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Michael L. Perlin

*New York Law School*, [michael.perlin@nyls.edu](mailto:michael.perlin@nyls.edu)

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## “With faces hidden while the walls were tightening”: Applying international human rights standards to forensic psychology\*

Michael L. Perlin

(New York Law School, New York, NY 10013, USA)

**Abstract:** This paper considers the relationship between forensic psychology and international human rights standards (and about the relationship between mental disability law and such standards in general), especially in the contexts of the sorts of cases in which forensic psychologists are involved, the special issues in the context of nations with developing economies, and the relevance of international mental health norms. I conclude by focusing on the use of therapeutic jurisprudence as an interpretive tool, and offering suggestions as to how the practice of forensic psychologists can and should best incorporate international human rights standards and principles in their work.

**Key words:** international human rights; forensic psychology; therapeutic jurisprudence; mental disability law; institutional litigation

### 1. Introduction

Although there are now robust bodies of literature in both law and psychology and in international human rights law, there has been remarkably little written about the specific relationship between forensic psychology and international human rights standards (and about the relationship between mental disability law and such standards in general). And this lack of attention is disturbing. On one hand, it is also surprising (since forensic psychologists regularly testify about persons with mental disabilities in the criminal justice system and in psychiatric institutions, and it is *not* news that the jail and prison and hospital facilities in many nations remain at the shock the conscience level proscribed as cruel and unusual punishment by the United States Supreme Court more than a half century ago).<sup>1</sup> But on the other, it is not (as violations of the rights of persons with mental disabilities were not seen as human rights violations by the leading international human rights watchdog groups until as recently as eight years ago).<sup>2</sup>

Attention is paid when it appears that state psychiatry or psychology is used as a tool of political oppressions, e.g., in the former Soviet Union<sup>3</sup> or in China<sup>4</sup>, but the literature is strangely silent on questions dealing with the

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Michael L. Perlin, professor of law, New York Law School; director of International Mental Disability Law Reform Project and Online Mental Disability Law Program; research field: mental disability law.

<sup>1</sup> *Rochin v. California*, 342 U.S. 165, 172-173 (1952). For considerations of such conditions, see Coyle, A. (2004). Prison reform efforts around the world: The role of prison administrators. *Pace L. Rev.*, 24, 825. Yamin, A. E. (2003). Not just a tragedy: Access to medications as a right under international law. *B.U. Int'l L.J.*, 21, 325, 345.

<sup>2</sup> Symposium transcript (2002). The application of international human rights law to institutional mental disability law. *N.Y.L. Sch. J. Int'l & Comp. L.*, 21, 387, 391-392 (comments of Eric Rosenthal, Esq.) (hereinafter *Application*).

<sup>3</sup> E.g., Bloch, S. & Reddaway, P. (1985). Psychiatrists and dissenters in the Soviet Union. In: Stover, E. & Nightingale, E. O. (Eds.), *The breaking of bodies and minds: Torture, psychiatric abuse, and the health professions*. W. H. Freeman & Co (SD), 132. Bonnie, R.

extent to which forensic psychology practice comports with international human rights norms.<sup>5</sup> Yet, there is a significant disconnect here. Studies done by groups such as Mental Disability Rights International (MDRI) reveal serious and systemic problems in the treatment of individuals in forensic facilities in Central and Eastern Europe and in Central and South America.<sup>6</sup> Evidence suggests that, in many nations, little has been done to correct violations of such norms.<sup>7</sup> Moreover, this failure has been met, typically, with a deafening silence on the part of professional organizations that one would hope would be vigilant in the protection of the rights of the vulnerable population in question. I hope to shed some light on these issues.

In this article, I will look at (1) the range of cases in which forensic psychologists typically evaluate persons in the criminal justice system and then testify as to their findings, (2) the range of standards of practice imposed in such matters, (3) the traditional role of forensic psychiatrists in institutional litigation in the United States, (4) the extent to which the work of forensic psychologists is examined critically by courts and/or licensing boards, (5) the special issues posed when this question is examined in the context of nations with developing economies, (6) the relevant international mental health norms, and (7) the extent to which such work meets international human rights norms. I will then conclude by offering some suggestions as to how such norms can more effectively be met (focusing specifically on how information about such norms can effectively be disseminated in nations with developing economies), by recommending that licensing and review boards specifically build such norms into their evaluation processes, and by considering different strategies to best insure that there is adherence to such norms in forensic practice.

The title of my paper draws on Bob Dylan’s towering masterpiece, *Chimes of Freedom*, a composition that critic Robert Shelton has characterized as Dylan’s most political song and an expression of affinity for a legion of the abused.<sup>8</sup> The exact words come from this verse:

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J. & Polubinskaya, S. V. (1999). Unraveling Soviet psychiatry. *J. Contemp. Leg. Iss.*, 10, 285-86. Bonnie, R. J. (2002). Political abuse of psychiatry in the Soviet Union and in China: Complexities and controversies. *J. Am. Acad. Psychiatry & L.*, 30, 136. Young-Anawaty, A. (1978). International human rights norms and soviet abuse of psychiatry, *Case W. Res. J. Int’l L.*, 10, 785.

<sup>4</sup> E.g., Munro, R. (2000). Judicial psychiatry in China and its political abuses. *Colum. J. Asian L.*, 14, 1. Bonnie, supra note 3.

<sup>5</sup> By way of example, a WESTLAW JLR search of INTERNATIONAL HUMAN RIGHTS/P FORENSIC PSYCHOLOGY reveals—in addition to citations to one of the papers upon which this article is based—only one source (see Rudolf, B. & Eriksson, A. (2007). Women’s rights under international human rights treaties: Issues of rape, domestic slavery, abortion, and domestic violence. *Int’l J. Const. L.*, 5, 507, an article that deals solely with issues arising under the Convention on the Elimination of All Forms of Discrimination against Women). The only relevant items found after changing the search to INTERNATIONAL HUMAN RIGHTS/P FORENSIC are these:

(1) Munro, supra note 4, 3-4 (By January 1983, a protracted campaign by Western psychiatric professional bodies and international human rights organizations led to a decision by the Soviet All-Union Society of Psychiatrists and Neuropathologists to withdraw from the World Psychiatric Association in order to avoid almost certain expulsion. It was not readmitted to the body until 1989, after several years of perestroika and the preliminary establishment of direct access by Western psychiatric delegations to Soviet forensic psychiatric institutions and their alleged mentally ill political inmates) (footnotes omitted).

