

2008

Tolling for the Luckless, the Abandoned and Forsaken: Community Safety, Therapeutic Jurisprudence and International Human Rights Law As Applied to Prisoners and Detainees

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Recommended Citation

Perlin, Michael L. and Birgden, Astrid, "Tolling for the Luckless, the Abandoned and Forsaken: Community Safety, Therapeutic Jurisprudence and International Human Rights Law As Applied to Prisoners and Detainees" (2008). *Articles & Chapters*. 1257. https://digitalcommons.nyls.edu/fac_articles_chapters/1257

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**New York Law School
Legal Studies**

Research Paper Series 07/08 #20

**“Tolling for the Luckless, the Abandoned and Forsaken”:
Community Safety, Therapeutic Jurisprudence and International
Human Rights Law as Applied to Prisoners and Detainees**

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“Tolling for the Luckless, the Abandoned and Forsaken”: Therapeutic Jurisprudence and International Human Rights Law as Applied to Prisoners and Detainees by Forensic Psychologists.

Astrid Birgden¹ and Michael L Perlin²

Objectives. There has been an explosion of interest in therapeutic jurisprudence as both a filter and lense for viewing the extent to which the legal system serves therapeutic or anti-therapeutic consequences. However, little attention has been paid to the impact of therapeutic jurisprudence on questions of international human rights law and the role of forensic psychologists. The paper aims to provide an intersection between human rights, therapeutic jurisprudence, and forensic psychology.

Method: Human rights are based on legal, social, and moral rules. Human rights literature generally considers legal rights but such policy statements do not provide principles to guide forensic psychologists in addressing moral or social rights. Therefore, a framework to guide forensic psychologists is required.

Conclusion. As duty-bearers, forensic psychologists need to address the core values of freedom and well-being in rights-holders (in this instance, prisoners and

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detainees with a mental illness). The paper proposes that human rights principles can add to the normative base of a therapeutic jurisprudence framework, and in turn, therapeutic jurisprudence can assist forensic psychologists to actively address human rights.

INTRODUCTION

Human rights violations arise because lack of respect for the individual's rights and dignity. There is a significant and disturbing "disconnect" between the two. Even though forensic psychologists have at least 60 discrete opportunities to come in contact with the criminal justice system (from testifying in court about the defendant's cognitive capacity to providing rehabilitation in corrections), the literature is "strangely silent" on whether forensic psychology practice meets human rights standards (Perlin, 2005), a silence that is both shameful and baffling (Perlin, 2006). Fellner (2006) estimates that in the United States 16 percent of adults in prisons and gaols have a mental illness, this rate is two to four times the general population, there are three times as many individuals incarcerated in prison as in mental health hospitals. Likewise, Ogloff (2002) reviewed available data in Australia and New Zealand and concluded that the prevalence of mental illness amongst prisoners is significantly higher than the general population. In both countries, the rate of prisoners with mental illness is also increasing. Prisoners with mental illness are more likely to violate prison rules leading to disciplinary hearings, inappropriate sanctions, and segregation

(Fellner, 2006). Therefore, the application of human rights principles to prisoners and detainees with a mental illness will be the focus of the paper.

An open question to be addressed is whether therapeutic jurisprudence might assist forensic psychologists to actively address human rights. Therapeutic jurisprudence, human rights, and forensic psychology can intersect in terms of therapeutic jurisprudence and human rights (Ward & Birgden, 2007), therapeutic jurisprudence and forensic psychology (Birgden & Ward, 2003), and human rights and forensic psychology (Perlin, 2005, 2006). In common, therapeutic jurisprudence, human rights, and forensic psychology rights are normative, humanistic (with a concern for well-being), and inter-disciplinary. A normative approach conceptualises problems, seeks solutions, and specifies values that are foundational for a particular profession (Madden & Wayne, 2002).

Therapeutic jurisprudence provides a useful interdisciplinary discourse- political theory and science, sociology, law, philosophy, biology, cultural studies, anthropology, and psychology- on human rights (Ward & Birgden, 2007). Both therapeutic jurisprudence and human rights can guide forensic psychologists in a normative approach (e.g., under what circumstances involuntary psychological treatment may be acceptable), a humanistic approach (forging a therapeutic alliance based on an ethic of care), and an inter-disciplinary approach (a collaborative approach with other disciplines).

