Moral Challenges for Psychologists Working in Psychology and Law

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States have an obligation to protect themselves and their citizens from harm, and they use the coercive powers of law to investigate threats, enforce rules and arbitrate disputes, thereby impacting on people's well-being and legal rights and privileges. Psychologists as a collective have a responsibility to use their abilities, knowledge, skill and experience to enhance law's effectiveness, efficiency, and reliability in preventing harm, but their professional behaviour in this collaboration must be moral. They could, however, find their personal values to be inappropriate or there to be insufficient moral guides and could find it difficult to obtain definitive moral guidance from law. The profession's ethical principles do, however, provide well-articulated, generally accepted and profession-appropriate guidance, but practitioners might encounter moral issues that can only be solved by the profession as a whole or society.

Key words: ethics; forensic; human rights; law; morality; psychology; risk assessment.

Disciplines and professions have an obligation to serve the interests of both society and its individual members (MacDonald, 1995; Parsons, 1968). Modern societies and individuals therefore expect psychologists to provide services to law that I define broadly to include the correction, investigative and justice systems. Psychologists provide services to these systems directly as administrators, consultants, policy advisers or practitioners using psychological resources (data, methods and instruments) that other psychologists have created as researchers, documented, edited, reviewed or taught. Some practitioners use these resources to provide therapeutic or rehabilitation services, but my focus is on the psychologists (assessors) who use psychological resources to generate information that law uses to make decisions that invariably impact on people's well-being and their legal rights and privileges.

Society's Use of Law and Coercion

The roots of law go back to the hunter-gatherer groups, which could only survive external threats and achieve their goals by ensuring internal order, strengthening the cohesion of the group, promoting mutually beneficial cooperation, and checking destructive selfish behaviour (Cosmides, 2015; Krasnow, Delton, Cosmides, & Tooby, 2015). Modern neuroscientists and psychologists (see, e.g. Rilling & Sanfey, 2011) confirm the belief of generations of scholars that people crave structure and order (see, e.g. Freud, 1927; Kelsen, 1943; Mill, 1859/1974) and feel wronged when others violate social norms (Rilling & Sanfey, 2011; Sanfey, 2007). Researchers (see, e.g. Pietrini, Guazzelli, Basso, Jaffe, & Grafman, 2000; Strang, Fischbacher, Utikal, Weber, & Falk, 2014) also confirm the historical view (see, e.g.

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Kelsen, 1943; Piaget, 1932/1965) that people's primitive survival need to protect themselves and significant others from further abuse (Von Fürer-Haimendorf, 1967) predisposes victims to retaliate by taking revenge (for a discussion see McCullough, Kurzban, & Tabak, 2013; Tripp & Bies, 1997).

States try to prevent vigilante behaviour (Hogan & Emler, 1981) that can lead to harmful cycles of violence by creating law that provides victims access to grievance procedures and remedies that they can use to offset the consequences of wrongful behaviour. Law therefore allows State organs to intervene in disputes by forcing people to undertake activities (e.g. community service, paying damages or fines) or to discontinue activities (e.g. trespassing on property or contacting specific people), or suspending or modifying their rights or privileges (e.g. imprisoning them or restricting their access to, or opportunity to parent, their children).

Since the 16th century, States involuntarily detain people whose lack of insight as a consequence of their mental disorders might cause them to harm themselves or others, on the basis that they lack the competency to make rational decisions (Allan, 2002). States, however, also increasingly use the risk of harm to people and the broader society to justify regulating the activities of competent people, such as compelling cyclists to wear head protection, preventing people from smoking in public spaces or paying for consensual sex (Mis, 2016). States further use criminal law to investigate and control the behaviour of people, and psychologists have recently expressed moral concerns about their peers' involvement in three types of regulation of activities.

Law, firstly, uses psychologists to assess people's risk of reoffending in an attempt to control those with a propensity to commit crimes. Law tries to prevent these people from committing future crimes by detaining them (even if they had not been found guilty of crimes, see, e.g. McSherry, 2014), or compelling them to wear radio transmitters, or

preventing them from going to locations (e.g. close to schools).