(2) Perlin, M. L. (2002). Chimes of freedom: international human rights and institutional mental disability law. *N.Y.L. Sch. J. Int’l & Comp. L.*, 21, 423, 428 (This course will teach participants the basics of all the major components of mental disability law: civil/constitutional mental disability law, institutional mental disability law, forensic mental disability law, and private mental disability tort law. It will illuminate the parallels with international human rightslaw (flowing from the promulgation of United Nations’ standards, principles, treaties, and international court decisions) in such a way that participants will be able to most effectively integrate the substance of the law into the practice of mental disability law (and mental disability advocacy) in Central & Eastern Europe) (describing online, distance learning course in mental disability law taught at New York Law School).

(3) *Application*, supra note 2, 344-345 (remarks of Prof. Michael L. Perlin) (substantially same).

<sup>6</sup> E.g., Mental Disability Rights International (2000). *Human rights & mental health: Mexico* (Mexico Report). ---- (2005). *Not on the agenda: Human rights of people with mental disabilities in Kosovo*. MDRI is globally acknowledged as the most important US-based NGO promoting the international oversight of the rights of people with mental disabilities. Retrieved from <http://www.mdri.org/aboutus/index.htm>.

<sup>7</sup> See, e.g., Lewis, O. (2002). Mental disability law in Central and Eastern Europe: Paper, practice, promise. *Journal of Mental Health Law*, 8, 293.

<sup>8</sup> See Shelton R. (1997). *No direction home: The life and music of Bob Dylan*. 220. And *ibid*, 197 (explaining use of phrase).

In the city's melted furnace, unexpectedly we watched  
With faces hidden while the walls were tightening  
As the echo of the wedding bells before the blowin' rain  
Dissolved into the bells of the lightning  
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.<sup>9</sup>

Those in forensic facilities are hidden,<sup>10</sup> and, in many nations, the walls truly are tightening around them. I offer this article in the hopes that this may, some day, be reversed.

## **2. The role of forensic psychologists in the criminal justice system**

First, what is forensic psychology? “Forensic psychology” means all forms of professional psychological conduct when acting, with definable foreknowledge, as a psychological expert on explicitly psycholegal issues, in direct assistance to courts, parties to legal proceedings, correctional and forensic mental health facilities and administrative, judicial, and legislative agencies acting in an adjudicative capacity.<sup>11</sup>

In the second chapter of one of the standard texts on forensic psychology, Allen Hess reproduces a chart prepared by the US Department of Justice's Bureau of Justice Statistics.<sup>12</sup> The chart, entitled *Discretionary Points in the Criminal Justice System*, depicts the path of a criminal case from the time of the crime to the end of the appellate process. By my count, there are at least sixty pressure points on this chart, and, presumably, that translates to at least sixty discrete opportunities for forensic psychologists to come into contact with the criminal justice system in a common law nation.

In an article discussing the role of forensic psychologists in death penalty cases, John Fabian, a lawyer and psychologist, notes that, in working within the justice system, the forensic psychologist's evaluations may generally include referral issues such as competency and sanity, sexual predator assessment, dangerousness, child custody evaluations, and mental/emotional distress pertaining to civil psychiatric issues.<sup>13</sup> Within this range of cases, forensic psychologists perform interviews, administer psychological tests, offer a diagnosis, and discuss clinical impressions attempting to link the mental illness and the crime.<sup>14</sup> In this universe, “more defendants are evaluated for competency and more financial resources are expended for their evaluation, adjudication, and treatment than for any other class of forensic activities.”<sup>15</sup>

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<sup>9</sup> Dylan, B. *Chimes of freedom*. Retrieved May 5, 2005, from <http://bobdylan.com/songs/chimes.html>.

<sup>10</sup> I have used this descriptor previously in a broad consideration of the mental disability law system. See Perlin, M. L. (2000). *The hidden prejudice: Mental disability on trial*.

<sup>11</sup> Committee on Ethical Guidelines for Forensic Psychologists (1991). Specialty guidelines for forensic psychologists. *Law & Hum. Behav.*, 15, 655, 657 (Guideline I B 1 b) (hereinafter *Specialty Guidelines*).

For an important critique of forensic psychology scholarship arguing that it does not sufficiently advance[e] aims of consumer empowerment, autonomy, [and] dignity, See Arrigo, B. A. (2004). Preface. In: Arrigo, B. A. (Ed.), *Psychological jurisprudence: Critical explorations in law, crime, and society*, vii, xi. See also Arrigo, B. A. (2000). Introduction to forensic psychology: Issues and controversies in crime and justice.

<sup>12</sup> Hess, A. (1999). Defining forensic psychology. In: Hess, A. & Weiner, I. (Eds.), *The handbook of forensic psychology* (2d ed.) (hereinafter *Handbook* (1999)). 24, 34-35.

<sup>13</sup> Fabian, J. (2003). Death penalty mitigation and the role of the forensic psychologist. *Law & Psychol. Rev.*, 27, 73, 84-85.

<sup>14</sup> Ibid.

<sup>15</sup> Golding, S. L. (1992). Studies of incompetent defendants: Research and social policy implications. *Forensic Rpts.*, 5, 77. As quoted in Cox, M. & Zapf, P. (2004). An investigation of discrepancies between mental health professionals and the courts in decisions about competency. *Law & Psychol. Rev.*, 28, 109, 111.

This immediately raises an important question. What sort of ethical standards are in place to govern the evaluations done by and the testimony given by forensic psychologists in such cases? And, to the point of this paper, to what extent is there a relationship between these standards and international human rights standards.

### **3. The range of standards of forensic psychology practice**

The American Psychological Association (APA) first published an ethical code more than half a century ago in 1953.<sup>16</sup> Since that time, it has regularly revised its standards, publishing the most recent version in 2002.<sup>17</sup> In its most recent iteration, the APA has included, in its general principle section, a principle simply entitled *Justice*:

Psychologists recognize that fairness and justice entitle all persons to access to and benefit from the contributions of psychology and to equal quality in the processes, procedures, and services being conducted by psychologists. Psychologists exercise reasonable judgment and take precautions to ensure that their potential biases, the boundaries of their competence, and the limitations of their expertise do not lead to or condone unjust practices.<sup>18</sup>

One of the questions I hope to explore in this article is the extent to which this fairness and justice principle is truly met internationally.