In particular, human rights and therapeutic jurisprudence involve two complementary justifications (Kress, 1999; Schopp, 1993; Ward & Birgden, 2007). The consequentialist justification respects the utility of human rights in appealing to both individual and community rights. A consequentialist approach sanctions the suspension of human rights if a cost-benefit analysis indicates that this will result in a greater amount of the value in question for the individual (e.g., well-being). In terms of autonomy, the consequences of decisions in promoting or undermining it are considered and concern for individual well-being demands the development of autonomous capacities. The deontological justification appeals to the dignity of human beings and argues that it is never appropriate to violate human rights. That is, the state and individuals have a duty to recognise the inherent value and worth of rights-holders. In terms of autonomy, this means respect for self-regarding choices made by a moral competent individual is more important than the consequences and autonomy rights override individual and community rights. The law is designed to protect freedom and promote well-being by providing care and treatment to those who require it. However, sometimes the consequentialist and deontological arguments for autonomy conflict such as when a prisoner with mental illness refuses treatment. On the one hand, an ethic of care assumes shared informed decision-making with the right to refuse treatment after weighing the choices. On the other hand, where there is a conflict between autonomy and well-being, the state either respects the individual's choice at the expense of well-being or overrides the individual's choice in order to promote well-being. Whether a legal system should be

concerned with autonomy is a normative question but at present it is expected that individuals should be protected in this way as it is a basic moral obligation (Haney, 2002; Winick, 1992). Therefore, autonomy is a human rights issue that forensic psychologists ought to concern themselves with.

HUMAN RIGHTS

Human rights are held by every individual in the international community as an autonomous agent, capable of formulating his or her own personal plans and seeking ways of realising them in daily life (Ward & Birgden, 2007). Recognition of the inherent dignity and inalienable rights of all members of the human family “is the foundation of freedom, justice, and peace in the world” (Kumar, 2003; Vienna Declaration and Programme of Action, 1993; Universal Declaration of Human Rights, 1948). Through “global” international covenants, individual rights are safeguarded against “cruel, inhuman, or degrading” treatment or punishment (International Covenant on Civil and Political Rights, Article 7, 1966), prisoners should be treated with humanity and dignity, and “reformation and social rehabilitation” should be provided (International Covenant on Civil and Political Rights, Article 10, 1966), and individuals are guaranteed “the right to the highest attainable standard of physical and mental health” (International Covenant on Economic, Social and Cultural Rights, Article 12, 1966). More specialised United Nations Conventions guarantee “respect for human rights and fundamental freedoms” in forensic and correctional systems (Vienna Declaration on Crime

and Justice, 2001), mandate that persons in detention or imprisonment be provided “medical care and treatment” (Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, Principle 6, 1988), and specify that persons with disabilities not be subjected to “exploitation, violence and abuse” (Convention on the Rights of Persons with Disabilities, Article 16, 2006). Judicial decisions from the European Court of Human Rights and from federal cases in the United States have incorporated these principles (see Perlin & Dlugacz, 2007). Therefore, there is no longer any question that prisoners have enforceable human rights (Robbins, 2006; Fellner, 2006).

As previously stated, there is an overrepresentation of individuals with mental illness in prisons. In the past three decades the relationship between human rights and persons institutionalised because of mental illness has become robust.

Important developments include the following: the United Nations General Assembly has adopted the “Mental Illness Principles”; the European Court on Human Rights has decided multiple cases reaffirming basic and fundamental rights in the commitment and institutionalisation process; mental disability-focused NGOs such as Mental Disability Rights International and the Mental Disability Advocacy Centre have called the world's attention to the examples of inhumane treatment discussed above; “global” NGOs such as Amnesty International have finally acknowledged that violations of the rights of persons institutionalised because of mental disability are, indeed, international human rights violations; the World Health Organisation has published a Resource Book

on Mental Health, Human Rights and Legislation; academics and activists have begun to create theoretical frameworks through which these problems can be addressed (Lewis, 2002; Rosenthal & Kanter, 2002; Rosenthal & Rubenstein, 1993) and, most importantly, the United Nations has recently adopted a new Disability Rights Convention (Perlin, 2007; see generally, Perlin, Kanter, Treuhart, Szeli, & Gledhill, 2006). Forensic psychologists have a duty to put these requirements into practice otherwise such treaties remain policies on paper.

