

Ethics in Correctional and Forensic Psychology: Getting the Balance Right

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Compared to their peers, correctional and forensic psychologists are more likely to encounter legal-ethical problems and have complaints lodged against them. The problems that confront them are often novel compared to those their peers deal with. They therefore often feel unsupported and disheartened. Further, they may drift away from the norms that govern the profession and behave in a manner that erodes the trust of the public in the profession and leads to division within the profession. To meet their legal-ethical responsibilities, it is essential that correctional and forensic psychologists should have a good knowledge and understanding of the norms that regulate them. In this article, I will identify the norm systems that guide the professional behaviour of psychologists and examine their content and the manner in which they are related, interact, influence each other, and impact on the professional behaviour of correctional and forensic psychologists. I will pay special attention to the psychology profession's ethical principles that underlie the profession's codes of ethics and examine how the other norm systems influence the interpretation of codes and these ethical principles.

Key words: corrections; ethics; forensic; law; morality; norms.

What is already known about this topic

- 1 Correctional and forensic psychologists provide services to people whose legal rights are restricted by society's need for justice and safety.
- 2 Psychologists who work in correctional and forensic settings are therefore often confronted by unique legal-ethical problems.
- 3 Psychologists who work in correctional and forensic settings complain that the standards of the Australian Psychological Society's Code of Ethics often do not provide a direct answer to their legal-ethical problems.

What this paper adds

- 1 The Code of Ethics is only one of a number of norm systems that govern psychologists' professional behaviour.
- 2 The Code of Ethics is useful as it takes into account all of these norm systems, except psychologists' own morality, and sets out the ethical principles of psychologists.
- 3 Psychologists who cannot find a direct answer to a legal-ethical problem in a standard of the Code should look for guidance to the various norm systems and ethical principles that are relevant.

During her keynote address at the Australian Psychological Society's (APS) Forensic Psychology National Conference, Karen Franklin (2011) gave this account of a parole evaluation of a prisoner in a Californian prison.

Before I was allowed to meet with this man, I was required to put on a military flak jacket (also called a bullet-proof vest). I was led into a cellblock, where the prisoner was locked inside a portable metal cage barely large enough for him to squeeze his body into. While I tried to talk with him through the grille of the cage, two guards hovered behind me. Interviewing someone in a cage, while wearing a bullet-proof vest, is hardly the type of doctor-patient relationship in which we were trained as psychologists. (p. 1)

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This vivid, some may say extreme, example is a good illustration of the profound but often subtle, legal-ethical issues that frequently confront psychologists working in corrections or doing forensic work, irrespective of whether they work in the civil, criminal, or family law areas. While dealing with legal-ethical problems is an integral part of the professional practice of all psychologists, there is evidence that correctional and forensic psychologists are more likely to encounter these types of problems and to have complaints lodged against them (Ackerman & Dolezal, 2006; Bow, Gottlieb, Siegel, & Noble, 2010). A number of factors contribute to this situation.

First, correctional and forensic psychologists provide services to people whose legal rights are restricted by society's needs for safety and justice. Various researchers have demonstrated how psychologists who work in detention settings (Haney, Banks, & Zimbarbo, 1973; Zimbarbo, Haney, Banks, & Jaffe, 1973) and as expert witnesses (Jones, 1994) can be socialised and become desensitised and embedded in the situation (Franklin, 2011). In such settings, psychologists may lose their ethical objectivity and become ethically desensitised (Anderten, Staulcup, & Grisso, 1980; Franklin, 2011; Jones, 1994).

Second, while the correctional and forensic roles of psychologists have a long history (Allan & Davis, 2010; Davis, 2008) and are recognised in legislation (see, e.g., the Western Australian Sentencing Act, 1995) these roles differ from what society considers to be the primary role of psychologists. Increasingly through legislation regulating the profession in Australia (Health Practitioner Regulation National Law Act, 2009) and other jurisdictions such as South Africa (Health Professions Act 56, 1974) and the UK (National Health Service Reform and Health Care Professions Act, 2002), society defines the primary role of psychologists as that of health practitioners whose function it is to prevent and heal individuals' mental health problems. It is this narrow definition of the role of psychologists that often influence how peers and the public judge the practice of psychologists.

Third, this narrow portrayal of the role of psychologists also influences what legal-ethical issues scholars study and write about and the legal-ethical training of psychologists. As the focus tends to be on the legal-ethical issues experienced by psychologists in the roles of preventers and healers of mental health problems, correctional and forensic psychologists are not exposed to the type of legal-ethical reasoning that will assist them to deal with issues they encounter in the settings where they work. Consequently, correctional and forensic psychologists do not feel equipped to deal with novel legal-ethical issues that confront them, often experiencing a sense of cognitive dissonance, to the point where some of them want to deny that they are psychologists¹ (Appelbaum, 1990; Gutheil, 2004; Halpern, Halpern, & Doherty, 2008) or argue that the profession's code of ethics, or at least parts of it, should not apply to them (Schafer, 2001).