In an effort to improve the quality of forensic psychological services offered to individual clients and the legal system and thereby to enhance forensic psychology as a discipline and profession,”<sup>19</sup> the Committee on Ethical Guidelines for Forensic Psychologists of the American Psychological Association issued *Specialty Guidelines for Forensic Psychologists*, to serve, in part as an aspirational model for psychologists acting as experts for the judicial system.<sup>20</sup>

These Guidelines cover a wide range of behavior. By way of example, the Guidelines on Competence require that forensic psychologists have an obligation to present to the court, regarding the specific matters to which they will testify, the boundaries of their competence, the factual bases (knowledge, skill, experience, training and education) for their qualifications as an expert, and the relevance of those factual bases to their qualification as an expert on the specific matters at issue.<sup>21</sup> Guidelines on Relationships mandate that forensic psychologists have an obligation to ensure that prospective clients are informed of their legal rights with respect to the anticipated forensic service, of the purposes of any evaluation, of the nature of procedures to be employed, and of the party who has retained the forensic psychologist.<sup>22</sup> Finally, as part of the Public and Professional Communications section, the Guidelines emphasize that forensic psychologists must be aware that their own personal observations, inferences and conclusions must be distinguished from legal facts, opinions, and conclusions.<sup>23</sup>

In a careful and comprehensive analysis, Prof. Kirk Heilbrun has identified 29 principles of forensic mental

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<sup>16</sup> American Psychological Association (1953): *Ethical standards of psychologists*.

<sup>17</sup> Ethical principles of psychologists and code of conduct (2002). *Am. Psychologist*, 57, 1060 (hereinafter *Ethical Principles*). These guidelines are currently undergoing revision. See Judges, D. P. (2004). The role of mental health professionals in capital punishment: an exercise in moral disengagement. *Hous. L. Rev.*, 41, 515, 587, n. 408.

<sup>18</sup> *Ethical Principles*, supra note 17, 1062-1063.

<sup>19</sup> *Specialty Guidelines*, supra note 11, 655.

<sup>20</sup> Dowling, A. (2003). Post-Atkins problems with enforcing the supreme court’s ban on executing the mentally retarded. *Seton Hall L. Rev.*, 33, 773, 809. Committee on Ethical Guidelines for Forensic Psychologists (1995). Specialty guidelines for forensic psychologists. In: Bersoff, D. N. (Ed.), *Ethical conflicts in psychology*. 441.

<sup>21</sup> *Specialty Guidelines*, supra note 11, 658 (Guideline III B).

<sup>22</sup> *Ibid*, 659 (Guideline IV E).

<sup>23</sup> *Ibid*, 665 (Guideline VII F).

health assessment, that he grouped according to whether they were established or emerging.<sup>24</sup> Heilbrun provides us with a carefully-established body of proscriptive and prescriptive rules, and it can be said with confidence that these rules apply to all forensic psychologists who are doing such assessments. The empirical question, though, is not answered: do forensic psychologists actually follow these rules? Let me turn next to specific fact-settings that may begin to illuminate the problem at hand: the involvement of forensic psychologists in institutional litigation in the US, and the extent to which the work of forensic psychologists is critically examined by courts or examining boards.<sup>25</sup>

#### **4. The role of forensic psychologists in institutional litigation in the United States**

In 1981, in the course of an opinion on prison overcrowding, US Supreme Court Justice William Brennan set out what he saw as the duty of expert witnesses:

Moreover, in seeking relevant information about conditions in a prison, the court must be open to evidence and

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<sup>24</sup> Heilbrun et al. (2004). Pragmatic psychology, forensic mental health assessment, and the case of thomas Johnson. *Psychol., Pub. Pol'y & L.*, 10, 31. See also Heilbrun, K. (2001). *Principles of forensic mental health assessment*.

These were the established principles:

- X Identify relevant forensic issues
- X Accept referrals only within area of expertise
- X Clarify financial arrangements
- X Obtain appropriate authorization
- X Avoid playing the dual roles of therapist and forensic evaluator
- X Use multiple sources of information for each area being assessed
- X Use relevance and reliability (validity) as guides for seeking information and selecting data sources
- X Obtain relevant historical information
- X Assess clinical characteristics in relevant, reliable, and valid ways\
- X Assess legally relevant behavior
- X Ensure that conditions for evaluation are quiet, private, and distraction-free
- X Provide appropriate notification of purpose and/or obtain appropriate authorization before beginning
- X Determine whether the individual understands the purpose of the evaluation and associated limits on confidentiality
- X Use third party information in assessing response style
- X Use case-specific (idiographic) evidence in assessing clinical condition, functional abilities, and causal connection
- X Use nomothetic evidence in assessing clinical condition, functional abilities, and causal connection
- X Use scientific reasoning in assessing causal connection between clinical condition and functional abilities
- X Describe findings and limits so that they need change little under cross examination
- X Attribute information to sources
- X Use plain language; avoid technical jargon
- X Write report in sections, according to model and procedures, and
- X Base testimony on the results of the properly performed FMHA.

And these principles were considered to be emerging:

- X Clarify the evaluator's role with the attorney
- X Determine the particular role to be played within forensic assessment if the referral is accepted.
- X Select the most appropriate model to guide data gathering, interpretation, and communication, and
- X Use testing when indicated in assessing response style.

Two standards were seen as either established or emerging, depending on the context:

- X Decline the referral when evaluator impartiality is unlikely, and
- X Testify effectively.

Heilbrun, supra, 31-40.

<sup>25</sup> Beyond the scope of this paper are the issues that arise when forensic psychologists are involved in interrogation abuses in such setting as Abu Ghirab or Guantanamo Bay. See, e.g., Birgden, A. & Perlin, M. L. (2009). “Where the home in the valley meets the damp dirty prison”: A human rights perspective on therapeutic jurisprudence and the role of forensic psychologists in correctional settings. *Aggression & Violent Behavior*, 14, 256 (hereinafter Birgden & Perlin, *Home*). Pope, K. S. & Gutheil, T. G. (2009). Psychologists abandon the nuremberg ethic: Concerns for detainee interrogations. *Int'l J. L. & Psychiatry*, 32, 161.

assistance from many sources, including expert testimony and studies on the effect of particular conditions on prisoners. For this purpose, public health, medical, psychiatric, psychological, penological, architectural, structural, and other experts have proved useful to the lower courts in observing and interpreting prison conditions.<sup>26</sup>

In an article the next year, Judge David Bazelon called on his fellow members of the judiciary to “open the courthouse doors” to mental health professionals.<sup>27</sup>

Indeed, beginning in the 1970s, forensic psychologists played integral roles in law reform litigation in cases involving institutionalized persons: in jails,<sup>28</sup> in prisons,<sup>29</sup> in psychiatric institutions,<sup>30</sup> and in facilities for persons with mental retardation.<sup>31</sup> In short, American forensic psychologists have, for nearly 40 years,<sup>32</sup> been deeply and integrally involved in public interest/law reform litigation<sup>33</sup> in these areas of the law.