Law, secondly, uses psychologists to develop behavioural profiles of suspects using covertly collected information (Allan, 2015) or using information for another purpose than that for which they had obtained consent to use it (see, e.g. Inmate Welfare Committee, *William Head Institution v Canada*, 2003 – Inmate case). The Canadian Federal Court in the Inmate case held that the Charter of Rights and Freedoms and Bill of Rights (Charter; Canadian Constitution Act, 1982) did not stop Correctional Services Canada (Corrections Canada) psychologists from completing a Psychopathy Checklist-Revised (PCL-R; Hare, 1991) using file data without offenders' consent if Corrections Canada needed it to fulfil its legislative mandate of protecting the public.

The final concern is psychologists' involvement in forensic interviews and interrogations as supervisors or consultants of investigators (e.g. observing actual or video recordings of interviews and making suggestions to interviewers) or as investigative interviewers (e.g. in family and child protection or criminal matters). Law has used interviews since the dawn of history (Donohue, 2008), but people who associate them with the Inquisition (Burman, 2004) and police abuse (Ofshe & Leo, 1997) often view them negatively. Psychology's involvement with interviews is not new because interviewers, interrogators and investigators have used psychological data (Münsterberg, 1908/1925), and psychologists have adopted investigative roles (see, e.g. Marbe, 1930; Münsterberg, 1908/1925) since the emergence of psychology as a separate discipline. Psychologists' purported involvement in so-called enhanced interviewing and its association with torture, however, has led to contemporary debates about psychologists' role and the use of psychological knowledge during interviews and interrogations (see, e.g. Arrigo, DeBatto, Rockwood, & Mawe, 2015; O'Donohue, Maragakis, Snipes, &

Soto, 2015; O'Donohue et al., 2014; Suedfeld, 2007).

A theme underlying these three activities is that they involve psychologists in law's use of 'organized coercion' (Lloyd, 1964, p. 41) to achieve its goals (Dworkin, 1986; Hart, 2012). Philosophers accept that States can use coercive legal powers to control autonomous people's behaviour, but since the 18th (Von Humboldt, 1792/1854) and 19th (Mill, 1859/1974) centuries they argued that this is only justified when directed toward prevention of harm to other individuals (the *private harm principle*). Modern philosophers argue that there is also a *public harm principle* that allows States to use coercion to prevent harm to public interests (see, e.g. Feinberg, 1973). States that use coercion to prevent harm, however, often also cause unavoidable and unintended harm (see, e.g. Gatti, Tremblay, & Vitaro, 2009), and therefore the net result might be immoral (wrong and/or bad). Citizens should therefore scrutinise the morality (rightness and goodness) of the purpose, provisions and administration of coercive legislation.

Some argue that legislators sometimes introduce coercive criminal legislation for the *purpose* of attracting votes rather than preventing harm (see, e.g. Nutall, 2000), whilst others contend that it reflects the public's punitive and intolerant opinion about certain forms of offending behaviour (see, e.g. De Keijser, 2014; De Keijser & Elffers, 2009), such as terrorism (Carlé, Charron, Milochévitch, & Hardeman, 2004; Van de Lagemaat, 2012). Perceived public opinion, however, might not accurately reflect public morality (i.e. what society as a whole considers as right and good) because it fluctuates depending on variables such as people's education and socio-economic status (Carpenter, 1889) and could be swayed by external influences such as biased messages from police in search of more resources and the media that make money out of crime coverage (Roberts & Plesničar, 2015). People should further consider the *provisions* of the relevant legislation

that determine the kind, magnitude, probability and immediacy of the targeted harm that justify the unavoidable and unintended harm caused by the lawful intervention (Brookbanks, 2002). In particular, they need to consider who should determine the relevant risks and what degree of certainty they should have that interventions will cause direct and immediate harm of a lesser magnitude than the targeted harm (McAlinden, 2001). Psychologists might not necessarily engage in the debate regarding the purpose and provisions of relevant legislation, but they should consider the moral appropriateness of their direct or indirect involvement in the *administration* of the relevant legislation.