Finally, as correctional and forensic psychologists work with judges, lawyers, prison officers, and other people whose professional norms² differ from their own, they may be tempted to adopt their colleagues' professional norms because they fear losing credibility and the confidence of their colleagues (Clingempeel, Mulvey, & Reppucci, 1980; Jones, 1994). While their colleagues' norms may be appropriate for their roles, these norms are often not appropriate for psychologists who have different roles (Anderten et al., 1980).

The cumulative effect of the factors mentioned above is that some correctional and forensic psychologists feel unsupported; others feel disheartened when they try to maintain what they consider to be the ethical aspirations of the profession; while others may drift away from the ethics of the profession and engage in behaviours that erode the trust of the public in the profession and lead to division within the profession. The risk of this happening was well illustrated by the behaviour of psychologists working in military detention centres during the so-called War on Terror and the aftermath thereof (Behnke, 2006b; Miles, 2007; Pope, 2011; Pope & Gutheil, 2009)

The Guidelines Committee of the APS³ is developing guidelines for correctional and forensic psychologists that will undoubtedly be of great assistance to them. Guidelines will, however, not solve all the problems because it is practically impossible to draft a concise and accessible, but at the same time fully comprehensive, set of guidelines free of internal inconsistencies (Allan, 2011a). It is, for instance, unlikely that a set of guidelines would assist psychologists finding themselves in the

situation referred to by Karen Franklin (2011). To feel competent to deal with the legal-ethical challenges they face and to be able to explain their ethical position to their colleagues and other stakeholders, correctional and forensic psychologists need to understand their legal-ethical position which in turn requires a sound knowledge of the norm systems, and more specifically the ethical principles and rules that regulate their behaviour.

My aim with this article is therefore to identify the norm systems that guide the professional behaviour of psychologists, and to examine their content and the manner in which they are related, interact, and influence each other. I will pay special attention to the ethical principles that underlie the psychology profession's codes of ethics and examine the other norm systems that influence the interpretation of these ethical codes, principles, and rules. I hope to demonstrate that the best, but seldom the only, solution to a legal-ethical problem is usually the one that gives the best balance between the relevant norm systems and ethical principles.

Norm Systems

There are at least five norm systems that are relevant to the professional conduct of psychologists: individual morality, human rights, public morality, law, and professional norms. Many psychologists are also subject to the norms of organisations they work for (e.g., department of corrective service) or engage with (e.g., courts).

Individual Morality

People's individual morality is the set of unique and constantly evolving personal moral principles and rules which they actively, though not necessarily consciously follow (Allan, 2011b). The only sanction for non-compliance is a guilty conscience. As people's morality is influenced by their culture, religion, other norm systems, and their life experiences, it is to some extent driven by their subjective needs and motives. The subjective and emotional nature of individual morality has two important implications. First, it explains why people working within the same normative system can make diverse decisions. Second, it explains why the utility of individual morality is limited in legal-ethical decision-making. For instance, the value psychologists place on individual freedom may lead them to different, but equally valid, conclusions when they are confronted with a situation where they must weigh up the welfare of an individual and that of society (Grisso, 2001). It may, nevertheless, also lead to conclusions that the majority of psychologists find morally repugnant. This is a concern as individual morality is very influential because it operates at an intuitive, automatic, and mostly unconscious level and therefore affects all people's decision-making, even their critical and deliberate decision-making processes (Allan, 2011b).

Human Rights

The human rights construct can be traced back to classic Roman law, Medieval Canon law where it is linked to the Magna Carta (1215); the European and English Reformations; and the Enlightenment (Witte, 2007). It has influenced documents such as the American Bill of Rights (Witte, 2007) and modern legal

systems, including English Common law. As Australian Common law is based on English Common law, these rights have made their way into Australian law, and Australians therefore enjoy rights thought of as human rights even though the Commonwealth does not have a bill of rights. Two Australian jurisdictions have passed human rights legislation aimed at entrenching certain rights (e.g., see the Australian Capital Territory's Human Rights Act, 2004 and the Charter of Human Rights and Responsibilities Act, Victoria, 2006), and all jurisdictions have laws that protect specific rights, such as for instance the right to privacy (see, e.g., the Privacy Act, 1988).

