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Where The Home In The Valley Meets The Damp Dirty Prison: A Human Rights Perspective On Therapeutic Jurisprudence And The Role Of Forensic Psychologists In Correctional Settings

Astrid Birgden

Michael L. Perlin

New York Law School, michael.perlin@nyls.edu

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Aggression and Violent Behavior



“Where the home in the valley meets the damp dirty prison”: A human rights perspective on therapeutic jurisprudence and the role of forensic psychologists in correctional settings[☆]

Astrid Birgden^{a,*}, Michael L. Perlin^b

^a School of Psychology, Deakin University, Australia

^b New York Law School, New York, USA

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ABSTRACT

The roles of forensic psychologists in coerced environments such as corrections include that of treatment provider (for the offender) and that of organizational consultant (for the community). This dual role raises ethical issues between offender rights and community rights; an imbalance results in the violation of human rights. A timely reminder of a slippery ethical slope that can arise is the failure of the American Psychological Association to manage this balance regarding interrogation and torture of detainees under the Bush administration. To establish a “bright-line position” regarding ethical practice, forensic psychologists need to be cognizant of international human rights law. In this endeavor, international covenants and a universal ethical code ought to guide practice, although seemingly unresolvable conflicts between the law and ethics codes may arise. A solution to this problem is to devise an ethical framework that is based on enforceable universally shared human values regarding dignity and rights. To this end, the legal theory of therapeutic jurisprudence can assist psychologists to understand the law, the legal system, and their role in applying the law therapeutically to support offender dignity, freedom, and well-being. In this way, a moral stance is taken and the forensic role of treatment provider and/or organizational consultant is not expected to trump the prescriptions and the proscriptions of the law.

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[☆] This lyric is found in Bob Dylan's song, *A Hard Rain's A-Gonna Fall* (1963). It appears in this verse: Oh, what'll you do now, my blue-eyed son? Oh, what'll you do now, my darling young one? I'm a-goin' back out 'fore the rain starts a-fallin', I'll walk to the depths of the deepest black forest, Where the people are many and their hands are all empty, Where the pellets of poison are flooding their waters, Where the home in the valley meets the damp dirty prison,...Although the song is as apocalyptic as any in Dylan's songbook, one of the most respected commentators concludes that, in spite of the pictures of “devastation” that populate the song, in the end there are “suggestions of hope” (Trager, 2004, p. 235). We offer this article in the same spirit.

* Corresponding author.
 E-mail address: astrid99@hotmail.com (A. Birgden).

1. Introduction

The correctional system is ultimately a legally coerced environment. In this instance, the forensic psychologist is a specialist, as defined by the American Association for Correctional Psychology¹, competent in

¹ Now the International Association for Correctional & Forensic Psychology.

correctional philosophy and systems, offender management, report writing, treatment to reduce re-offending, and outcome research rather than only providing mental health services within corrections (AAPC, 2000). Forensic psychologists working within the correctional system have a unique dual role in balancing offender rights and community rights. Put another way, forensic psychologists work *with* the offender but *for* corrections. Of numerous roles fulfilled by forensic psychologists, two that are relevant to this article can be described as the role of treatment provider and the role of organizational consultant (see (AAPC, 2000; Correia, 2009). As treatment provider, forensic psychologists engage in assessment (of mental health, risk of re-offending, criminogenic needs, parole, and malingering), treatment (of substance abuse, sexual and violent offending, values and attitudes, and suicide prevention, individually and in groups), and management (of case coordination, institutional violence and sexual assault, crisis intervention, and staff selection). As consultant, forensic psychologists promote staff training, a humane and safe environment, positive organizational culture and so on. As will be demonstrated, these dual roles become anti-therapeutic in coercive environments if community rights trump offender rights.

The dual role experienced by forensic psychologists provides a power imbalance exploitable for unethical purposes such as: failing to represent multiple interests and weigh community, social, and political values (i.e., a normative judgment that community rights outweigh offender rights); causing harm to the offender (an extreme case being assessing competence for execution); applying empathy skills to elicit information the offender may not wish to disclose; and avoiding legal protections regarding justice and fairness (see Perlin, 1991b). From a human rights perspective, duty-bearers are obliged to actively meet, or to at least not actively restrain, the human rights of rights-holders such as offenders (Ward & Birgden, 2007). Therefore, forensic psychologists are duty-bearers obliged to support positive human rights (e.g., deliver therapeutic services) and negative human rights (e.g., not interfere with free speech). In corrections it is preferable that the role of forensic psychologists is therapeutic rather than anti-therapeutic. As will be seen, therapeutic forensic psychologists attempt to balance the role conflict between offender rights and community rights.