Personal Decision Making

A range of factors make people's moral decisions poorer than they estimate (see, e.g. Allison, Messick, & Goethals, 1989; Tenbrunsel, 1998). For instance, their affiliation needs, emotions, feelings of disgust and other mechanisms that protect their self-worth and self-interest (Babcock & Loewenstein, 1997; Babcock, Loewenstein, & Issacharoff, 1997; Epley & Caruso, 2004; Greenwald, Pickrell, & Farnham, 2002; Hastorf & Cantril, 1954) could influence their decisions (for a critical overview see Newell & Shanks, 2014). People, in part, make decision-making mistakes because the constant demands on their finite cognitive abilities to make multiple decisions rapidly (see, e.g. Ericsson, Charness, Feltovich, & Hoffman, 2006; Gigerenzer & Todd, 1999; Rieskamp & Hoffrage, 1999; Simon, 1955, 1956; Tversky & Kahneman, 1974) lead them to make decisions non-consciously (see, e.g. Greene & Haidt, 2002; Reynolds, 2006). People make non-conscious decisions using two closely related constructs – namely, *prototypes*, which are neural representations (Smolensky, 1988) of objects or notions (e.g. do no harm), and *heuristics*, which are methods that allow people to arrive 'at satisfactory solutions with modest amounts of computation' (Simon, 1990, p. 11).

People would not be able to survive if they did not make decisions non-consciously, and such decisions work well for routine situations, but not necessarily when people have to make novel or complex moral decisions in professional contexts. The first problem is that psychologists might tend to choose the first satisfactory option that they identify without distinguishing relevant and irrelevant evidence, alternative options and the evidence for and against options (Simon, 1955, 1956; Tversky & Kahneman, 1981, 1986). The second is that psychologists' inclination to avoid cognitive dissonance (see, e.g. Festinger, 1957) might lead them to use prototypes based on their subjective personal values that are not appropriate for professional decisions. For instance, compassion is an admirable personal trait, but psychologists who are overly compassionate could make decisions leading to boundary violations in professional relationships (Allan, 2017).

However, people can improve the quality of their moral decision making by using the method that experts use (Campitelli & Gobet, 2010; Morris & Moore, 2000; Rest, 1979). This includes two broad strategies. The first is to develop heuristics that allow them to identify and choose the best of the available solutions by focussing on relevant information and analysing it as deeply and abstractly as the complexity of tasks require and the time allows (Campitelli & Gobet, 2004). The second strategy, and more important for this article, is to develop prototypes to guide their conscious and non-conscious decision making (see Allan, 2017, for a discussion). Psychologists develop and internalise these prototypes by storing objective chunks (Chase & Simon, 1973) or templates (Gobet & Simon, 1996) of normative information that they then use to solve moral problems. The problem confronting psychologists is where to find external and objective norms that transcend their personal values to internalise as prototypes. A place where they might find them is in the decisions of courts.

Law and Morality

Most psychologists could find it difficult to establish what moral principles underlie law because two rival traditions exist in law regarding who should decide the morality of legislation and what principles they should apply when doing so. Proponents of *natural law* generally believe that judges must decide the morality of legislation by applying the universal law that humans 'possessed in a state of nature' (Lloyd, 1964, p. 83), but often disagree about what law humans possessed in a state of nature. They initially used *divine law* as a yardstick, but later adopted the *fundamental rights* identified during and after the Reformation (Witte, 2007). These rights (see, e.g. Bill of Rights of the United States, 1791), however, often do not flow from a clear set of moral principles, but rather from arbitrary assumptions about the desires of people with a specific socio-cultural history (Lloyd, 1964).

Legal positivists in contrast generally make a clear distinction between legal (what is the law?) and moral (what ought the law be?) questions and argue that all people, including judges, must follow and obey existing law and use legitimate means to change such law, or parts of it, that they consider immoral (Lloyd, 1964). Positivists therefore believe that judges should refrain from questioning the morality of the purpose and provisions of legislation, which means that they could administer immoral legislation as happened in, for example, Nazi Germany.

Proponents of both traditions therefore, particularly since the Second World War, started looking at human rights law to find a set of moral principles that provides natural law supporters with a set of generally accepted and universal moral principles and positivists with legal principles based on a clear moral foundation (Lloyd, 1964). The foundational moral principle of human rights law is respect for human dignity (McCruden, 2008), which philosophers such as Locke (1690/2005), Rousseau (1762/2002)

and Kant (1785/2001, 1796/1887) initially developed. Most people consider the United Nations' (1948) *Universal Declaration of Human Rights* as the cornerstone of human rights law, but it and other United Nations treaties and instruments, such as the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (United Nations, 1985), do not automatically form part of countries' domestic law (Allan, 2013a). People living in countries that adopted United Nations treaties and instruments can, however, lodge complaints with the Human Rights Committee of the United Nations established under Article 28 of the International Covenant on Civil and Political Rights (United Nations, 1966).