The concept of human rights as applied in the APS Code of Ethics (Code; Australian Psychological Society, 2007) is, however, a modern version thereof that emerged among the members of the United Nations (UN) in the aftermath of the Second World War (McCrudden, 2008; Witte, 2007). In an endeavour to prevent a repeat of the atrocities committed during the Second World War, member states placed emphasis on human dignity and adopted the Universal Declaration of Human Rights (United Nations, 1948). In this document, they articulated what they considered to be the human rights of individuals and collectives across the world based on the recognition that "the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world" (Preamble, United Nations, 1948). As treaties of the UN are instruments of international law, aimed at countries rather than individuals, they are aspirational and do not automatically form part of the domestic law of a jurisdiction. They do, however, reflect those global rights of fairness and justice that transcend public morality and law and which are today seen as the unquestionable rights of every human. All psychologists as a collective, therefore have a legal obligation to honour those rights of people that form part of domestic law, and a moral obligation to aspire to respect human rights that do not form part of domestic law (Australian Psychological Society, 2007).

Since 1948, the UN has adopted a range of treaties that give effect to the Universal Declaration. Some of these deal with the rights of people that are directly relevant to psychologists, such as, those dealing with the rights of people with intellectual disabilities (United Nations, 1971), disabilities (United Nations, 1981) and mental illness (United Nations, 1991), the Convention on the Rights of the Child (United Nations, 1990), and the Declaration on the Rights of Indigenous People (United Nations, 2007). Two documents that are of particular importance to correctional and forensic psychologists are those dealing with the protection of persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment (United Nations, 1975), and the basic principles of justice for victims of crime and abuse of power (United Nations, 1985).

Public Morality

In contrast to human rights which are considered to be universal, public morality is the set of well-established and well-defined, but usually unwritten, principles and rules that reflects what a society or a specific group regards as appropriate behaviour⁴ (Allan, 2011b). Public morality manifests as cultural rules and customs and in contrast to individual morality is shared by

the majority in the society. In Western societies, those rules of public morality that are highly valued have mostly become legal rules, and the social sanctions for non-compliance with other rules of public morality are usually non-coercive and rarely go beyond the social shunning of the wrongdoer. Even in Western societies, public morality remains important as it influences individual morality, professional ethics, organisational norms, and law. Further, where law and public morality coincide, there is usually greater compliance with the law because of the added moral obligation (Hahlo & Kahn, 1968).

Law

In democratic countries, law is largely an expression of the public morality in the relevant jurisdiction because it is made by delegates of the majority of citizens in the jurisdiction. Governments do, nevertheless, make law that goes beyond the public morality of the time when they consider it to be in the public interest. For instance legislation regulating smoking, seatbelts in cars, and helmets for cyclists was, initially at least, not widely supported by the public (Allan, 2011b).

Law operates in three distinctive but complementary ways: it confers rights, it creates prohibitions, or imposes obligations,⁵ and very importantly, it establishes enforcement procedures (Miller, 2002). This ability to enforce norms is one of two factors which give law its relative prominence *vis-à-vis* the other norm systems because it provides powerful criminal sanctions and civil remedies to those whose rights have been violated. The other factor that makes law the dominant norm system is the rule of law which provides that no person or entity is beyond the law. The rule of law is recognised in the Preamble of the Code which provides that "psychologists respect and act in accordance with the laws of the jurisdictions in which they practise. The Code should be interpreted with reference to these laws" (Australian Psychological Society, 2007).

Law may sometimes be immoral (Honoré, 1993) as demonstrated by the laws in Nazi Germany prior to the Second World War. In such situations, psychologists' individual morality may compel them to follow their conscience and do what they believe is right even though what they do is illegal.

Organisational Norms

Organisational norms refer to those implicit or explicit principles and rules that organisations develop to assist them in exercising their social role and to regulate the behaviour of their employees and others who provide services to them. These norms may be articulated as goals, expectations, policies, principles, and rules, and non-compliance may lead to reprimands and other disciplinary action and may even have legal repercussions. The function of an organisation determines its norms, and these norms may require psychologists it employs to adopt a role that differs from the healing role officially ascribed to psychologists. As organisational norms must comply with law, there is no legal reason for psychologists not to obey them. Organisational norms, however, need not necessarily be consistent with professional norms, and therefore psychologists working for certain organisations will have to accept some tension between their professional and organisational norms.