In relation to prisons, Zinger (2006) states that the best approach to ensure that the rule of law is upheld is to view corrections as being in the human rights business. The author states that

The best argument for observing human rights standards is not merely that they are required by international or domestic law but that they actually work better than any known alternative - for offenders, for correctional staff, and for society at large. Compliance with human rights obligations increases, though it does not guarantee, the odds of releasing a more responsible citizen. In essence, a prison environment respectful of human rights is conducive to positive change, whereas an environment of abuse, disrespect, and discrimination has the opposite effect: Treating prisoners with humanity actually enhances public safety. Moreover, through respecting the human rights of prisoners, society conveys a

strong message that everyone, regardless of their circumstance, race, social status, gender, religion, and so on, is to be treated with inherent respect and dignity. (p 127)

THERAPEUTIC JURISPRUDENCE

Therapeutic jurisprudence is a 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 (whether defendant, victim/survivor, witness, judicial officer, lawyer, or court staff). Therapeutic jurisprudence is part of a growing comprehensive movement in the law towards establishing more humane and psychologically optimal ways of handling legal issues collaboratively, creatively, and respectfully (Daicoff, 2000). These alternative approaches optimise the psychological well-being of individuals, relationships, and communities dealing with a legal matter, and acknowledge concerns beyond strict legal rights, duties, and obligations. In its aim to use the law to empower individuals, enhance rights, and promote well-being, therapeutic jurisprudence has been described as "...a sea-change in ethical thinking about the role of law...a movement towards a more distinctly relational approach to the practice of law...which emphasises psychological wellness over adversarial triumphalism" (Brookbanks, 2001, p. 329-330). That is, therapeutic jurisprudence supports an ethic of care.

Therapeutic jurisprudence evaluates law on the basis of its therapeutic and anti-therapeutic consequences, specifies that well-being is a good that should be maximised, and is concerned with autonomy and other rights (Kress, 1999; Winick, 1997). Kress describes therapeutic jurisprudence as a hybrid theory incorporating consequentialist, deontological, and rights-based theories. Therefore, therapeutic jurisprudence is well placed to be combined with human rights.

The normative stance of therapeutic jurisprudence is to maximise the overarching aims of the law and it assumes that therapeutic effects are desirable and should generally be the aim of the law, and that anti-therapeutic effects are undesirable and should be avoided or minimised by the law (Winick, 1997). However, therapeutic jurisprudence could be considered normatively neutral as when values conflict, therapeutic jurisprudence does not purport to determine what should be done, but rather, "...sets the stage for their sharp articulation" (Wexler & Winick, 1996, p. xvii) and "...calls for an awareness of these consequences and enables a more precise weighing of sometimes competing values" (Winick, 1997, p. 191). In this instance, Winick maintains that an ethical or political theory, rather than therapeutic jurisprudence, should establish a hierarchy of values.

This perceived neutral normative base in therapeutic jurisprudence has been criticised. Slobogin (1995) indicates that therapeutic jurisprudence inadequately

addresses internal balancing (when therapeutic interests fail to converge with other interests) and external balancing (when a therapeutic rule for one group may not be therapeutic for another group) and Schopp (1999) suggests that a normative framework to balance such conflicting values is required. However, Kress (1999) notes that normative questions are contested concepts, a value such as autonomy may be incomparable, and no other normative enterprise would be able to address this problem anyway. Nevertheless, La Fond (1999) indicates that it is unacceptable for therapeutic jurisprudence to accept other social values when anti-therapeutic consequences are severe. For example, sex offender predator laws are so destructive to individual and community well-being that therapeutic jurisprudence "...must take a normative stance and assert that the law should be repealed or substantially changed...assert its primacy and require change regardless of competing values" (La Fond, 1999, p. 378). In this instance, La Fond argues that therapeutic jurisprudence must develop a normative base to address retributive laws that interfere negatively with the human condition. Similarly, it will be argued that where community rights trump human rights in prisoners and detainees with a mental illness, therapeutic jurisprudence should balance the two. Human rights principles can direct this balance.