Countries can also incorporate human (sometimes called fundamental or natural) rights into their constitutions (see, e.g. Constitution of Ireland, 1937) or other legislation (see, e.g. the United Kingdom's Human Rights Act 1998). Countries thereby give their citizens *claim rights* (see Corbin, 1919; Feinberg, 1973; Hohfeld, 1919) that they can enforce in courts, by contrast to unenforceable moral rights. Some regional bodies, such as the Council of Europe (1950), furthermore developed their own *conventions on human rights* (Council of Europe, 1950) and more specific instruments such as the *Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (Prevention of Torture Convention; Council of Europe, 1987). Bodies such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment aim to prevent human rights violations, and citizens of member states can approach bodies such as the European Court of Human Rights for relief after having exhausted the remedies available under their domestic law.

These bodies apply human rights law when they consider the provisions of member countries' legislation and its administration and often hear matters with profound moral implications (see, e.g. Wackenheim v France, 2002), and their decisions carry much weight

and provide useful information on moral issues (see, e.g. Grosskopf v Germany, 2010, on preventative detention). However, psychologists trying to solve professional issues will often find it difficult to identify well-articulated, comprehensive and applied principles by studying the decision of these bodies because they hear relatively few cases and usually undertake legal (see, e.g. Selmouni v France, 1999) rather than moral analyses of issues.

Psychology's Ethical Principles

Allan (*in press*, 2017b) therefore argues that psychologists should use the set of ethical principles that underlies psychology's codes of ethics to develop prototypes to fill in the gaps that law leaves open. Allan (2010, 2016) identified a set of eight principles that underlies most of psychology's codes of ethics and also the *Universal Declaration of Ethical Principles for Psychologists* (International Union of Psychological Science [IUPsyS] and the International Association of Applied Psychology [IAAP], 2008) that psychologists across the world recognise (Gauthier, Pettifor, & Ferrero, 2010). These principles, which can be collapsed into three or five principles with several components (see Table 1), reflect the accumulated wisdom of generations of psychologists regarding how the moral foundations that people across the world share should be applied by psychologists who aspire to provide high-quality morally acceptable services to individuals and society.

Psychologists faced with moral decisions should identify the principle that in the circumstances appears to be more binding than the others, and obey their obligations under it. They might find that their obligations under one principle conflict with those under another, or that they have conflicting obligations to different people under the same principle. Under the non-maleficence principle, psychologists might therefore have to compare the risk of harming infants by removing

Table 1. Ethical principles and the obligations they bring.

<i>Respect for people and their own human dignity (humanity principle)</i>	
<ul style="list-style-type: none">• Do not objectify people by using them as means to an end• Refrain from undermining people’s self-worth, reputation and privacy (rights against intrusion and to confidentiality)• Respect people’s autonomy to make informed, free and voluntary decisions about their own interests and to act on them (autonomy)• Be accountable, honest and open (integrity)	
<i>Justice</i>	
<ul style="list-style-type: none">• Strive to make fair decisions (procedural)• Strive to distribute benefits, resources, risks and costs fairly (distributive)	
<i>Fidelity</i>	
<ul style="list-style-type: none">• Be trustworthy• Provide services within expertise• Maintain boundaries that will allow objective and effective services• Place service recipients’ interests before own	
<i>Care</i>	
<ul style="list-style-type: none">• Do not cause harm, or engage in behaviour that can reasonably be foreseen to cause harm and minimise unavoidable or unintended harm (non-maleficence)• Act benevolently and ensure the optimal outcome for all involved by balancing the benefits, risks and costs of decisions (beneficence)	
<i>Responsibility</i>	
<ul style="list-style-type: none">• Obey the law and do research that will benefit states and their citizens (social)• Refrain from doing anything that will bring the profession into disrepute (professional)• Honour contracts, including those with payers and employers (contractual).	

them from attachment figures to the risk that they could be sexually abused by fathers who have histories of child sexual abuse (see, e.g. Farnell & Chanbau, 2016). They should then examine the circumstances to identify the principle, or combination of principles, to which they should give priority and use it to make tentative decisions that they review as circumstances change.