## **5. The extent to which the work of forensic psychologists is critically examined by licensure boards**

Astonishingly, there has been virtually no reported litigation in the United States of cases in which forensic psychologists have been brought before state licensing boards for censure. In one case, an appellate court reversed the Oregon Board of Psychologist Examiners’ decision to suspend a forensic psychologist’s license for its failure to articulate the standard it employed in determining the sort of investigation that is necessary before a psychologist may render an opinion on future dangerousness.<sup>34</sup> In the other, a state board of psychology imposed sanctions on forensic psychologist for sexual misconduct arising from a sexual relationship psychologist had with former client.<sup>35</sup>

Beyond this, in only one criminal case have the professional standards ever been closely examined. In *Thompson v. Bell*, a death penalty case, Judge Clay, dissenting from denial of a writ of habeas corpus, noted:

As the trial record clearly shows, Dr. Copple did not have the requisite knowledge and training to provide the sort of expert assistance necessary to protect Thompson’s constitutional rights. Simply put, Dr. Copple lacked the medical expertise to be a qualified witness in Thompson’s behalf and to rebut the state’s psychiatric evaluation performed by the team of forensic psychiatrists and psychologists at [the mental health facility]. Specifically, as an industrial psychologist specializing in Social Security and vocational evaluations, Copple lacked the specialized knowledge, skill, experience, and training to function as a qualified witness in this capital case where a forensic psychologist or psychiatrist was needed to provide a psychological basis for Thompson’s behavior in order to show that he was mentally impaired.<sup>36</sup>

Continuing, the dissenting judge focused on the ways that industrial psychologists (such as the witness in the case before the court) differed markedly in their education, training and perspective from forensic psychologists:

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<sup>26</sup> *Rhodes v. Chapman*, 452 U.S. 337, 363 (1981).

<sup>27</sup> Bazelon, D. (1982). Veils, values and social responsibility. *Am. Psychologist*, 37, 115.

<sup>28</sup> See, e.g., Davoli, J. I. (2005). Reconsidering the consequences of an insanity acquittal. *New Eng. J. on Crim. & Civ. Confinement*, 31, 3, 11-12.

<sup>29</sup> See, e.g., Chung, S. (2000). Prison overcrowding: Standards in determining eighth amendment violations. *Fordham L. Rev.*, 68, 2351, 2369-2370. Herman, S. N. (1983-1984). Institutional litigation in the post-Chapman world. *N.Y.U. Rev. L. & Soc. Change*, 122, 99, 306.

<sup>30</sup> See, e.g., Perlin et al. (1995). Therapeutic jurisprudence and the civil rights of institutionalized mentally disabled persons: Hopeless oxymoron or path to redemption? *Psychology, Pub. Pol’y & L.*, 1, 80, 101.

<sup>31</sup> See, e.g., Cox & Zapf, *supra* note 15.

<sup>32</sup> See *Wyatt v. Stickney*, 344 F. Supp. 1341 (M.D. Ala. 1971).

<sup>33</sup> See, e.g., Sherman, E. (2003). American class actions: significant features and developing alternatives in foreign legal systems. *F.R.D.*, 215, 130.

<sup>34</sup> *Cochran v. Board of Psychologist Examiners*, 15 P.3d 73 (Or.App. 2000).

<sup>35</sup> *Caddy v. State, Dept. of Health, Bd. of Psychology*, 764 So.2d 625 (Fla. App. 2000).

<sup>36</sup> 315 F.3d 566, 601 (6<sup>th</sup> Cir. 2003), superseded on other grounds, 373 F.3d 688 (6<sup>th</sup> Cir. 2004).



The professional goals and expertise of industrial psychologists thus differ markedly from those of forensic psychiatrists or psychologists. ... [T]he American Board of Forensic Psychology, which is part of the American Board of Professional Psychology, defines “forensic psychology is the application of the science and profession of psychology to questions and issues relating to the law and legal system.” The practice of forensic psychology includes, in pertinent part, “psychological evaluation and expert testimony regarding criminal forensic issues such as trial competency, waiver of Miranda rights, criminal responsibility.” <http://www.abfp.com/brochure.html>... An even more specific definition of forensic psychology has been adopted by the American Psychological-Law Society, Division 41 of the American Psychological Association...<sup>37</sup>

Remarkably, these are the only American case examples that there are.<sup>38</sup>

In a thoughtful law review article, Prof. David Shapiro, an expert on the topic of forensic ethics, carefully analyzed several then-recent US Supreme Court decisions<sup>39</sup> from the perspective of the *Specialty Guidelines* discussed earlier.<sup>40</sup> Interestingly, however, for the purposes of this paper, Prof. Shapiro’s article, while cited frequently on a variety of points, has only been the subject of one comment in the legal literature on code-of-conduct issues.<sup>41</sup> Beyond this, the legal literature is lamentably silent.

## **6. Special issues to consider in the context of nations with developing economies**

The leading textbooks in this area stress again and again the problems that arise due to role conflicts, due to potential abuse of power, due to the potential vulnerability of persons being evaluated, due to blurred role boundaries, and due to a potential lack of respect for individuals’ rights and dignity.<sup>42</sup> I have discussed two of these issues, the disconnecting between therapeutic and forensic relationships<sup>43</sup> and the blurring of roles and of

<sup>37</sup> Ibid, 602-603.

<sup>38</sup> By way of comparison, 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. One psychologist was reprimanded for professional misconduct, later de-registered for separate criminal charges, and in 2003 was re-registered with conditions. See Birgden, A. & Perlin, M. L. (2008). “Tolling for the luckless, the abandoned and forsaken:” Community safety, therapeutic jurisprudence and international human rights law as applied to prisoners and detainees. *Leg. & Criminol. Psychology*, 13, 231(hereinafter Birgden & Perlin, *Tolling*).