THERAPEUTIC JURISPRUDENCE AND HUMAN RIGHTS

Therapeutic jurisprudence considers therapeutic aspects of the law. Therefore, therapeutic jurisprudence would support therapeutic prisons and the psychological well-being of prisoners and detainees with mental illness. However, very little literature has considered the intersection between therapeutic jurisprudence and human rights (see Ferencz & McGuire, 2000; Ward & Birgden, 2007; Winick, 2002). Therapeutic jurisprudence originated from consideration of mental health law. Winick describes the progress of mental health law from the medical model (with lack of treatment and human rights abuses in institutions) to a legal rights-based model (with improved but vague civil commitment and due process standards) to a therapeutic jurisprudence model (to balance legal and therapeutic needs of civilly committed patients). Winick identifies the convergence between therapeutic jurisprudence and human rights values in civil commitment procedures such as liberty, due process, the right to treatment and to refuse treatment, and the exercise of decision-making. In this analysis Winick concluded that:

The remedy for the abuses in the mental health system of Hungary and other Eastern European nations is a healthy dose of international human rights law and therapeutic jurisprudence. As that region moves from a medical, to a legal, to a therapeutic jurisprudence model of civil commitment, we can expect to see reforms in mental health law and practice that will both protect individual liberty and promote improved mental health and psychological well-being. (Winick, 2002, p. 572)

As stated, therapeutic jurisprudence has been criticised for being normatively neutral. A human rights model can assist therapeutic jurisprudence to develop a normative base. Ensuring human rights improves well-being for both the prisoner and the community.

Human Rights Model

Virtually no attention has been paid by forensic psychologists to the violation of human rights in prisons. Ward and Birgden (2007) have proposed a human rights model to be applied by forensic psychologists in offender rehabilitation. The proposed model is the only known one based on human rights principles rather than policies. Based on the work of Gewirth and consequential and deontological justifications, Ward and Birgden argue that the individual has the right to core values of freedom and well-being in order to function as an autonomous and dignified agent. The core value of freedom entails non-coerced situations and internal capabilities (e.g., the capacity to formulate intentions, to imagine possible actions, and to form and implement valued plans). Freedom is made up of personal freedom and social recognition. The core value of well-being entails meeting physical, social, and psychological needs. Well-being is made up of personal security, material subsistence, and elemental equality.

Freedom as a core value includes autonomy. Autonomy is often overlooked by forensic psychologists in prisons and so will be detailed here. Schopp (1993) describes autonomy as a right, a virtue, and a capacity. As a right, autonomy is an entitlement to self-determination (i.e., control of one's body, family, employment, privacy, and property). As a virtue, autonomy is a set of conditions such as self-reflection, direction, reliance, and control; moral authenticity and independence; and responsibility for self. As a capacity, autonomy is a necessary condition because an individual who does not have capacity cannot exercise rights or develop virtues (and so the state retains authority over the right and virtues). Therefore, autonomy allows the individual to exercise sovereign self-determination, develop the virtues of autonomy as a condition, and possess autonomous capacities. Autonomous individuals develop an integrated life (or a good life) by reviewing and shaping their projects, motives, and conduct. Autonomy may be restricted by lack of rights and capacity (e.g., poor decision-making) or by lack of rights and virtue (e.g., poor impulse control).

The human rights model proposed by Ward and Birgden (2007) can be applied to prisoners and detainees with mental illness. The revised model is made up of policies, objects, and core values (see Figure 1). Policies articulate legal rights based on various declarations of human rights. For prisoners, the United Nations Standard Minimum Rules for the Treatment of Prisoners adopted by the Economic and Social Council in 1957 identifies the basic principles of no discrimination (concerning race, colour, gender, religion, politics etc) and respect

for the religious and moral precepts of the group to which the prisoner belongs. For the treatment of prisoners with mental illness specified legal rules include the mentally ill being placed in special institutions under medical supervision, medical/psychiatric service providing treatment to all prisoners who require it, and medical/psychiatric treatment continuing upon release into the community. Figure 1 summarises the minimum standards regarding the treatment of all prisoners and detainees.