In offender rehabilitation, “the field of forensic psychology has a role to play by becoming a therapeutic agent that is more attuned to the law and legal context” (Elwork, 1992, p. 176). Therapeutic jurisprudence (TJ) presents a new model by which we can assess the ultimate impact of the law on offenders, studying the role of the law (and the role of forensic psychologists) as therapeutic agents, recognizing that substantive rules, legal procedures, and roles may have either therapeutic or anti-therapeutic consequences, and questioning whether such rules, procedures, and roles can or should be reshaped so as to enhance their therapeutic potential, while not subordinating due process legal principles (see Wexler, 1990, Winick, 1997). To date, there has been little TJ analysis of the role of forensic psychologists in corrections (although see Cohen & Dvoskin, 1993 regarding suicide prevention, and Birgden, 2002b, 2004a,b, 2008; Dickey, 2008; McGuire, 2003 regarding offender rehabilitation). This article aims to consider the dual role of forensic psychologists within corrections through the specific lens of international human rights laws and a recent universal declaration of ethical principles for psychologists; differentiating between ethical and legal obligations owed to the offender and the community (AAPC, 2000).

This article has three sections. The first section provides an overview of international human rights laws as applied to corrections and warns that serious ethical problems may arise if such laws are violated. To demonstrate the potential problem, an example is provided of the role of psychologists in the torture and interrogation of military detainees in the US; it is argued that the American Psychological Association (APA) weighted the balance toward community rights (as organizational consultant) and against detainee

rights (as treatment provider), particularly because the organization initially chose to disregard international law. The second section describes universal ethical principles which ought to assist forensic psychologists in corrections to balance offender rights and community rights. However, when international human rights law and ethic codes conflict, clear guidelines to manage conflict are currently lacking as human rights are not mentioned in enforceable sections. If ethics codes were to be underpinned by enforceable universally shared human values regarding dignity and rights, such conflicts are less likely to arise. Meanwhile, forensic psychologists cannot function independently from the law. TJ as a legal theory can assist forensic psychologists to balance offender rights and community rights without trumping the law. The third section proposes that the legal theory of TJ can clarify the role of forensic psychologists in promoting the therapeutic effects of the law to actively meet the human rights of offenders and provides a “checklist” for forensic psychologists to compare against universal principles. Finally, we conclude that TJ-minded forensic psychologists can reconcile the dual role of treatment provider and organizational consultant without violating the overarching dignity of the clients or the community while attending to the core values of freedom and well-being of offenders. In this way, both legal and ethical obligations can be met.

2. International human rights law and corrections

Human rights are necessary for all individuals; human rights violations occur when persons are treated as objects or as a means to others' ends (Ward & Birgden, 2007). Offenders have enforceable human rights (Birgden & Perlin, 2008). The Vienna Declaration and Program of Action (1993) and the Universal Declaration of Human Rights (1948) recognized that inherent dignity and inalienable rights of all individuals is the foundation of freedom, justice, and peace. Through global covenants, individual rights regarding offenders are safeguarded against cruel, inhuman, or degrading treatment or punishment, and prisoners should be treated with humanity and dignity and provided with reformation and social rehabilitation (International Covenant on Civil and Political Rights, 1966a), individuals are guaranteed the right to the highest attainable standard of physical and mental health (International Covenant on Economic, Social and Cultural Rights, 1966b), individuals are guaranteed respect for human rights and fundamental freedoms in forensic and correctional systems (Vienna Declaration on Crime and Justice, 2001), and prisoners should be treated in a humane manner and with dignity (United Nations Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, 1988). In particular, torture and other humiliating actions during interrogation are considered a human rights violation (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987). Offenders with mental disabilities are over-represented in corrections (Fellner, 2006). As with offenders, individuals with mental disabilities are to expect respect for their inherent dignity, non-discrimination, freedom from exploitation, violence and abuse, a right to protection of the integrity of the person, equal recognition before the law, equal access to justice, and finally, freedom from torture or cruel, inhuman or degrading treatment or punishment (Convention on the Rights of Persons with Disabilities, 2006). This recent Convention is especially important because it is a more comprehensive document in comparison to other global covenants (Perlin & Szeli, in press; Perlin & Dlugacz, in press). Such universal laws, in conjunction with ethical codes, must guide forensic psychologists working in corrections to support human rights.