Application of Legal and Ethical Principles

The care (non-maleficence) principle requires psychologists to prevent reasonably foreseeable harm to people towards whom they have a responsibility, and the responsibility (social) principle expands this protection to the whole of society, thereby giving assessors *prima facie* justification to assist States in protecting themselves and their citizens. However, assessors’ behaviour might lead to

unavoidable or unintended harmful consequences that exceed the benefits thereof for society, the profession and individuals, thereby violating the care principle. This could be particularly problematic if assessors’ behaviour violates the fidelity principle by bringing the profession into disrepute, thus eroding the public’s trust in them and the profession.

Society and individuals can rarely judge professionals’ abilities, knowledge, skill and experience, and if they need to consult them they must trust those that they use to act in their best interests, thereby making trust essential to professions’ existence (see, e.g. MacDonald, 1995). Society, individuals and the profession will suffer if people lose trust in psychologists and stop using their services, but more relevant here is the risk that clients and those administering the law might lose trust in them and stop using them. Assessors’

professional behaviour is particularly likely to influence the public's perceptions as their work often receives publicity, especially if there have been miscarriages of justice. They also work with people who are often very emotional because their rights, interests and well-being are at stake and who might therefore be particularly distrustful of psychologists whose opinions they believe are influential even though this might not be true. Assessors can try to keep people's trust in them and the profession by adhering strictly to the justice (procedural) and respect for humanity principles.

Justice Principle

The procedural component of the justice principle reflects people's expectation that others will be fair when they collect and use information to make decisions that will impact on their rights, interests and well-being (Lind & Tyler, 1988). Assessors who collect information that will be used to making such decisions (Allan, 2013b) should specifically consider the seven requirements of this principle.

Assessors should strive to be *objective*, but, as the discussion of decision making above suggests, they could find it difficult, if not impossible, to avoid bias (Allison et al., 1989; Greenwald et al., 2002; Moore & Loewenstein, 2004). They could be influenced by internal factors such as their emotions, prejudices and self-interest (Diekmann, Samuels, Ross, & Bazerman, 1997; Messick, Bloom, Boldizar, & Samuelson, 1985), or external factors such as the expectations of their colleagues, managers, legal decision-makers, and assessees (see, e.g. Gutheil & Simon, 2004). Psychologists can improve the objectivity of their decision making by using structured and actuarial methods and always trying to work under close supervision (for a general discussion see, e.g. Allan, 2017). They should avoid doing non-treatment-related risk assessments of people to whom they provide or provided treatment. The independent reviewers of a murder committed by

a parolee in the United Kingdom (Her Majesty's Inspectorate of Probation, 2006), for example, concluded that the assessment of the parolee's risk had been wrong and that the 'fact that this assessment was being made by the psychologist who was also delivering treatment may be a factor in this case' (paragraph 10.1.6).

Assessors should use *reliable resources* even when they do not anticipate external scrutiny, such as that lawyers might raise concerns about the tests used in their pleadings or cross-examination. They should therefore use scientifically credible resources (e.g. avoid non-peer-reviewed and online resources of uncertain reliability) that are specific and sensitive enough to limit both false positives and false negatives. Assessors in countries with big migrant (particularly refugees) or Indigenous populations (see, e.g. Allan, Dawson, & Allan, 2006) might not have such resources because they are usually developed for the majority populations in most countries. Judges in countries such as Australia (see, e.g. DPP v Mangolamara, 2007), Canada (see e.g. Ewert v Canada, 2015) and New Zealand (see, e.g. R v Peta, 2007) have expressed concern about the reliability of the instruments that psychologists use when they assess Indigenous sexual offenders. In *Ewert v Canada* (2015) the court used the human rights principles embodied in the Canadian Charter (1982) to prevent Corrections Canada psychologists from using well-known assessment tools such as the PCL-R and Violence Risk Appraisal Guide (VRAG; Harris, Rice, & Quinsey, 1993) to assess Canadian Aboriginal offenders until Corrections Canada confirmed the reliability of those tools in respect of this group. The Federal Court of Appeals in *Canada v Ewert* (2016) overturned this decision but that does not reduce psychologists' ethical obligation to restrict their use of culturally questionable resources to those cases where there is legal and ethical justification for using them and adhere strictly to other principles, such as by obtaining assessees' consent and collaboration.