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An individual's right can be moral (i.e., based on a moral theory or principle), social (i.e., guaranteed by a social institution), or legal (i.e., prescribed by particular laws). Human rights literature generally considers legal rights but such policy statements do not provide principles to guide forensic psychologists in delivering services within a human rights framework. For example, the health and welfare chapter in a prisoner legal rights handbook published in Australia by Rosa (2000) lists general and mental health, diet/food, hunger strikes, compassionate leave, and marriage of prisoners. These chapters do not guide forensic psychologists in addressing moral or social rights of prisoners. To practice ethically, forensic psychologists need to also consider moral and social rights.

The core values to guide forensic psychologists are freedom and well-being. The state and duty-bearers (namely forensic psychologists) have an obligation to ensure these values to rights-holders (while recognising that rights-holders may also be rights-violators). The five objects in Figure 1 elaborate the two core values of freedom and well-being. Objects are specific rights that have been proposed by Orend (2002). The core value of freedom is made up of personal freedom and social recognition. Personal freedom is the right of individuals to rely on their own judgment when deciding how to live a life (although freedom may be curtailed while in prison). Social recognition is the right to direct the course of one's own life, to be treated in a dignified and respectful manner as an autonomous agent, and to experience self-respect and self-esteem (we consider autonomy to be crucial for all prisoners). The core value of well-being is made up of personal security, material subsistence, and elemental equality. Personal security is the right to physical safety and welfare (e.g., due process rights in law and freedom from violence by staff and other prisoners). Material subsistence is the right to basic levels of physical health, food, water, and education (with adjustments made to match learning style). Elemental equality is the right to equality before the law and freedom from discrimination (most obviously on the grounds of disability but also gender, ethnicity etc). The two core values of freedom and well-being, although lacking to date, ought to be a primary focus of forensic psychologists (Ward & Birgden, 2007).

The community may consider that prisoners with mental illness have forfeited human rights or that their rights may be overridden by the state if the rights of non-offenders outweigh them. However, the prisoner still possesses *all* well-being rights and *some* freedom rights (Ward & Birgden, 2007). Curtailing some freedom rights (through incarceration, parole conditions, or a community based sentence) can be justified. However, any curtailment of freedom rights should be rationally justified and based on criteria such as the length of time forfeiture occurs, what kinds of rights are forfeited, and whether the state can punish beyond the sentence (i.e., a normative consideration). For the prisoner with mental illness, failure to provide competent and specialised medical/psychiatric services must also be justified.

In the context of autonomy, Schopp (1993) distinguishes between freedom, liberty, and sovereignty. *Freedom* is the presence of choices to perform or not perform an action (i.e., lack of external personal constraints). The more options an individual has, the more freedom s/he has. *Liberty* is the absence of rule-imposed limits on freedom of action (i.e., lack of legal constraints). Legal systems constrain individual liberty to prevent harm to others. Regarding prisoners with mental illness, the relationship between liberty and freedom can be considered in two ways. On the one hand, the prisoner may have liberty curtailed by law but should still have freedom supported through the provision of options (e.g., choices of treatment). On the other hand, the prisoner may be at liberty to engage in pro-social behaviours but does not have the freedom to so do

because s/he lacks the required skills and environment (e.g., mental state and/or environment to support pro-social behaviour). Based on the described human rights model, prisoners with a mental illness are more likely to lack social recognition (or autonomy) due to lack of capacity. *Sovereignty* is a moral right within autonomy. Sovereignty is the right for the competent individual to independently define his or her own projects and the principles by which s/he lives (which may merit praise or blame) to define the unique aspect of his or her life and well-being. Sovereignty also supports beneficence in addressing the unique human well-being adopted by the individual (not just basic needs such as food, shelter, and safety). To support autonomy, the law should provide a degree of freedom and protect liberty otherwise the individual's sovereignty is violated.