Professional Norms

The stable, though incomplete, set of norms widely shared by the members of a profession (Beauchamp & Childress, 2009) constitutes its professional norms. Psychology, as is customary for most professions, publishes codes of ethics and conduct to make a public statement of their ethical principles and the standards of conduct expected of members when they practise, teach, or do research (Allan, 2011a). The Code is a continuation of the code of the Australian Branch of the British Psychological Society, the predecessor of the APS, published in 1949. Cooke (2000) relates that the initial code was developed because of concerns regarding the use and publication of psychological data that had been accumulated during the Second World War and issues around deception and confidentiality in research and practice. The aim of the code was to protect the welfare of individuals and society and the reputation of the profession (British Psychological Society (Australian Branch), 1949). In the 60 years since its first publication, the code has been revised on a number of occasions, and the Psychology Board of Australia adopted the 2007 version thereof in 2010 (Allan, 2010a, 2011a); and it therefore binds all Australian psychologists. The Code has also been recognised by the courts as an indicator of the professional ethics of Australian psychologists (Psychologist Registration Board v Robinson, 2004; Psychologists Board of Queensland v Robinson, 2004).

As psychologists' role and the context within which they work influence the application of the ethical principles and standards, the APS further develops and publishes Ethical Guidelines (APS, 2010) that explain and augment their application in specific settings. The guidelines and the standards published in codes are, however, never exhaustive because it is impossible to capture the whole body of professional ethics in a guideline or standard, and it is, in any event, undesirable to do so as doing so will discourage higher level moral reasoning (Kohlberg, 1976). In order to deal with novel ethical problems, psychologists therefore require a thorough understanding of the ethical principles that form the foundation of these standards and guidelines.

Ethical Principles

The Code is based on ethical principles⁶ that are similar to those of psychologists in other countries (Allan, 2010b, 2011b) and those expressed in the Universal Declaration of Ethical Principles for Psychologists (2008). As the affect, behaviour and cognitions of humans are the focus of psychologists' endeavours, even of those who do not directly work with people, it is not surprising that the philosophy of Kant (1724–1804), which emphasises the dignity of persons,⁷ has strongly influenced the ethical principles adopted by psychologists (Eyde & Quaintance, 1988). Kant⁸ (1785/2001) argued that persons' humanity, that is, their unique ability to conscious and rational reasoning, makes it possible for them to distinguish between right and wrong behaviour and to make autonomous and reasoned choices. Their humanity therefore gives persons dignity that is an *inner worth*, which makes them worthy of respect (Kain, 2009). Kant further argued that because of their humanity, persons are obliged to make moral decisions (i.e., choose

between good and bad and right and wrong) and to respect humanity in themselves and other people irrespective of how they appraise them. Some philosophers propose that the dignity of persons is therefore inviolable (Dillon, 2010; Kain, 2009) and that people should recognise that some individuals and groups are more vulnerable to disrespectful behaviour and remove obstacles that prevent them from experiencing a dignified existence (Dillon, 2010).

A well-known ethical principle that psychologists derive from Kant's (1785/2001) theory is *respect for autonomy*, that is, that psychologists are obliged to respect competent persons' ability to make decisions regarding matters that are of importance to themselves, even though the decisions they make may objectively appear to be bad or wrong decisions. To be able to make autonomous decisions, people must be fully informed and make their decisions freely and voluntarily without any undue influence or coercion. Where clients' ability to make autonomous decisions is possibly or actually compromised because of factors such as their health (physical or psychological) or situation (e.g., detention), psychologists should take steps to optimise their ability to make autonomous decisions. A necessary implication of this ethical principle is that competent persons can waive their rights, for instance to be fully informed about the limitations of a procedure; or by permitting a psychologist to give a copy of their confidential clinical notes to a lawyer. Consent, however, never justifies psychologists to act in a manner that is illegal or disrespectful of the dignity of other people, as discussed next.

The ethical principle *respect for the dignity and rights of people* requires psychologists to respect persons' physical and psychological integrity, legal rights (e.g., intellectual property rights), and moral rights (e.g., those human rights that do not form part of law). This principle comes closest to reflecting Kant's (1785/2001) notion that people must respect the humanity of others. It is essentially about the manner in which people treat others. Psychologists must therefore not demean or defame persons and must treat them in a way that will foster their positive self-regard (Rawls, 1999). The situation related by Karen Franklin (2011) suggests that the humanity of the relevant prisoner was not being respected by the prison authorities. Psychologists must also respect the privacy of people by not encroaching in their sphere of intimacy (the so-called right to be left alone) and by keeping information that they have obtained in their professional capacity confidential.

The *integrity principle* reminds psychologists to be open, honest, and accountable in their professional dealings. They must be accurate and objective when they communicate with clients, and when they convey information about clients. Psychologists who write reports should therefore be absolutely honest and should not mislead readers in any manner (Bazelon, 1982). In a seminal paper, Judge Bazelon identified what he calls sins of forensic psychologists in this regard, namely their failure to disclose their "underlying observations and methods of inference" (p. 116), "values" (p. 116), and "role conflicts" (p. 117) they may have, and "uncertainties and divisions of opinion that may exist about" their findings (p. 117). Psychologists must correct any misconceptions people may have about them and their role. Clients who have had dealings with psychologists may not, for instance, appreciate that correctional and forensic psychologists usually cannot maintain the same

level of confidentiality as psychologists who work in traditional clinical and counselling settings and should be warned about this.