Assessors must also only undertake assessments within their ability, knowledge, skills and experience (*competence*). They should know and understand the theories that underlie the resources they use and be familiar with the relevant and current manuals and related peer-reviewed material (Allan & Grisso, 2014). They should be able to select and use appropriate resources and know the psychometric properties of instruments and how to administer them and how to interpret and report their findings. Novice assessors should develop these competencies and gain experience by training and working under close supervision of experienced and competent colleagues. Experienced psychologists should keep abreast of developments in the area they work in by attending professional development training and reading peer-reviewed literature.

They must collect and consider all the reasonably accessible relevant *information* from representative sources, and if their employers or contracts do not allow them enough time to undertake effective assessments they must try to rectify the problem to avoid foreseeable risk to society, individuals, their employers and themselves. Individual assessors might find it very difficult to negotiate individually with their employers and contractors for realistic time allocations, and they should therefore do so through their professional and industrial bodies.

Assessors must apply the appropriate legal (e.g. test in legislation) and psychological (e.g. diagnostic) criteria to the pertinent information in a logical manner that leads to *defensible conclusions*. They should point to the limitations of their assessments, data and opinions in their records, reports and testimony and identify and explain departures from previous decisions that they or others have made in similar circumstances (Allan & Grisso, 2014). Assessors should *report* their findings, opinions and, if relevant, decisions, in an objective and detached manner, avoiding subtle exaggerations, acknowledging the limitations of their assessments and data, and

distinguishing their observations from their opinions. They must, finally, as far as is practical, *inform examinees of their decisions* and give them opportunities to correct wrong factual material and ask questions. If required, they should review their conclusions (see Allan & Grisso, 2014, for a more comprehensive discussion).

The Respect for Humanity Principle

This respect for humanity principle and human rights law have the dignity that all humans share as their philosophical root (see, e.g. Allan, 2013a). Even philosophers sometimes disagree about whether behaviour is disrespectful of human dignity (see, e.g. Feinberg, 1973), but it is clear that no person should behave in a manner that is disrespectful of other people's dignity, or permits others to behave in a manner that disregard their dignity, if the majority of people will find such behaviour offensive (see, e.g. *Wackenheim v France*, 2002). Allan and Davidson (2013, 2015) propose that as a practical guide psychologists in their professional capacity should treat others in accordance with what society considers good manners.

Assessors often experience anger and disgust when they observe the disrespectful way in which those with whom they work behave towards themselves and others. Assessors can be honest with such people about what they think of their behaviour, but must not in return violate their physical or psychological integrity. They should avoid objectifying others by using them for their own means (e.g. administering tests on them merely because they need the experience); dehumanising them by labelling (e.g. calling them psychopaths); or belittling or disregarding their group identity (e.g. assessing them with psychological tests not appropriate for their culture or language). In particular, they should refrain from behaviour that could degrade or impair assessee's self-esteem, or make them experience fear, anguish or feelings of inferiority, or assist others who do this – to break

other peoples' psychological and physical resistance down constitutes torture (Council of Europe, 1987).

Assessors can lessen the risk that people might feel betrayed by them and lose trust in all psychologists by explaining their exceptional role to non-psychologists and by being scrupulously honest with all people with whom they interact as professionals. They must especially inform assessees of the purpose of activities and the limits of privacy that they can offer them. Well-informed competent assessees can then make educated decisions regarding whether they want to proceed with the service, what information they want to disclose to assessors during the process and whether they want to waive their rights and privileges.