3. International human rights law violations

A stark example of psychologists failing to support human rights is the involvement in torture and interrogation of suspected terrorists carried out during the years of the Bush Administration in detention centers in Guantánamo Bay, Abu Ghraib, Bagram and “black sites” operated by the CIA in Europe and elsewhere (Costanzo, Gerrity, &

Sykes, 2007; Glenn, 2007; Soldz, 2008, 2009)². More specifically, psychologists have been involved in human rights violations. Although it has been repeatedly denied by the APA that psychologist members have engaged in torture, Olson, Soldz, and Davis (2008) have a documented example of a psychologist's involvement in "extreme torture" and Halpern, Halpern, and Doherty (2008) have expressed concerns that military psychologists and psychiatrists continued to be engaged in coercive interrogations. At the least, psychologists have acted as consultants and chaired Behavioral Science Consultation Teams ("biscuits") that developed and taught interrogation strategies and assessed intelligence (see Glenn, 2007; Lott, 2007; Miles, 2007; Soldz, 2008, 2009). Subject to the inevitability of gradual escalation, the role of psychology and psychologists in interrogation of detainees alerts us to the "slippery slope of initial commitments that can be gradually escalated until someone is behaving in ways contrary to their basic attitudes and values" (Zimbardo, 2007, p. 69).

The debate within psychology in the US has turned on the role of psychologists in interrogation; whether it is ethical to *consult* or *advise* (rather than *assist*) in interrogations. Part of this debate was fuelled by the Report of the American Psychological Association Presidential Task Force on Psychological Ethics and National Security (PENS Report, 2005). While the PENS Report recommended that "psychologists do not engage in, direct, support, facilitate, or offer training in torture or other cruel, inhuman, or degrading treatment" (p. 1) and "psychologists are alert to acts of torture and other cruel, inhuman, or degrading treatment and have an ethical responsibility to report these acts to the appropriate authorities" (p. 4), the report was ambiguous about the role of psychologists in interrogation, in that it accepted that they may act as consultants and proposed that:

...consistent with the APA Ethics Code for psychologists to serve in consultative roles to interrogation and information-gathering processes for national security-related purposes, *as psychologists have a long-standing tradition of doing in other law enforcement contexts*. Acknowledging that engaging in such consultative and advisory roles entails a delicate balance of ethical considerations, the Task Force stated that psychologists are in a unique position to assist in ensuring that these processes are safe and ethical for all participants. (PENS Report, 2005, italics added, p. 1)

The PENS Report (2005) recommended that psychologists were to demarcate their role of treatment providers (considered inappropriate) from organizational consultants to interrogators (considered appropriate). This recommendation was in contrast to recommendations adopted by the American Psychiatric Association and the American Medical Association who had clearly banned participation and consultation in interrogation of military detainees (Glenn, 2007; Kory, 2007; Soldz, 2008). On the one hand, psychiatrists and other medical doctors ultimately rejected a proposed amendment that they could assist with "non-coercive" interrogations in 2006 on the basis of "do no harm" (Halpern et al., 2008). On the other hand, psychologists seemingly weighed community protection as organizational consultants against individual rights as treatment providers. The weighting of community protection against individual rights lead the APA to "...regularly [using] deception and bad faith, continuing to argue that participation in interrogations is indeed ethical" (Soldz, 2008, p. 603) and the APA position possibly occurred because of close ties with the US military as a source of employment and research funds (Soldz, 2009). Perhaps as a result of this weighting, the majority members of the PENS Report chose to base their recommendations on US domestic laws rather than international human rights law (Olson et al., 2008).

On the one hand, the APA was a UN-accredited Non-Government Organization bound to honor international law (Altman, 2008; Keck & Sikkink, 1998). On the other hand, the Bush administration had radically argued that under domestic law interrogation was not torture and later that such interrogation was not forbidden if it occurred outside the US with non-US citizens (see *Harbury v. Deutch*, 233 F.3d 596, 603 (D.C. Cir. 2001, rev'd on other grounds sub nom. *Christopher v. Harbury*, 536 U.S. 403 (2002) that torture occurring outside the US was outside the protections of the Fifth Amendment of the Constitution). In this instance, community rights trumped detainee rights and the psychology profession treated detainees as objects or as a means to an ends.