The procedural justice component of the *justice principle* (which in general requires psychologists to treat people fairly and overlaps with the integrity principle) is of particular importance to correctional and forensic psychologists as they often make decisions that impact on other people's lives, or provide information to those who make such decisions (Allan & Davis, 2010).⁹ Procedural justice requires that psychologists who are making decisions about other people take into account all relevant information, have an open mind (i.e., remain open to persuasion), and be unbiased. This means that psychologists should not have any actual or conscious prejudice, arising from past contacts or knowledge, towards persons whom they make decisions about and must also avoid any situation that *may* create the perception that they are biased. The test of perceived or apprehended bias is whether an independent, reasonable, informed observer could believe that the psychologist may be biased. This is one of the reasons why psychologists should not write reports for family courts where one of the parties is a current or former client.

The *responsibility principle* reminds psychologists that they are accountable to various persons and entities, which could include the organisation they work for, their profession, their clients, and the society. Psychologists who work for *organisations* will be bound by their service agreement with the organisation and, as discussed above, the norms of the organisation. Psychologists' responsibility to the *profession* stems from an agreement that they, in return for the privileges they acquire by registering, will refrain from doing something that may reflect negatively on the profession or discipline or that will discourage members of the public from trusting or using the services of psychologists. Psychologists' responsibility to their *clients* is determined either by the explicit or implied contracts with them or their role. The definition of client is wide and includes "a party or parties to psychological service involving teaching, supervision, research and professional practice in psychology" (Definition section, Australian Psychological Society, 2007). Psychologists (e.g., single court experts appointed under the Family Law Act, 1975) frequently find themselves in situations where they may have more than one client as defined in the Code. Standard B.5 of the Code requires psychologists in these circumstances to determine what their specific responsibility towards each of their clients is and to explain this to each of them. Ultimately, both the profession and individual psychologists, however, have a responsibility to *society* which arise from a social contract between the professions and society (Parsons, 1968). In terms of this contract, society bestows certain privileges on the psychologists as individuals and a collective, who in return address society's needs and protect the interests and welfare of society, and individual members of society. All psychologists must therefore protect the interests of society: They must, for example, disclose confidential information regarding clients who pose an immediate and serious threat to identifiable persons if this is the only reasonable method of averting the danger. It is inevitable that there will often be tension between psychologists' responsibilities to different people and entities that they will have to resolve, an issue that I will revisit later.

The *fidelity principle* reflects the fact that the relationship between psychologists and their clients is seen to be uneven. Psychologists are seen to be in a position of power *vis-à-vis* their clients because of their knowledge, skill, and insight. Clients are seen to be disempowered because they are usually vulnerable when they consult psychologists and can only receive a service if they make themselves even more vulnerable by sharing intimate and sensitive information with psychologists. In the eyes of the public, forensic psychologists in particular appear to be seen as very powerful, as demonstrated by the comment of two *Seattle Times* reporters that a deceased psychologist "as a parenting evaluator in child-custody cases, carried tremendous power" (Sullivan & O'Hagan, 2007, p. 10). People must therefore trust that psychologists they engage with professionally are trustworthy in the sense that they are competent, loyal, and committed to act to their clients' benefit even where it may be detrimental to their own interests or those of others. The application of this principle, which I will discuss later, is restricted in some settings that correctional and forensic psychologists work in.

The *nonmaleficence principle* (do no harm) reflects the obligation of all people, including psychologists, to refrain from deliberately or negligently harming other people; and refrain from engaging in behaviour if there is a reasonably foreseeable risk of harm to others.¹⁰ Psychologists must therefore not create a potential risk of harm by exceeding their competence or departing from the professional standards expected of reasonable and prudent psychologists in the same circumstances. It is, nevertheless, unavoidable that psychologists will at times cause unintended but avoidable harm, for instance, their clients undergoing grief therapy may during the process become very distraught and even develop suicidal ideas. As the ultimate goal of psychologists providing grief therapy is, however, to benefit their clients, the beneficence principle, which I discuss next, justifies proceeding with the therapy if it is indicated.