Assessors sometimes feel that their assessees lack the opportunity to make informed, free and voluntary decisions. Psychologists, for instance, analyse covertly collected data of people, and obtaining informed consent from them would defeat the purposes of the legislation that they operate under (e.g. the Criminal Investigation [Covert Powers] Act 2012, WA). However, psychologists can do these analyses if they are satisfied that the agency they work for collected the data with legal warrants authorising the collection, analysis and use of the data (Allan, 2015). However, assessors must still adhere diligently to the other ethical principles and specifically avoid analysing data of people with whom they have other professional relationships (e.g. as counsellors). Assessors should further ensure that assessees understand the options they might have and that they may withhold their consent, but also what the consequences would be if they do so. These consequences could be negative for examinees (e.g. their parole applications might fail), and assessors might have legal authority to perform risk assessments using available file data without their collaboration (see, e.g. Inmate Welfare Committee, 2003).

Conclusion

States have an obligation to protect themselves and their citizens from harm, and they partly use the coercive powers of the law to achieve this by investigating threats, enforcing rules and arbitrating disputes even though it may impact on people's well-being and their legal rights and privileges. States also require *all* psychologists to protect them and their citizens from harm by, for instance, requiring them to disclose confidential information if they suspect their clients might cause irreversible harm to themselves or other people and if the only reasonable way of preventing the harm is by disclosing the information. Furthermore, the drafters of professional codes give psychologists the *discretion* to disclose confidential information to avert risks of harm in emergency situations or to protect 'the health, welfare or safety of children or vulnerable adults' (standard 1(2)(vi)(c), British Psychological Society, 2009) even in the absence of such legislation.

Psychologists as a collective, however, also have resources that allow them to assist law (and therefore Society) actively in being more effective, efficient and reliable in preventing harm. The law can use psychologists' observations (e.g. who has better parenting skills), predictions (e.g. who might reoffend or desist) and intervention (e.g. through rehabilitation or punishment¹) skills to prevent or minimise the occurrence of harm. Psychological resources about interviewing, detection of deception, reliability of memory, identification and testimony can reduce the risk of harm (e.g. information that foils terrorist attempts) and miscarriages of justice (e.g. through false confessions or mistaken identifications). Psychologists as a collective therefore have a responsibility to assist the law directly or indirectly in its protective function even though this may involve them in coercive processes. The profession's ethical principles provide well-articulated, generally accepted and profession-appropriate guidance.

The care and responsibility principles read together justify psychologists' assistance to the law in protecting States and their citizens even when this involves coercion, but the fidelity principle requires them to refrain from behaviour that might erode the trust in them, their peers or the profession. They can, however, minimise this risk by paying particular attention to the justice and respect for humanity principles, thereby ensuring that people will trust psychologists even though some might feel the law disregard their rights, interests, self-worth and reputation.

Assessors, however, irrespective of their roles, should provide services within the constraints of their social, professional and contractual responsibilities, and they should obtain legal advice and/or involve appropriate professional or industrial bodies if indicated. This might, for instance, happen where psychologists feel that their employers' instruction might require them to behave unlawfully. Those who feel that employers or contractors require them to violate their professional ethical principles should clarify the situation and seek constructive solutions that will allow them to uphold their ethical principles. Some psychologists might therefore be confronted with the difficult choice of terminating contracts when they cannot reconcile their employers' expectations with the profession's ethical expectations.

Assessors might, however, sometimes find that issues beyond their control make it difficult for them to achieve the ethical aspirations of their profession. A pressing issue in many countries is the lack of resources to assess Indigenous sexual offenders (see, e.g. Allan et al., 2006; Smallbone & Rallings, 2013; Spiranovic, 2012). Some assessors could rightfully argue that they should refrain from assessing Indigenous sexual offenders. However, doing that ignores psychologists' broader responsibility to contribute to the protection of members of society (see, e.g. Allan, 2013b; Allan & Grisso, 2014), in this situation specifically the victims of Indigenous sexual offenders who will most likely

be Indigenous women and children (Australian Bureau of Statistics, 2014–15; Wunderstiz, 2010). Assessors finding themselves in this situation could use the care principle to justify the assessments that they undertake if they ensure the optimal outcome for all involved by balancing the benefits, risks and costs of decisions, but the justice (distribute) principle nevertheless requires them to advocate for the development of resources that will eliminate the problem.

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Ethical standards

Declaration of conflicts of interest

Alfred Allan has declared no conflicts of interest

Ethical approval

This article does not contain any studies with human participants or animals performed by the author.

Note

1. For a discussion of moral issues regarding punishment see, e.g. Honderich (2006).

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