Inevitably, international human rights law has an impact on the practice of psychology when human rights violations appear likely to occur. The struggle to have international law recognized in the interrogation of detainees has resulted in a fascinating debate played out in four subsequent APA meetings. In opposition to the APA's position, Olson et al. (2008) argued that the PENS Report (2005) was inconsistent with the APA Ethics Code (2002) while Opatow (2007) warned that "violating human rights and sidestepping international and national laws and professional ethics will be remembered as wrong in the harsher light of time" (p. 460). Two months after the release of the PENS Report, an APA resolution indicated that any departure from the APA's Ethics Code under direction from authority would be in accordance with "basic human rights"; however, this change was not followed through at the time. Furthermore, the Forensic Psychology Division was concerned that this resolution would mean that if psychologists recommended the incarceration of defendants, they would be violating human rights (Summers, 2007). In 2006, a resolution affirmed that psychologists: (1) should not knowingly be engaged in cruel, inhuman, or degrading treatment or punishment, and (2) should report any unethical acts to the authorities; and were committed to basic human rights in accordance with international law (see www.apa.org/governance/resolutions/notorturers.html). However, the resolution did not mention the term "interrogation", did not define "cruel or inhumane", exempted "pain or suffering" arising from lawful sanctions, and remained ambiguous about recognized standards when domestic and international law conflicted (Altman, 2008; Kory, 2007). In 2007, Altman proposed a moratorium until a clear policy statement that US law was based on international law was made, characterizing the issue as political (see Altman, 2008). Altman's resolution was rejected and a compromise resolution was proposed that emphasized an "absolute prohibition" against assisting in the use of torture and interrogations and explicitly invoked definitions of torture in international law (see www.apa.org/governance/resolutions/councilres0807.html). Doubt remained as to the role of psychologists in interrogation, as that resolution only prohibited procedures such as hooding, forced nakedness, stress positions, using dogs, physical assault, and sensory deprivation if used in a manner that represented *significant* pain or suffering or in a manner that a reasonable person would judge to cause lasting harm.

Most recently in 2008, the annual APA meeting proposed an amendment to ban on engagement in *any* techniques considered torture or cruel, inhuman or degrading treatment or punishment as defined in international law (see www.apa.org/governance/resolutions/amend022208.html). Furthermore, in September 2008, a resolution was supported that psychologists should not work in settings where detainees were outside the protection of international or US law— unless they were working directly for the detainee or an organization that protected human rights (see www.apa.org/releases/interrogatepos.html). Thus, the APA's policy position has evolved from a community protection role in assisting interrogations in 2005 to a treatment provider role in notifying President Bush that it would "prohibit psychologists from any involvement in interrogations or any other operational procedures at detention sites that are in violation of the US Constitution or international law" (APA, 2008, no page number). However, this resolution may still not comport with

² Note that on 23 January 2009 newly elected President Obama signed three landmark executive orders closing Guantanamo Bay and all CIA prisons and banning the use of torture (see <http://www.abc.net.au/news/tag/obama-barack/>).

the APA Ethics Code. Meanwhile, the APA remains silent about the roles of psychologists in interrogation abuses (see Soldz, 2008). It would appear that a “bright-line position” (Olson et al., 2008) was long overdue. Most recently, Soldz (2009) proposed a truth and reconciliation process to determine the ethical, policy, and organizational protections required to avoid such violations of human rights in the future.

Just because an individual is an offender does not mean that his or her basic dignity as a human being is forfeited (Ward & Birgden, 2007) and human rights violations ultimately occur through lack of respect for the individual’s rights and dignity (Birgden & Perlin, 2008). The role of the psychology profession in interrogations as described has set the scene for a fierce debate about the relationship between psychology and international human rights law. Perlin and Dlugacz (2007; *in press*) suggested that such human rights violations could be expanded to a broader inquiry regarding the relationship between international human rights law and forensic psychology practice in general. Applied to corrections, forensic psychology has been strangely and problematically silent about the abuse of institutionalized individuals and the impact of these abuses on mental health and well-being (Perlin, 2005), a silence that is both shameful and baffling (Perlin, 2006). For example, in the last decade human rights for offenders has neither been canvassed in the 66 standards proposed by the AACP (2000) nor addressed in the most recent edition of a prison practitioner handbook by Correia (2009). In this context, a human rights model specifically for offenders had been proposed (see Ward & Birgden, 2007). While legal rights are identified in the various global covenants previously described, such laws do not guide forensic psychologists in addressing moral rights (based on a moral theory or principle) or social rights (e.g., rights guaranteed by corrections). In their model, Ward and Birgden proposed that forensic psychologists ought to attend to the core value of offender freedom (i.e., non-coerced situations and autonomous decision-making) and the core value of offender well-being (i.e., physical, social, and psychological well-being). Consequently, Birgden and Perlin recommended that a broader enquiry in relation to the core values of offender freedom and well-being within corrections and international human rights law should occur. To provide psychologists with a “bright-line position” to practice ethically, forensic psychologists need to be conversant with international human rights law, particularly when working in a coercive environment such as corrections. At its most basic, the interaction between psychology and law defines what the law, the legal system, and legal actors expect from forensic psychologists; conversely, forensic psychologists carry an ethical and a moral burden to deliver quality services:

if forensic psychologists as experts do not attempt to influence and shape...policy development, it can result in inappropriate policy formulation...forcing forensic psychologists to participate in the legal system in ways for which they are not well trained or suited (e.g., performing order maintenance rather than therapeutic functions in an institution). (Krauss & Sales, 2003, p. 557)

In summary, to assist forensic psychologists practicing in corrections, an awareness of international human rights law is required to support offender dignity, freedom, and well-being. However, psychologists also need to practice within the ethical codes of their profession.

4. Ethical principles for forensic psychologists

In addition to international human rights law, a Universal Declaration of Ethical Principles for Psychologists was recently adopted by the International Union of Psychological Science (IUPS, 2008). This document states that ethics is the core of psychology and provided a set of aspirational moral principles to guide codes of ethics and a universal standard against which to evaluate the ethical and moral development

of the profession. The Declaration describes ethical principles based on shared human values of peace, freedom, responsibility, justice, humanity, and morality (as supported by international human rights law in global covenants previously described). While historically, forensic psychologists have focused on the individual–clinical psychological approach to offender rehabilitation, the Declaration recognizes that psychologists work within broader social contexts: individuals, families, groups, and communities.

What of the argument that international human rights law and ethical codes do not assist forensic psychologists to practice ethically, particularly when the two conflict? For example, the Universal Declaration of Ethical Principles for Psychologists does not clearly state what to do if there is a conflict between ethical principles, or between an ethics code and the law. If there is a conflict between ethics codes and the law, then psychologists must meet whichever has a higher standard and where the conflict appears unresolvable, psychologists may adhere to the requirements of the law “in keeping with basic principles of human rights” (APA Ethics Code, 2002, p. 2). However, human rights are only mentioned in the non-enforceable introduction and are absent in the enforceable section regarding resolving ethical issues. Such an absence was seen to weight military commands over ethical responsibilities in the interrogation of detainees (Olson et al., 2008). In the US, draft guidelines for forensic psychology considered conflicts in practice (Committee on the Revision of the Specialty Guidelines for Forensic Psychology, 2008). While there is absolutely no mention of forensic practice in prisons or corrections, Section 9.02 suggests that conflicts in organizational demands require psychologists to resolve the conflict based on the Specialty Guidelines and the APA Ethics Code. In other words, forensic psychologists are provided with little guidance to manage a dual role of treatment provider and organizational consultant roles in corrections. While the PENS Report (2005) had recommended that psychologists were to reject their treatment provider role in favor of the organizational consultant role, we would argue that both roles are sustainable if guided by universal ethical principles and international human rights laws to benefit both the offender and the community.

An alternative approach to balancing ethics codes and international human rights laws is to create an ethical framework that combines the two, or puts into effect protection of inherent dignity and rights. Ward and Syverson (2009) devised an ethical framework for forensic psychologists, first grounded on ethical theories of human dignity and interdependence, and out of which emerge ethical principles, ethical codes, and practice. The authors argued that basing an ethical framework on dignity is consistent with human rights doctrines, avoids having to create a normatively “best” theory, and protects the offender’s legal, moral, and social rights as proposed by Ward and Birgden (2007). In this way, forensic psychologists can act ethically while not trumping international human rights laws. Therefore, a TJ-minded forensic psychologist can- and we argue must- consider the law in balancing offender dignity, freedom, and well-being with responsibilities to the community without trumping the law.

5. Therapeutic jurisprudence

Forensic psychologists cannot function in isolation from the law, including international human rights law. As previously discussed, TJ is a conceptual framework developed by Professors David Wexler and Bruce Winick with a particular concern for the psychological well-being of individuals who are in contact with the law (including offenders). TJ perceives that the law “...can function as a kind of therapist or therapeutic agent. Legal rules, legal procedures, and the roles of legal actors (such as lawyers and judges) constitute social forces that, whether intended or not, often produce therapeutic or anti-therapeutic consequences” Winick, 1997, p. 185). As with international human rights law and ethics codes, TJ supports dignity, freedom, and well-being.