The *beneficence principle* (do good) requires psychologists to take positive steps to contribute to the welfare of their clients and has two components (Beauchamp & Childress, 2009). The first of these is *utility*, which requires psychologists to attempt to maximise the positive outcomes for clients by balancing the risks, costs, and benefits in all situations and taking the course of action that will optimise the benefits relative to the risks and costs. In situations where a client will be harmed, psychologists must try to mitigate the harm. While grief therapy is, for instance, justified, the therapist must still take reasonable steps to minimise the transient distress the client may experience. The second component, *positive beneficence*, requires psychologists to anticipate and neutralise, as far as reasonably possible, factors which may cause harm to clients even where there is no legal obligation to do so. Psychologists who foresee that a course of action pursued by clients may cause them harm should therefore advise them of the foreseeable risks. The beneficence principle does not allow psychologists to act in a paternalistic manner by directing clients to act in a certain manner, or acting on behalf of clients without their consent, because doing that ignores their clients' autonomy. Psychologists can therefore warn competent clients of the risks of their course of action but must then allow them to decide what to do about these warnings. It follows that clients who ignore psychologists' advice must take responsibility for the consequences of their decisions.

Dealing with Legal-Ethical Issues and Finding the Right Balance between Obligations

When psychologists are confronted by legal-ethical problems, the Code, read with one or more of the Ethical Guidelines if appropriate, will mostly provide adequate guidance. These documents reflect the ethical principles of the profession and take into account the public morality of the relevant society and the law of the jurisdiction that would include enforceable human rights expectations. The Code, particularly the standards which are the applications of the ethical principles, should, however, always be interpreted with reference to the role and setting psychologists work in, because this will determine what norms are relevant and the weight that should be given to them. It is therefore possible that what is appropriate for psychologists working in a high security forensic mental health unit may be inappropriate for psychologists who work in a community mental health clinic next door. I will next try to demonstrate how the various norm systems influence the interpretation of the Code.

The norm system that is most likely to influence the interpretation of the Code is *law*, especially the civil, correctional, criminal, family, and mental health law in the jurisdiction in which psychologists work, but sometimes even the common law may need to be considered. A case in point is the prevention of suicide and self-harm where Allan et al. (2006), after a review of the relevant case law, concluded that when it comes to the prevention of suicide “the burden on practitioners working in prisons will be greater than on those in private practice” (p. 232). Therefore, while clause 2.5 of the Australian Psychology Society (2009) *Guidelines Relating to Suicidal Clients* cautions psychologists to respect “the client’s autonomy, . . . [in] . . . deciding whether and when to intervene, . . .” the common law is such that most, if not all, departments of corrections direct psychologists to take steps to prevent clients from self-harm. In most cases, departments have specific protocols in place that may require psychologists to act in a way that will ignore prisoners’ rights to autonomy, and may not be in accordance with what is considered to be best practice in most other settings.

Legal provisions that are not directly aimed at the behaviour of psychologists can also influence the ethical decision-making of forensic psychologists. For instance, psychologists conducting an assessment in a family law dispute may conclude that it would be in the best interest of a child if the court orders the father to be the primary caregiver, but realise that if the court makes such an order it will have a devastating emotional effect on the mother who has a history of severe depression and self-harm attempts. Normally, psychologists will have to weigh up the relative risk of harm to the mother versus that to the child. They must also take into account the integrity principle requiring them to be honest and the justice principle requiring them to be fair to all parties. The factor that will, however, be conclusive here is the rule that the interest of children are paramount in family law matters, and therefore the psychologist will have to write a report that reflects that putting the child in the care of the father will be in his or her best interest despite foreseeing that this may cause the mother psychological harm.¹¹

When considering the scenario in the previous paragraph, psychologists should also be cognisant of the legal rule that

expert witnesses are consultants of the courts and therefore required to be totally objective and honest when they communicate with the court (Allan, 2005; Allan & Davis, 2010; Allan & Meintjes-Van der Walt, 2006). Adherence to this rule makes it impossible for psychologists to be as loyal to their clients as envisaged by the fiduciary principle may lead to the disclosure of confidential information that clients do not want to be disclosed, and can harm both clients’ legal and psychological interests. The beneficence principle consequently requires psychologists about to undertake an assessment which they know will, or could, lead to them writing a court report, or testifying in court, to inform the people they are about to assess that the normal rules such as confidentiality and loyalty may not apply in respect of the relevant assessment, and that information collected could be subpoenaed even if no formal report is prepared. Where psychologists anticipate that the content of a court report could be psychologically harmful to the person whom they assessed, or somebody related to that person, they should take steps to minimise such harm. Such interventions should be ethical (i.e., should not involve a boundary crossing except if there is an emergency) and must not interfere with the legal process. Psychologists should therefore consult a lawyer before they intervene with somebody they have forensically assessed.