<sup>39</sup> See, e.g., *Godinez v. Moran*, 509 U.S. 389 (1993) (establishing unitary standard for competency to stand trial, plead guilty and waive counsel); *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993) (liberalizing admissibility standard in cases involving expert witnesses); *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987) (creating criminal defense exception to psychotherapist-patient privilege); *Ford v. Wainwright*, 477 U.S. 399 (1986) (standard for competency to be executed); *Foucha v. Louisiana*, 504 U.S. 71 (1992) (standard for retention in case of no-longer-mentally-ill insanity acquittee); *Kansas v. Hendricks*, 521 U.S. 346 (1997) (upholding constitutionality of state sexually violent predator act).

<sup>40</sup> See Shapiro, D. L. (1997). Ethical dilemmas for the mental health professional: issues raised by recent Supreme Court decisions. *Cal. W. L. Rev.*, 34, 177.

<sup>41</sup> See Miller-Rice, R. A. (2000). The “insane” contradiction of *Singleton v. Norris*: Forced medication in a death row inmate’s medical interest which happens to facilitate his execution. *U. Ark. Little Rock L. Rev.*, 22, 659, 665-666, n. 28:

Doctor David Shapiro suggests that a psychologist’s participation in a *Ford [v. Wainwright]*, see supra note 39/ hearing could violate the *American psychological association’s ethical principles of psychologists and code of conduct*... Specifically, Shapiro notes that Standard 1.14 calls on psychologists to “‘avoid harm’... If one believes that executing another human being is harm, then participating in such evaluations at all could be seen as a violation of Standard 1.14.” Ibid. Standard 1.14 states: “Psychologists take reasonable steps to avoid harming their patients or clients, research participants, students, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.” American Psychological Association (1992): Ethical principles of psychologists and code of conduct’ 1.14. 5.

<sup>42</sup> See, e.g., Hess, A. (1997). The ethics of forensic psychology. In: Hess, A. & Weiner, I. (Eds.), *Handbook of forensic psychology*. 653, 653-654,----(1999). Practicing principled forensic psychology: legal, ethical, and moral considerations. In: *Handbook* (1999), supra note 12, 673, 689. Melton et al. (1997). *Psychological evaluations for the Courts*’ 3.02 (2d ed.) (The nature and method of forensic assessment).

<sup>43</sup> See generally Perlin, M. L. (1991). Power imbalances in therapeutic and forensic relationships. *Behav. Sci. & L.*, 9, 111. See also,----(1992). Tarasoff and the dilemma of the dangerous patient: New directions for the 1990’s. *Law & Psychol. Rev.*, 16, 29, 42,----(2004). Everything’s a little upside down, as a matter of fact the wheels have stopped: the fraudulence of the incompetency evaluation process. *Houston J. Health L. & Pol’y*, 4, 239, 249 n. 55.

borderlines between different aspects of disability law,<sup>44</sup> extensively, primarily in the context of domestic law.<sup>45</sup> However, there appears to be no literature on the question of the relationship between the standards discussed throughout this paper and the practice of forensic psychology in nations with developing economies.<sup>46</sup>

## **7. The relevant international mental health norms<sup>47</sup>**

In late 2001, the United Nations General Assembly established an Ad Hoc Committee “to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities...”.<sup>48</sup> The Ad Hoc Committee drafted a document over the course of five years and eight sessions, and the new *Convention on the Rights of Persons with Disabilities* (sometimes “Convention” or “Disability Convention”)<sup>49</sup> was adopted in December 2006 and opened for signature in March 2007.<sup>50</sup> It entered into force—thus becoming legally binding on States parties—on May 3, 2008, thirty days after the 20th ratification.<sup>51</sup> One of the hallmarks of the process that led to the publication of the UN Convention was the participation of persons with disabilities and the clarion cry, “Nothing about us, without us.”<sup>52</sup> This has led commentators to conclude that the Convention “is regarded as having finally empowered the ‘world’s largest minority’ to claim their rights, and to participate in international and national affairs on an equal basis with others who have achieved specific treaty recognition and protection.”<sup>53</sup>

<sup>44</sup> See generally, Perlin, M. L. (1998). “Where the winds hit heavy on the borderline”: Mental disability law, theory and practice, “us” and “them.” *Loyola L.A. L. Rev.*, 31, 775.----(2001). On desolation row: the blurring of the borders between civil and criminal mental disability law, and what it means to all of us (keynote address, first International Conference on Forensic Mental Health Services, Vancouver, BC, Canada, April 2001). See also,----(2003). Therapeutic jurisprudence and outpatient commitment: Kendra’s law as case study. *Psychol. Pub. Pol’y & L.*, 9, 183, 198.----(2002). “Chimes of freedom”: International human rights and institutional mental disability law. *N.Y.L. Sch. J. Int’l & Comp. L.*, 21, 423, 423 (hereinafter Perlin, *Chimes*).

<sup>45</sup> But see Perlin, *Chimes*, supra note 44.

<sup>46</sup> The American law review literature is embarrassingly sparse on issues involving nations with developing economies and human rights in any context. See, for two rare examples in the context of international trade law, DiMatteo et al. (2003). The doha declaration and beyond: giving a voice to non-trade concerns within the wto trade regime. *Vand. J. Transnat’l L.*, 36, 95, 124-26. Champion, K. V. (1996). Who pays for free trade? The dilemma of free trade and international labor standards. *N.C.J. Int’l L. & Com. Reg.*, 22, 181, 196. And for one in the context of international sex trafficking, Cianciarulo, M. S. (2008). The trafficking and exploitation victims assistance program: A proposed early response plan for victims of international human trafficking in the United States. *N.M. L. Rev.*, 38, 373.

<sup>47</sup> Much of this section is adapted from Perlin, M. L. & Szeli, E. (2010). Mental health law and human rights: Evolution and contemporary challenges. In: Dudley, M. (Ed.), *Mental health and human rights* (in press). See also Perlin, M. L. (2009). “A change is gonna come”: The implications of the United Nations convention on the rights of persons with disabilities for the domestic practice of constitutional mental disability law. *No. Ill. U. L. Rev.*, 29, 483 (hereinafter Perlin, *Change*).----. The chimes of freedom flashing: exploring the intersection between international human rights and mental disability law (in press) (hereinafter Perlin, *Flashing*).

<sup>48</sup> G.A. Res. 56/168 (2001).

<sup>49</sup> G.A. Res. A/61/611 (2006).

<sup>50</sup> G.A. Res. A/61/106 (2006).

