A number of other colleagues reviewed drafts of the Introduction and an earlier version that was published as a separate law review article. In particular, we are grateful to Binny Miller for her detailed comments and suggestions. Other colleagues whose work and ideas provided inspiration for this book include Bonnie Allen, Susan Daicoff, Lynn Barenberg, Barbara Babb, David Boulding, and Laurie Barron.

We also presented and received helpful feedback on the ideas contained in the book at several clinical legal education workshops. We would like to thank Randy Hertz and the participants in the 2008 Clinical Law Review Writers Workshop conducted at NYU Law School. We also had a very productive exchange at the New England Clinicians' Workshop organized by Russell Engler at Suffolk Law School in the fall of 2008. Additionally, we received helpful feedback at the Delaware Valley Clinicians' Workshop and at the AALS Clinical Conference, both held in the spring of 2009.

We could not have completed this project without Peter Egler, who provided invaluable assistance with formatting the text and the citations to make

them consistent and readable. Another individual without whom the book would not have come to fruition is Leslie Friedman, who helped us to secure the necessary copyright clearances. Additional support and follow-up was provided by Donna Duggan. Linda Williams also invested a great deal of time and energy on this project during its early stages.

Many law and social work students contributed to the development of the book as well as its structural and technical elements. These include: Katie Lamb, Yaya Ren, Brendan Thompson, and Mona Jean-Baptiste. Special assistance was provided by Marian Gibfried, Jamie Rahn, Lonni Kyhos, and Ana Almeida-Halassa. Students in the Therapeutic Jurisprudence class at the UConn Law School field tested a number of chapters during the past two years and provided excellent feedback. Special thanks to Renae Flemmings and Steve Bidwell who contributed insightful comments on several chapters.

We greatly appreciate our publisher, Carolina Academic Press, and we thank everyone we worked with at CAP for their patience and flexibility.

Finally, we are forever indebted to our spouses and our family members among other things for their support and for tolerating the necessary evenings and weekends it took to complete this project.