Regarding its application to corrections, therapeutic law ought to weigh community rights and offender rights, therapeutic legal procedures can motivate offender change and support informed decision-making (see Birgden, 2004a regarding “the will and the way” in offender rehabilitation), and therapeutic legal roles can harness psychological principles (see Birgden 2002a,b, 2004a for strategies that enhance the values, attitudes, and skills of legal actors, including corrections staff). Furthermore, in the context of offenders with mental disabilities, Birgden and Perlin (2008) argued that TJ could assist forensic psychologists to actively address offender needs based on international declarations of human rights. Forensic psychology, TJ, and human rights can intersect in terms of TJ and forensic psychology (Birgden & Ward, 2003), TJ and human rights (Ward & Birgden, 2007; Winick, 2002), and forensic psychology and human rights (Birgden & Perlin, 2008; Perlin, 2005, 2006; Perlin & McClain, 2009; Ward, 2008). In common, TJ, forensic psychology, and human rights are normative, humanistic, and interdisciplinary. Birgden (in press) had argued that TJ needs to take a normative stance regarding offenders, based on a human rights perspective. A TJ philosophy based on human rights can guide forensic psychologists in a normative approach (e.g., under what circumstances involuntary psychological treatment may be acceptable), a humanistic approach (i.e., forging a therapeutic alliance based on an ethic of care), and an interdisciplinary approach (i.e., a collaborative approach with other disciplines).

In summary, current forensic psychology practice lacks a focus on offender rehabilitation within a legal context (Birgden, 2008). While TJ focuses primarily on the roles of judges and lawyers, it is also concerned with the role of psychologists in applying the law (Freckleton & List, 2004; Slobogin, 1995; Wexler, 1996). TJ-minded forensic psychologists should deliver therapeutic services in corrections within an ethical framework based on universally shared human values, as enacted in law.

6. A TJ role for forensic psychologists

As discussed, ethical forensic practice must be understood in the context of international human rights law and international ethical codes of practice; preferably combined. In addition, a TJ approach requires forensic psychologists to understand the law and attempt to apply it to therapeutic effect. What does *therapeutic* mean in the context of TJ and corrections? To date, TJ has not clearly defined the concept (see Kress, 1999) and it is unclear whether social scientists, legal actors, legislators (or indeed offenders) ought to define the concept (Roderick & Krumholz, 2006; Slobogin, 1995). Despite this problem, Birgden (2008) argued that a TJ approach in corrections requires a balance between community rights and offender rights in order to manage offender risk for the community and meet offender needs for the offender; weighting justice principles and therapeutic principles to enhance community protection. In this way, the offender can be managed as both a rights-violator and a rights-holder (Ward & Birgden, 2007).

In this final section, we will consider a TJ approach to the implementation of universal ethical principles to manage the dual role regarding addressing community rights and offender rights. In this way, universally shared human values regarding dignity and rights can be upheld. The following section will assume that the reader is familiar with current offender rehabilitation practices (i.e., offender assessment, treatment, and management). The TJ role of forensic psychologists in addressing particular values will be considered against each ethical principle proposed by the IUPS. Italicized prompts serving as a “checklist” are provided for the reader to consider whether he or she applies these values in daily practice (i.e., are you a TJ-minded forensic psychologist?).

6.1. Principle I: respect for dignity

Dignity is the philosophical foundation upon which other ethical principles are based and it is assumed that all individuals are interdependent social beings (IUPS, 2008). In TJ terms, upholding

the offender's dignity will have a therapeutic effect; dismissing dignity will have an anti-therapeutic effect.

- a) Respect the worth and dignity of all human beings. As previously stated, human rights violations occur through lack of respect for dignity (Birgden & Perlin, 2008) and may result in offender resistance, non-compliance and harm.

Q: If asked, would your clients state that you treat them respectfully?

- b) Respect diversity in ensuring that offender rehabilitation is individualized to meet offender needs, not only to manage risk.

Q: Are you applying more than brief actuarial assessment tools and “one size fits all” program packages?

- c) Respect culture and understand why cultural competency is critical to all aspects of the forensic process (Perlin & McClain, 2009). The exceptions are where custom violates the dignity of others (e.g., paedophile networks that do not recognize laws regarding child consent) or will harm the offender's well-being (e.g., sharing prison-made tattoo guns).

Q: What adjustments are you making for cultures and customs?