<sup>51</sup> On the 20th ratification, see <http://www.un.org/News/Press/docs/2008/hr4941.doc.htm>. See generally Melish, T. (2007). The UN disability convention: Historic process, strong prospects, and why the U.S. should ratify. *Hum. Rts. Brief.*, 14, 37, 44. Stein, M. A. & Stein, P. J. S. (2007). Beyond disability civil rights. *Hastings L. J.*, 58, 1203. Flynn, M. (2010). Olmstead plans revisited: lessons learned from the U.N. convention on the rights of persons with disabilities. *Law & Ineq.*, 28, 407. The Convention (hereinafter sometimes *UN Convention*) can be found at <http://www.un.org/disabilities>.

<sup>52</sup> See, e.g., Kayess, R. & French, P. (2008). Out of darkness into light? Introducing the convention on the rights of persons with disabilities. *Hum. Rts. L. Rev.*, 8, 1, 4 n.15.

See, for example, Statement by Hon Ruth Dyson, Minister for Disability Issues, New Zealand Mission to the UN, for Formal Ceremony at the Signing of the Convention on the Rights of Persons with Disability, March 30, 2007: “Just as the Convention itself is the product of a remarkable partnership between governments and civil society, effective implementation will require a continuation of that partnership.” The negotiating slogan ‘Nothing about us without us’ was adopted by the International Disability Caucus. Retrieved November 13, 2007, from [http://www.un.org/esa/socdev/enable/documents/Stat\\_Conv/nzam.doc](http://www.un.org/esa/socdev/enable/documents/Stat_Conv/nzam.doc).

<sup>53</sup> Ibid, n. 17 (See, for example, statements made by the High Commissioner for Human Rights, Louise Arbour, and the Permanent Representative of New Zealand and Chair of the Ad-Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Ambassador Don Mackay, at a Special Event on the Convention on Rights of Persons with Disabilities, convened by the UN Human Rights Council, 26 March 2007. Retrieved November 13, 2007, from

[http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/7444B2E219117CE8C12572AA004C5701?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/7444B2E219117CE8C12572AA004C5701?OpenDocument).

The Disability Convention furthers the human rights approach to disability and recognizes the right of people with disabilities to equality in most every aspect of life.<sup>54</sup> It calls for “respect for inherent dignity”<sup>55</sup> and “non-discrimination.”<sup>56</sup> Subsequent articles declare “freedom from torture or cruel, inhuman or degrading treatment or punishment,”<sup>57</sup> “freedom from exploitation, violence and abuse,”<sup>58</sup> and a right to protection of the “integrity of the person.”<sup>59</sup>

Those nations that have not yet ratified the Convention must consider what are commonly referred to as the MI Principles.<sup>60</sup> In 1991, the United Nations General Assembly adopted the “Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care” (the “MI Principles”).<sup>61</sup> These principles established minimum human rights standards of practice in the mental health field, and have been recognized as “the most complete standards for the protection of the rights of persons with mental disability at the international level.”<sup>62</sup> The MI Principles have been used by international oversight and enforcement bodies, and have been directly incorporated into mental health legislation in many countries, including Mexico, Hungary, Portugal and Australia (and in others, e.g., Nicaragua and Costa Rica, as a guide in the redesign of their mental health policies).<sup>63</sup>

The MI Principles establish standards for treatment and living conditions within psychiatric institutions, and create protections against arbitrary detention in such facilities. These principles apply broadly to persons with mental illness, whether or not they are in psychiatric facilities, and they apply to all persons admitted to a mental health facility, whether or not they are diagnosed as mentally ill. The MI Principles recognize, by way of example, that “[e]very person with a mental illness shall have the right to live and work, to the extent possible in the community.”<sup>64</sup> They have major implications for the structure of mental health systems since they recognize that “[e]very patient shall have the right to be treated and cared for, as far as possible, in the community in which he or she lives.” They also protect a broad array of rights within institutions, including protections against “harm, including unjustified medication, abuse by other patients, staff or others.”<sup>65</sup> They require the establishment of monitoring and inspection of facilities to ensure compliance with the Principles, and require treatment “based on an individually prescribed plan,” and directed towards preserving and enhancing personal autonomy.”<sup>66</sup>

This brief overview raises an important, and as of yet, unasked, question: to what extent have these principles been considered by forensic psychology in an international context?<sup>67</sup>

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<sup>54</sup> See, e.g., Dhir, A. (2005). Human rights treaty drafting through the lens of mental disability: The proposed international convention on protection and promotion of the rights and dignity of persons with disabilities. *Stan. J. Int'l L.*, 41, 181.

<sup>55</sup> *UN Convention*, Article 3(a).

<sup>56</sup> *Ibid*, Article 3(b).

<sup>57</sup> *Ibid*, Article 15.

<sup>58</sup> *Ibid*, Article 16.

<sup>59</sup> *Ibid*, Article 17.

<sup>60</sup> See generally Perlin et al. (2006). *International human rights and comparative mental disability law: Cases and materials*.

<sup>61</sup> Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, G.A. Res. 46/119, 46 U.N. GAOR, Supp. No. 49, Annex at 188-192, U.N. Doc. A/46/49 (1991) (hereinafter, *MI Principles*).

<sup>62</sup> *Victor Rosario Congo v. Ecuador*, Case 11.427, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc.7 rev., 475, para. 54 (1998).

<sup>63</sup> See Rosenthal, E.& Sundram, C. (2002). International human rights in mental health legislation. *N.Y.L. Sch. J. Int'l & Compar. L.*, 21, 469, 488-489.

<sup>64</sup> *MI Principles*, supra note 61, Principle 3.

<sup>65</sup> *Ibid*, Principle 8(2).

<sup>66</sup> Rosenthal & Sundram, supra note 63, 471.

<sup>67</sup> On the question of the application of international human rights standards to forensic evaluations, see Perlin, M. L. & McClain, V. (2009). “Where souls are forgotten”: Cultural competencies, forensic evaluations and international human rights. *Psychol., Pub. Pol'y & L.*, 15, 257.