Where a clear legal rule applies, psychologists should follow it but with two very important provisos. First, the standard of conduct required from psychologists by law may be less stringent than what is required of them by their professional ethics. This is because law generally sets minimum behavioural standards, whereas professional ethics are aspirational and therefore can require a higher standard of conduct. A case in point is the ethical prohibition of social and sexual relationships between psychologists and their adult clients even though it is lawful in Australia for two consenting adults to have social and sexual relationships (for a more in-depth discussion, see Allan & Thomson, 2010). Psychologists who ignore the higher ethical standard act unethically. Second, legislation in the correctional, family, and mental health law areas may give psychologists coercive powers, such as requesting the court to compel a person by subpoena to provide them with information. Psychologists may also find that courts provide them with confidential information about people without obtaining consent for it to be used by the psychologist. For instance, a parole board may provide psychologists transcripts of prisoners’ private telephone conversations to consider when they write parole reports. Despite this legislative authority, psychologists must exercise their powers, or use the information, in accordance with the provisions of the Code and its underlying ethical principles. At least three ethical principles are relevant here.

To start with, psychologists should respect the autonomy of the prisoners and provide them with adequate information to make a choice. Furthermore, psychologists must not cause harm and it is likely that prisoners who feel that their rights have been disregarded may refrain from using the services of psychologists in the future, or more concerning, discourage others to do so. Finally, psychologists have a responsibility not to bring the profession into disrepute, and if prisoners feel psychologists have disregarded their rights it brings the whole profession into disrepute. Psychologists with coercive powers should therefore as a

rule not exercise them without consent, but in obtaining consent they must inform, in this case, prisoners that the parole board is likely to make a negative inference should they refuse to give psychologist consent to study the transcripts. It is true that prisoners' choices in these circumstances are restricted, but these restrictions are imposed by law and are justified by the societal interests of justice and security.

Codes must also be interpreted with reference to *organisational norms* and they may be more problematic than legal norms because they are specific to the organisation; not transparent and poorly articulated, but at the same time very influential within organisations. Two factors make the norms of organisations that correctional and forensic psychologists generally work for particularly problematic. First, they are often organisations that society, or more specifically the state, has given coercive powers to allow them to protect society's security and promote justice (e.g., courts; departments of corrections; forensic psychiatric hospitals; and the police). They may even have a mandate to take proactive steps to protect society by collecting covert information (e.g., intelligence organisations and crime and corruption investigating agencies). Second, many of the people served by these organisations have extensive criminal records or histories of violent or socially inappropriate behaviour and many of them could pose a threat to the safety of employees of the organisations. The norms of these organisations therefore tend to be aimed at ensuring the protection of the public and staff, even at the cost of the rights of those they serve.

The authors of the Preamble to the Code anticipated that there would be tension between the Code and the norms of the organisations psychologists. Therefore, psychologists are instructed to act with reference to, but not necessarily in deference to, any organisational norms and procedures to which they may be subject. Standard B.12.1 of the Code further provides that where the demands of an organisation require psychologists to violate the principles, values or standards set out in the Code, they should clarify the nature of such conflicts; inform all parties of their legal-ethical responsibilities; and seek a constructive resolution of the conflict that upholds the principles of the Code. Where psychologists who, for instance, work in a prison feel that the organisation's norms require them to treat clients or potential clients in a demeaning manner (see examples given by Franklin, 2011), they should endeavour to change these norms. In all other instances, they should adhere to their ethical rules as far as is practically possible within the norms of the organisation. Correctional psychologists, who, for instance, facilitate groups attended by sexual offenders merely because it is a prerequisite for obtaining parole, should accept that the participants are not, objectively, making a free and voluntary decision to attend the group. This is, however, a reality and psychologists' obligation under these circumstances is to ensure that the prisoners are fully informed of the options they have, restricted as they may be, and are allowed to make an optimally free and voluntary decision within the context.

The final norm system that will always, to some degree or another, influence psychologists' interpretation of a code is their *individual morality*, and this is important at two levels for this article. To start with, the emotive and potentially self-serving nature of individual morality can lead to poor ethical decision-making. Psychologists can change this by internalising the

ethical principles of the profession as virtues, which should ensure that their decision-making will usually meet the minimum legal and ethical standards.

Furthermore, psychologists' individual morality may lead them to question the legal, organisational, or professional norms they are subject to, and this could make it difficult for them to do their work. While they are entitled to advocate for changes to the relevant norms, if unsuccessful it is questionable whether psychologists should work in settings where they know that their moral values are contrary to the relevant legal, professional, or organisational norms that apply in the setting as they will inevitably be confronted with difficult decisions and experience stress that may be to the detriment of the service they provide to their clients. A problem is that many of the work settings where psychologists experience this form of emotional discord are settings where there is a great need for psychological services. The same values that make psychologists question the relevant legal, organisational, or professional norms are often those that lead them to believe that they have a moral obligation to provide services there.