Forensic psychologists therefore need to focus on addressing social recognition in prisoners with a mental illness. In addition, curtailing well-being rights (e.g., medical/psychiatric care, employment opportunities, quality forensic psychology services, and choices) cannot be justified. It is unethical to assume that prisoners' rights should always be overridden by community rights; the failure to provide the minimum level of retained freedom rights and well-being rights is a violation of human rights (Ward & Birgden, 2007). As duty-bearers, forensic psychologists have a professional obligation to ensure the rights of rights-holders (in this instance prisoners and detainees with mental illness). In turn, the rights-holder needs to be able to pursue goals as long as s/he does not infringe upon

the rights of others. If the prisoner is acknowledged as a human rights-holder and duty-bearer, as well as rights-violator, then this view will support “rights and duties, duties and rights: the ethical foundations of a liberal and flourishing community and a fairer and more humane criminal justice system” (Ward & Birgden, 2007, p. 642).

Role of Forensic Psychologists

Psychologists are to demonstrate respect for individuals by acknowledging their legal rights and moral rights, their dignity, and right to participate in decisions affecting their lives (see Australian Psychological Society, 2007). However, very little literature has considered the intersection between forensic psychology and human rights (see Ward & Birgden, 2007; Perlin, 2005, 2006; Perlin & Dlugacz, 2007). Despite the rapid development of forensic psychology, Ward and Birgden have noted that there is a lack of theoretical and research attention paid to moral, social, and legal rights in prisoners. Such concerns are particularly applicable to prisoners with a mental illness. The United Nations Standard Minimum Rules for the Treatment of Prisoners (1957) requires prison staff to display integrity, humanity, competence, and personal suitability for the work. Forensic psychologists are also required to adhere to codes of professional conduct. Codes are a public commitment by a professional group to a particular set of standards and rules and the highest standards of ethical practice (Glaser, 2003). For example, the American Psychological Association

ethical code determines that psychologists must recognise “fairness and justice” and the Speciality Guidelines for Forensic Psychologists also cover a range of professional behaviours (Perlin, 2005), and the Australian Psychological (2007) addresses three general principles- respect, propriety, and integrity in its Code of Ethics. In terms of legal consequences for breaching codes, it is rare for forensic psychologists to be censured. In the United States, Perlin (2005) could find only two cases where forensic psychologists had been brought before state licensing boards for poor professional conduct and one criminal case where professional standards were scrutinised. In Australia, only two states provide publicly accessible information regarding professional practice over a period of time. In South Australia, there were 24 cases between 1991 and 2007 but none were forensic psychologists (South Australian Psychological Board, 2007). In Victoria, there were 34 cases between 1999 and 2007 and two of these were forensic psychologists (Psychologists Registration Board of Victoria, 2007). One psychologist was reprimanded for professional misconduct, later de-registered for separate criminal charges, and in 2003 was re-registered with conditions. The other psychologist was de-registered for professional misconduct. An additional problem with existing codes is that such standards and rules are not based on a theory linking them to human rights. Ward and Birgden (2007) suggest that forensic psychologists as therapeutic agents (in therapeutic jurisprudence terms) should use the concept of human rights to structure and guide the assessment, treatment, and management of offenders (see Ward, Gannon, & Birgden, 2007 as an example applied to sex offenders) and ground

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ethical principles for psychological practice (see Ward, Gannon, & Vess, in press regarding the American Psychological Association)..

Similarly, the following three general principles of the Australian Psychological Society (2007) can support freedom and well-being in practice. *Respect* considers the rights and dignity of individuals which includes ensuring justice, respect, informed consent, privacy, confidentiality, and release of information. As discussed, forensic psychologists ought to respect the prisoner's right to autonomy and justice and promote their legal, social, and moral rights (although on occasion these rights may be overridden by community rights). In demonstrating respect, forensic psychologist should ensure impartial allocation to adequate treatment rather than act on personal reactions to individual behaviour (see Glaser, 2003), recognise that they are agents of the state engaged in a community-individual balance (see Birgden, 2007), and recognise uniqueness and diversity of each individual (Ward et al., in press).

Furthermore, *propriety* includes competence, professional responsibility, psychological assessment, and competing demands. In particular, forensic psychologists ought to be aware that while informed consent in prisoners may include capacity and information, voluntariness without coercion or restraint may be vexed (see Birgden & Vincent, 1999). *Integrity* includes reputable behaviour, communication, conflict of interest, and non-exploitation. Forensic psychologist ought to be competent, protect the rights of prisoners and detainees (i.e., do no

harm), and consider that the rights of prisoners and the community take precedence over their own interests.