## **8. The extent to which forensic psychology practice meets international human rights norms**

There has been an important increase in recent years in the scholarly literature on the relationship between mental disability law and international human rights,<sup>68</sup> and on the application of mental disability law in civil law jurisdictions.<sup>69</sup> As part of this new literature, scholars and advocates are beginning to examine the extent to which facilities for persons with mental disabilities (both civil and forensic) comport with international human rights standards. In a devastating critique of such facilities in ten nations in Central and Eastern Europe, Oliver Lewis, legal director of the Budapest-based Mental Disability Advocacy Center,<sup>70</sup> analyzed such issues as civil detention, court reviews, forensic detention, the use of social care homes,<sup>71</sup> staffing, treatment, use of restraint and seclusion, and guardianship, and concluded that, in some instances, institutionalized persons endure worse conditions now than they did at the fall of communism.<sup>72</sup> In conclusion, he found that:

Rights and safeguards exist largely on paper. Governments appear to be satisfied to enact human rights compliant mental health legislation, whilst ignoring mechanisms to ensure enforcement of the law in practice. The lack of state legal aid systems, the problems of access-to-justice by those under guardianship housed in remote institutions, the few lawyers willing to represent people with mental disabilities, coupled with the unwillingness of domestic courts to hear ECHR points and the grinding slowness of the Strasbourg Court all combine to produce a pessimistic situation in which the realization of human rights seems a long way off.<sup>73</sup>

The stunningly graphic and comprehensive reports done by MDRI on conditions in Hungary, Uruguay, Mexico, and elsewhere<sup>74</sup> have further mirrored these conclusions.

This literature is robust, and, when read in its entirety, demonstrates that there are certain universal factors<sup>75</sup> that globally dominate the treatment of those institutionalized because of mental disability: (1) a lack of

<sup>68</sup> See, e.g., Perlin & Szeli, *supra* note 47. Perlin, *Change*, *supra* note 47. Perlin, *Flashing*, *supra* note 47. Rosenthal, E. & Rubenstein, L. S. (1993). International human rights advocacy under the “principles for the protection of persons with mental illness.” *Int’l J. L. & Psychiatry*, 16, 257. Rosenthal & Sundram, *supra* note 63. Kanter, A. & Rosenthal, E. (2002). The right to community integration: protections under United States and international law. In: Breslin et al. (Eds.), *Disability rights: International and national perspectives*, 325. Kanter, A. S. (2003). The globalization of disability rights law. *Syracuse J. Int’l L. & Com.*, 30, 241. Gostin, L. O. & Gable, L. (2003). The human rights of persons with mental disabilities: a global perspective on the application of human rights principles to mental health. *Md. L. Rev.*, 63, 20. Kingdon et al. (2004). Protecting the human rights of people with mental disorder: New recommendations emerging from the Council of Europe. *Brit. J. Psychiatry*, 185, 277. Winick, B. J. (2002). Therapeutic jurisprudence and the treatment of people with mental illness in Eastern Europe: Construing international human rights law. *N.Y.L. Sch. J. Int’l & Comp. L.*, 21, 537.

<sup>69</sup> See, e.g., Cohen, P. S. (1999). Psychiatric commitment in Japan: International concern and domestic reform. *UCLA Pac. Basin L.J.*, 14, 28. Munro, *supra* note 4 (Asia). Moncada, A. C. (1994). Involuntary commitment and the use of seclusion and restraint in Uruguay: a comparison with the United Nations principles for the protection of persons with mental illness. *U. Miami Inter-Am. L. Rev.*, 25, 589 (South America). Lewis, *supra* note 7 (Eastern Europe). Gostin, L. O. (2000). Human rights of persons with mental disabilities: The European convention of human rights. *Int’l J. L. & Psychiatry*, 23, 125. Harding, T.W. (1989). The application of the European convention of human rights to the field of psychiatry. *Int’l J. L. & Psychiatry*, 12, 245. Ferencz & McGuire (2000). Mental health review tribunals in the UK. *Court Review*, Spring 2000, 48. Hewitt, D. (2001). Do human rights impact on mental health law?(European Union). *New L.J.*, 151, 1278 (Western Europe). On the issues that relate to the different weight given to mental status expert testimony in civil and common law jurisdictions, see Perlin, M. L., Birgden, A. & Gledhill, K. (2009). “The witness who saw, /He left little doubt:” A comparative consideration of expert testimony in mental disability law cases. *J. Investigative Psychol. & Offender Prof.*, 6, 59.

<sup>70</sup> See [www.mdac.info](http://www.mdac.info).

<sup>71</sup> See, e.g., Kanev, K. (2002). State, human rights, and mental health in Bulgaria. *N.Y.L. Sch. J. Int’l & Comp. L.*, 21, 435, 435. Winick, *supra* note 67, 569.

<sup>72</sup> Lewis, *supra* note 7, 294.

<sup>73</sup> *Ibid.* 302.

<sup>74</sup> Perlin, *Chimes*, *supra* note 44, 424 (referring to Mexico Report, *supra* note 6; Mental Disability Rights International, Human Rights & Mental Health: Hungary (1997); Mental Disability Rights International, Human Rights & Mental Health: Uruguay (1995).

<sup>75</sup> See Perlin, M. L. (2007). International human rights law and comparative mental disability law: The universal factors. *Syracuse J. Int’l L. & Commerce*, 34, 333. Perlin, *Flashing*, *supra* note 47, Chapter 5.

comprehensive legislation (in some nations, of *any* legislation) to govern the commitment and treatment of persons with mental disabilities;<sup>76</sup> (2) a lack of independent counsel made available to persons facing commitment and those institutionalized;<sup>77</sup> (3) a failure to provide humane care to institutionalized persons, (4) a lack of coherent and integrated community programs as an alternative to institutional care;<sup>78</sup> and (5) a failure to provide humane services to forensic patients (those whose involvement in the mental health system was triggered by involvement in the criminal justice system).<sup>79</sup>

Clearly, there is a potential link here between these universal issues and the topic of this paper. If patients are being treated as poorly in Europe and in South America as MDRI's and Lewis's investigations reveal, then it is clear that the international human rights standards reflected in the CRPD<sup>80</sup> are being ignored. Forensic psychology, although rarely brought under the microscope of licensing boards and/or judicial scrutiny, has played a major role in the transformation of American institutional care. It is time for it to turn its attention to the international stage. Its own standards demand it.