Exploring the posed question further is beyond the ambit of this article, but I will attend to the situation where psychologists find themselves in a situation where they feel that the legal, organisational, professional, or a combination of these, norms that are relevant in a specific situation are immoral. Take the case of psychologists who receive legal opinion that they are compelled to disclose confidential client information while they feel that the confidential nature of client notes is inviolable. As psychologists violate the autonomy of other people by imposing their individual morality on them, they should be irrespective of their own views, first determine what their clients' views are. If clients approve the disclosure, psychologists should respect their views as the right of confidentiality is that of the clients. Should their clients oppose the disclosure of the information, psychologists must consult a colleague and where appropriate a lawyer, to obtain an objective opinion as they are entitled to explore legitimate avenues to avoid disclosing the information. Where there is, however, no such avenue, or the psychologists have exhausted all such avenues, they should disclose the information. As autonomous persons psychologists may, however, choose to ignore the relevant norms, but before they do so they need to consider the consequences of such behaviour as they may face social, legal, or disciplinary sanctions (for a debate in this regard, see Ansell & Ross, 1990; Eenwyk, 1990; Pope & Bajt, 1988).

Finally, where psychologists cannot find a solution to a problem in the Code or any of the norms systems, psychologists should apply the eight *ethical principles*. As each of the principles has equal weight, psychologists may be confronted with ethical dilemmas where they must choose between two or more courses of action, each that will have substantial consequences and which is supported by one or more ethical principles (Allan, 2011b). They therefore face a situation where whatever course of action they take they will compromise at least one ethical principle. Psychologists could also be confronted with situations where they have obligations flowing from the same principle but to more than one person. Where people are confronted with competing obligations they should, according to Ross (1930), consider the situation carefully and then obey the obligation

which they conclude is “in the circumstances . . . more incumbent than any other ” (Ross, 1930, p. 19).

Conclusion

Correctional and forensic psychologists fulfil an important social role, but it differs from that of psychologists working in traditional mental health settings. In the contexts they work there is a relatively higher risk of being confronted by legal-ethical challenges, many of which will differ from those their peers encounter. While the same norm systems that regulate the decision-making and behaviour of their peers, govern correctional and forensic psychologists, the application of the components of these norm systems differ due to differences in their role and responsibilities. The specific set of ethical guidelines that the Ethical Guidelines Committee of the APS is in the process of developing should assist correctional and forensic psychologists but will never provide answers to all the novel legal-ethical problems that they may encounter. They therefore still need to have a sound knowledge of the norms that govern their professional practice, particularly the ethical principles of the profession. Of these principles, the one that is of particular importance to correctional and forensic psychologists is respect for the dignity and rights of people, as what they do must always be respectful of the humanity of those they work with.

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Endnotes

1. Some other psychologists, notably industrial and organisational psychologists, feel the same (Behnke, 2006a; Bordow, 1971).
2. The word *norm* is derived from the Latin word *norma* which means “a carpenter’s square for measuring right angles” and in a transferred sense it is used to refer to a standard or rule (Simpson, 1971, p. 396). In this article, I define a norm as a principle or rule that governs conduct, action, or procedure, in other words, it tells people what they ought and ought not to do.
3. The American Psychology and Law Society (2011) recently published a revision of its guidelines which were first published in 1991.
4. Religion informs public morality and, in some societies, there may be very little distinction between religious and public mores.
5. Ordinary persons also create legal obligations and duties, e.g., by concluding contracts.
6. For ease of communication, I distinguish eight not mutually exclusive principles, but they could be collapsed into fewer principles, and the nomenclature I use is not universal either.

7. As codes of ethics, declarations of the UN and law are all products of their time; it is probably no coincidence that the first national codes of ethics in psychology, the UN declarations of human rights and legal reform aimed at making it easier for people to protect their dignity and human rights, all appeared in the middle of the 20th century in the wake of the total disregard for human dignity during the Second World War.

8. There are other philosophers whose work could also provide valuable guidance to psychologists, but I will limit this discussion to Kant’s (1785/2001) work because it has such a major impact on ethical thinking generally and forms the basis of the ethical principles of psychologists.

9. There is an abundance of research that demonstrates the psychological importance of procedural justice, see for instance Tyler (1984) and Lind and Tyler (1988).

10. This principle provides the moral foundation for the legal rule that prohibits people from harming other people.

11. While it is beyond the scope of this article to explore the topic further, this demonstrates how important it is for psychologists to use an effective decision-making process when they are confronted by legal-ethical problems. See Allan (2011b) for an overview of the different decision-making approaches that are available.

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