- d) Respect free and informed consent. In corrections, while the capacity and information elements may be met, the voluntariness element is vexed. To overcome this problem, Birgden (2008) proposed that forensic psychologists provide offenders with the opportunity for autonomous decision-making about whether to accept or reject rehabilitation without consequence (the exception being high risk, serious offenders who may reject treatment and therefore are incapacitated for a prescribed period).

Q: Are you assisting your client to make informed decision-making regarding engagement in programs?

- e) Respect the privacy of offenders, their supports, and the community. In the APA Ethics Code (2002) privacy is briefly mentioned in that psychologists include only germane information in reports and consultations and discuss confidential information only for appropriate scientific or professional purposes with appropriate persons.

Q: Are you ensuring that you do not breach the privacy rights of your client and their families?

- f) Respect confidentiality of offenders, their supports, and the community. Balancing offender rights and community rights concerning confidentiality is the most common dilemma for forensic psychologists and epitomizes the dual role. The forensic relationship is not an equal one; the power lies with the psychologist. In corrections, absolute confidentiality does not exist with opportunities for the psychologist to inappropriately disclose offender information or for the psychologist to be obliged to disclose information for community protection (Perlin, 1991b).

Q: Do you warn your client of the limits to confidentiality, in writing, when you establish the therapeutic relationship?

- g) Respect fairness and justice. This value can be achieved by ensuring due process, an important aspect of the law not well understood and often lacking in corrections. Due process allows freedom of choice without any intrusion on individual liberty and the pursuit of happiness; where the state does intervene, the decision needs to be rationally justified rather than be arbitrary or unreasonable (Ward & Birgden, 2007; Winick, 1992). Due process considerations regarding compliance with the law have been analyzed for defendants (see Tyler, 1990, 1996). Applied to offenders, due process is made up of participation (encouraging the offender to share in decision-making), dignity (being respectful and acknowledging the offender's rights and values as a competent, equal citizen and human being), and trust (clearly explaining decisions). Attending to due process in corrections will mean that the procedure will be perceived as fair even if it may not influence the ultimate outcome.

Q: Do you allow your clients to present their point of view, respect them as competent and equal citizens, and work to build a therapeutic alliance?

6.2. Principle II: competent caring for the well-being

Competent caring is beneficial for clients; above all, psychologists ought to do no harm (IUPS, 2008). In TJ terms, competent caring includes developing interpersonal relationships that ensure therapeutic rather than anti-therapeutic effects within an ethic of care.

a) Demonstrate active concern in the well-being of individuals, their social supports, and the community. Supporting individual autonomy will maximize individual and community well being, as required by the principles of morality and justice (Winick, 1992). Offender rehabilitation cannot be conducted without considering the context to which the offender returns (see Ward & Stewart, 2003). Therefore, practice would require meeting with social supports, either at the prison/community corrections location or within the home.

Q: Do you provide opportunities to your client and their support systems to make informed choices?

b) Do no harm to offenders, their social supports, or their communities. Again, any loss of freedom must be rationally justified.

Q: Are you adding any further punishment to loss of liberty?

c) Maximize benefits and minimize potential harm which can occur within a balanced offender-community rights approach.

Q: Are you leaning in one direction towards community needs or offender needs?

d) Correct or off-set any harmful effects of psychological practice. Amongst other values, offender rehabilitation should aim to enhance offender well-being and encourage offenders to develop a self-narrative script of “redemption” rather than “condemnation” (Maruna, 2001).

Q: Do your clients have lower scores on measures of physical, mental, and social well-being after your intervention?

e) Develop and maintain competence. Competent psychologists demonstrate motivation and capacity (“the will and the way”) in assisting offenders to devise a good life (Birgden, 2004a).

Q: Are you up-to-date on the literature, for example, regarding involuntary treatment or the efficacy of sex offender monitoring laws?

f) Demonstrate awareness of how psychologists' own values, attitudes, experiences, and social contexts influence their actions and recommendations. Supportive values and attitudes rather than confrontational approaches are required (Birgden, 2004a, 2008).

Q: Are you aware of the extent to which your personally-held values may impact on your responses to your client's behavior?

g) Respect the ability of offenders and their social supports to make decisions for themselves and to care for themselves and each other. For example, the offender's conception of a good life may differ from that of treatment providers (Ward & Stewart, 2003).

Q: Are you aware of value-laden judgments that you make about what your clients can and cannot do?