One approach that may be of help here is that of therapeutic jurisprudence. Therapeutic jurisprudence presents a new model by which we can assess the ultimate impact of case law and legislation that affects mentally disabled individuals, studying the role of the law as a therapeutic agent, recognizing that substantive rules, legal procedures and lawyers' roles may have either therapeutic or anti-therapeutic consequences, and questioning whether such rules, procedures, and roles can or should be reshaped so as to enhance their therapeutic potential, while not subordinating due process principles.<sup>81</sup>

Prof. Bruce Winick, one of the founding fathers of therapeutic jurisprudence, has been the first to consider its potential impact in this area of the law in these areas of the world:

If developments in mental health law in Eastern Europe follow the path of the American experience, the task of construing the various international human rights provisions that place limits on how those with mental illness are treated will be guided by principles of therapeutic jurisprudence.<sup>82</sup>

Winick concludes his careful and comprehensive analysis of these issues in this manner:

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. ... Bringing the rule

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<sup>76</sup> See, e.g., Fischer, J. (2006). A comparative look at the right-to-refuse treatment for involuntarily hospitalized persons with a mental illness. *Hastings Int'l & Comp. L. Rev.*, 29, 153. Yamin, supra note 1. Quinn, G. (1992). Civil commitment and the right to treatment under the European convention on human rights. *Harv. Hum. Rts. J.*, 5, 1. Legamaate, J. (1995). Involuntary admission to a psychiatric hospital: Recent European developments. *Eur. J. Health L.*, 2, 15.

<sup>77</sup> See, e.g., Carrillo, A. J. (2004). Bringing international law home: The innovative role of human rights clinics in the transnational legal process. *Colum. Hum. Rts. L. Rev.*, 35, 527. Uphoff, R. J. (1999). Why in-house live client clinics won't work in Romania: Confessions of a clinician educator. *Clinical L. Rev.*, 6, 315. Johnson, E. Jr. (2000). Equal access to justice: Comparing access to justice in the United States and other industrial democracies. *Fordham Int'l L. J.*, 24, 83. Lewis, supra note 7, 297-298.

<sup>78</sup> See, e.g., Landau, L. B. (2003). Beyond the losers: Transforming governmental practice in refugee-affected Tanzania. *J. Refugee Stud.*, 16, 19.

<sup>79</sup> See, e.g., Mental Disability Rights International, *Human Rights & Mental Health: Mexico* (2000).

<sup>80</sup> See supra note 51.

<sup>81</sup> Perlin, M. L. (2003). "She breaks just like a little girl": Neonaticide, the insanity defense, and the irrelevance of "ordinary common sense." *Wm. & Mary J. Women & L.*, 10, 1, 30 n. 33. See generally, Wexler, D. B. (Ed.) (1990). *Therapeutic jurisprudence: The law as a therapeutic agent*. Wexler, D. B. & Winick, B. J. (Eds.) (1991). *Essays in therapeutic jurisprudence*. -----(1996). *Law in a therapeutic key: Recent developments in therapeutic jurisprudence*. Winick, B. J. (Ed.) (1997). *Therapeutic jurisprudence applied: Essays on mental health law*. Perlin, *Flashing*, supra note 47, Chapter 9.

<sup>82</sup> Winick, supra note 67, 540.

of law to the mental hospital will do much to limit abuses, and bringing therapeutic jurisprudence to mental health law and practice in Eastern Europe and to our construction of international human rights principles will do much to reshape law and practice in this area into a more effective tool for promoting the mental health of patients. A therapeutic jurisprudence model for civil commitment can do much to convert the mental health system in Eastern Europe into a more humane and therapeutic one that can provide help to those suffering from mental illness without in the process harming them.<sup>83</sup>

In the past several years, there has been an explosion of literature recounting the impact that therapeutic jurisprudence has had on the practice of law<sup>84</sup> and on the judging of cases.<sup>85</sup> Scholars are now just beginning to explore the intersection between therapeutic jurisprudence and forensic psychology,<sup>86</sup> and between therapeutic jurisprudence and international human rights law.<sup>87</sup> In a recent article with Prof. Astrid Birgden, I concluded:

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.<sup>88</sup>

I believe that similar explorations will have the exciting potential of restructuring this landscape.

## **9. Conclusion**

Recall that the APA’s standards speak of fairness and justice.<sup>89</sup> I have sought, in the context of this paper, to demonstrate how forensic psychologists can best work towards this end if they adhere to international human rights principles in the contexts I have been discussing. And recall the exegesis of my title.<sup>90</sup> There is no phrase I can imagine that better describes the plight of those in forensic facilities worldwide than the one used in *Chimes of Freedom* by Dylan: The luckless, the abandoned an’ forsaked/the outcast, burnin’ constantly at stake.<sup>91</sup> I hope and believe that consideration of the arguments that I am advancing here will be one modest step in the creation of a better world for the individuals now so abandoned an’ forsaked. And I believe that would be an important accomplishment.

(Edited by Albert Q.)

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<sup>83</sup> Ibid, 572.

<sup>84</sup> See, e.g., Stolle, D. P. (2000). *Practicing therapeutic jurisprudence: Law as a helping profession*.

<sup>85</sup> See, e.g., Winick, B. J. & Wexler, D. B. (Eds.) (2003). Judging in a therapeutic key: Therapeutic jurisprudence and the Courts.

<sup>86</sup> See, e.g., Fishman, D. B. (2004). Pragmatic psychology and the law. *Psychol. Pub. Pol’y & L.*, 10, 3.-----(2004). Prospects for developing a “Psycholegal Lexis.” *Psychol. Pub. Pol’y & L.*, 10, 178.-----(2003). Background on the “Psycholegal Lexis Proposal:” Exploring the potential of a systematic case study database in forensic psychology. *Psychol. Pub. Pol’y & L.*, 9, 267. Birgden, A. & Ward, T. (2003). Psycholegal soft spots in the criminal justice system. *Psychol. Pub. Pol’y & L.*, 9, 334. Wexler, D. (1996). Some thoughts and observations on the teaching of therapeutic jurisprudence. *Rev. Der. P.R.*, 35, 273. Wiener, R. (1993). Social analytic jurisprudence and tort law: Social cognition goes to court. *St. Louis U. L.J.*, 37, 503. Levine, M. (1993). A therapeutic jurisprudence analysis of mandated reporting of child maltreatment by psychotherapists. *N.Y.L. Sch. J. Hum. Rts.*, 10, 711.

<sup>87</sup> See Perlin, M. L. & Dlugacz, H. A. (2009). “It’s doom alone that counts”: Can international human rights law be an effective source of rights in correctional conditions litigation? *Behav. Sci. & L.*, 27, 675.

<sup>88</sup> Birgden & Perlin, *Tolling*, supra note 38. See also Birgden & Perlin, *Home*, supra note 25.

<sup>89</sup> *Ethical Principles*, supra note 17, 1062-1063.

<sup>90</sup> See supra text accompanying notes 8-10.

<sup>91</sup> Dylan, supra note 9.