Glaser (2003) distinguishes between *treating the punished* by providing mental health care for prisoners and *treatment as punishment* by imposing conditions on community based orders or parole. In this context, Glaser states that codes of professional conduct for mental health professionals are based on four basic principles: (1) autonomy- the client is free from external constraints and can make informed voluntary decisions, (2) non-maleficence- avoid harm to the client, (3) beneficence- the welfare of the client is the primary goal of treatment, and (4) justice- the client is treated fairly, equitably, and in accordance with his or her rights and entitlement. When these principles conflict, the norms and rules they produce should be suitably specified to address ethical dilemmas. As a result, Glaser suggests that three broad principles are required in forensic settings: (1) provide due process protections; (2) ensure that punishment is proportionate to the seriousness of the offence; and (3) minimise infringement on freedom rights. In addition, prison treats individuals as a means not an ends, and, if every individual has intrinsic value, then his or her rights should not be overridden by other concerns. A combined therapeutic jurisprudence-human rights approach should assist to overcome these problems.

If forensic psychologists do not recognise 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). Article 15 of the United Nations Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (1988) clearly states that no individual should be subjected to torture, to cruel, inhuman or degrading treatment, or punishment. However, in the past year, there has been a dramatic increase in the attention paid to the issue of the standards of behaviour that govern the practice of forensic psychologists (and forensic psychiatrists). This new attention flows mostly from revelations of the sanction of torture at prison camps in Guantanamo Bay and Abu Ghirab by the United State's government. These human rights violations have led to the question of whether this ongoing (and fierce) debate will be limited to the extraordinarily important (but clearly, relatively narrow) question of the relationship between forensic psychology and torture as a function of international human rights law, or whether it will be expanded to a broader inquiry that considers the relationship between international human rights law and all professional practice that forensic psychologists engage in (Perlin & Dlugacz, 2007). We suggest that the latter should occur, particularly in relation to freedom and well-being.

CONCLUSION

Institutionalised individuals, particularly prisoners and detainees with mental illness, are confined in prison and forensic facilities that regularly and grossly violate international human rights standards (Perlin, 2002, 2006, 2007; Perlin et

al., 2006; Perlin & Dlugacz, 2007). Forensic psychology has been strangely- and problematically- silent about these abuses, and their impact on the mental health and well-being of those so institutionalised (Perlin, 2006).

Therapeutic jurisprudence offers a potentially redemptive solution to this state of affairs. We believe that therapeutic jurisprudence principles can, and should, be taken seriously to address the human rights problems that we discuss in this paper. Therapeutic jurisprudence can suggest therapeutic laws, procedures, and roles that maximise the core values of freedom and well-being (and the related objects) for prisoners and detainees with a mental illness. Therapeutic jurisprudence offers an intersection between forensic psychology and human rights with its normative, humanistic, and inter-disciplinary approach.

Conversely, the normative base of therapeutic jurisprudence can be strengthened by the application of human rights principles regarding moral, social, and legal rights and when values conflict, therapeutic jurisprudence ought to always support well-being and only accept curtailed freedom as the least restrictive alternative. As duty-bearers, forensic psychologists have a responsibility to actively address the panoply of legal rights discussed in this paper and to expand their attention to moral and social rights.

The paper's title comes in part from Bob Dylan's epic song, *Chimes of Freedom* (Dylan, 1964), characterized by a leading critic as Dylan's "most political song" and an expression of his "affinity" for a "legion of the abused" (Shelton, 1997, p. 220, as quoted in Perlin, 2002, p. 432). The verse in question reads, in part:

Tolling for the rebel, tolling for the rake

Tolling for the luckless, the abandoned an' forsaked

Tolling for the outcast, burnin' constantly at stake

An' we gazed upon the chimes of freedom flashing.

(<http://bobdylan.com/moderntimes/songs/chimes.html>)

The individuals in correctional and forensic institutions about whom we write are “luckless,... abandoned, [and] forsaked.” We hope that adoption of the ideas we offer here might begin to ameliorate this situation.

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Figure 1: A Model of the Structure of Human Rights for Prisoners (adapted from Ward & Birgden, 2007)