6.3. Principle III: integrity of psychologists

Integrity is considered vital to advance scientific knowledge and to maintain community confidence in the discipline of psychology (IUPS, 2008). TJ is also consistent with traditional judicial principles such as integrity.

a) Engage in honest and truthful, open, and accurate communications. Plain language assessment and treatment reports provided to corrections or the courts should be provided to the offender.

Q: Are you writing plain language reports that your clients can read and understand?

b) Provide complete disclosure of positive and negative information unless it is culturally inappropriate, violates confidentiality, or is potentially seriously harmful to the offender or the community.

Q: Are you transparent in disclosing information to your client?

c) Maximize impartiality and minimize bias. Perlin (1991a, 1993, 2000) provided examples where experts had distorted their testimony to the courts in order to achieve socially desirable aims, a distortion he described as “pretextuality.” It is expected that such pretextuality may occur in corrections regarding decisions to remove an offender from a program, failing to support offender's choices that conflict with the psychologist's views and so on. Furthermore, Glaser (2003) warned that psychologists who have strong feelings (positive or negative) toward an offender should remove themselves from important decisions about them such as whether s/he remains on a program.

Q: Have you provided biased information lately to achieve a particular outcome?

d) Do not exploit offenders for personal, professional, or financial gain (e.g., professional boundary violations). Infringement of this value is the one that psychologists most often appear before professional bodies for sanction.

Q: Have you reported a colleague who you believe may be exploiting an offender?

e) Avoid conflicts of interest and declare them when they cannot be avoided or are inappropriate to avoid. This problem can arise when psychologists function as private practitioners in the courts and public treatment providers within prison (a forensic-therapeutic role conflict).

Q: Have you declined to assess a repeat offender that you previously worked with as a treatment provider for a court report?

6.4. Principle IV: professional and scientific responsibilities to the community

Professional and scientific responsibility contributes to the knowledge about human behavior and to the development of social structures and policies that benefit all individuals (IUPS, 2008). A TJ approach requires that social science evidence determines whether the law is therapeutic or anti-therapeutic.

a) Apply scientific and professional knowledge to promote the well-being of the community and all its members. This value is assumed to include offenders; thus relying solely on risk management strategies for offender rehabilitation is unethical.

Q: Is your service delivery model based on sound scientific and professional principles that balance community and offender rights?

b) Use knowledge for beneficial purposes and to protect such knowledge from being misused, used incompetently, or made useless.

Q: Are you applying invalid or unreliable methods that serve no purpose to the client?

c) Deliver psychological services in ways that are ethical and consistent with the promotion of the well-being of the community and all its members. Again, this value is assumed to include offenders.

Q: Does the service delivery model you apply attend to your client's well-being?

d) Promote the highest ethical ideals in the activities of the psychological profession. The example regarding the interrogation of detainees appears to be a failure of the APA to initially meet this value.

Q: Are you receiving the required ethical support from your professional body?

e) Provide training in ethical responsibilities and required competencies.

Q: Are you receiving training and support in managing ethical issues that arise from your role?

f) Develop ethical awareness and be as self-correcting as possible. In the US and Australia, psychologists are rarely sanctioned for unethical behavior (see Birgden & Perlin, 2008).

Q: How many psychologists have been sanctioned in your state in the past year?

In summary, when any of these universal ethical principles are dismissed or overridden, forensic psychology practice may become anti-therapeutic, unethical, and illegal.

7. Conclusion

If forensic psychologists do not recognize that the business of corrections is to promote and monitor respect for human rights and prevent, detect, and remedy human rights violations, systemic abuses of power will be inevitable (Zinger, 2006). The role of psychologists in the interrogation (and perhaps torture) of detainees is a timely reminder of the slippery ethical slope that can arise for those working in coercive environments if the role for community protection (as organizational consultant) outweighs the role for offender rights (as treatment provider), particularly if offenders are used as a means to an ends.

A TJ stance prefers that the role of forensic psychologists in corrections is therapeutic rather than anti-therapeutic. Based on an approach that observes universal ethical principles and international human rights laws, forensic psychologists can manage the dual role of protecting community rights and offender rights; the roles need not be contradictory in a humane corrections culture. A TJ role supports the overarching dignity of the clients and the community while attending to the core values of freedom and well-being of offenders. Such an approach is timely and more urgent at this point in history because of recent examples of human rights violations and corresponding developments in international human rights laws and universal ethical principles. Hopefully, forensic psychologists who act as treatment providers and/or organizational consultants can compensate for the “damp dirty prison” by applying the law therapeutically.

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