



## What does impartiality mean in medico-legal psychiatry? An international survey



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### HIGHLIGHTS

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### ABSTRACT

Medico-legal psychiatry is the field of forensic psychiatry that consists of reporting to criminal, civil and administrative authorities and testifying in courts of law. As a forensic science, medico-legal psychiatry is based on the principle of impartiality. However, the notion of impartiality is not clearly defined and can be understood in many different ways. The purpose of this study was to explore the meaning that expert psychiatrists attribute to this notion. Members of the forensic sections of the World Psychiatric Association, the European Psychiatric Association and the American Academy of Psychiatry and the Law were surveyed by e-mail using a vignette and a questionnaire. One hundred and thirty-one responses were received. When commenting on the case presented in the vignette, a large majority of respondents considered that the personal moral convictions of the doctor were the main factor likely to cast doubt on the impartiality of the expert, followed by past personal experience and the fact that the expert was the treating doctor of the examinee. In the answers to the questionnaire, 54% of participants considered that the question of impartiality was similar in both the inquisitorial and adversarial systems. Impartiality was considered by most participants as both an ethical and a legal concept. The main factors considered as likely to affect the impartiality of an expert were past personal experience, personal beliefs and perceptions, and the fact that the expert was the treating doctor of the examinee. Training in forensic psychiatry and past professional experience were considered to be the most important factors that could enhance the impartiality of an expert. When asked about their own definition, 70% of respondents defined impartiality as a choice specific to the expert, and 27% of participants defined impartiality as a result of external factors. The term 'objectivity' was used in 30% of responses. Results revealed a rather unified view of the issue of impartiality by medico-legal psychiatrists, irrespective of their country and practice conditions. The notions of honesty and striving for objectivity, which are emphasized in several guidelines of forensic psychiatry associations, were cited by many participants. Impartiality appears to be considered as a coherent concept in both normative and consequentialist ethics and represents a useful reference in the practice of medico-legal psychiatry.

### 1. Introduction

According to the definition of the American Academy of Psychiatry and the Law (AAPL), also used by the forensic section of the World Psychiatric Association (WPA): 'Forensic psychiatry is a subspecialty of clinical psychiatry and clinical expertise is applied to legal issues in legal contexts embracing civil, criminal, correctional or legislative

matters' (Dressing & Salize, 2006; World Psychiatric Association, 2010). Prison psychiatry consists of providing care to detained persons. Medico-legal psychiatry involves providing reports to criminal, civil or administrative authorities and acting as an expert witness in a court of law (Arboleda-Florez, 2006).

In many European countries and in some States in the USA, medico-legal psychiatry is a section of forensic medicine for historical and

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practical reasons (Rosner, 2003). Indeed, as an expertise activity, it obeys the same ethical principles as other forensic sciences. When a psychiatrist acts as an expert witness for the authorities, he/she does not have the same role as a therapist. This is because he/she does not act at the request of a patient nor in the sole interest of one, but at the request of the authority who mandates him/her in the interests of justice. For this reason the legal, ethical and deontological principles of medicine do not apply in the same way in medico-legal psychiatry as for therapeutic medicine (Niveau & Welle, 2018). As argued by many authors, the forensic sciences are mainly guided by the ethical principle of impartiality, irrespective of the country and the legal system where these sciences are practiced (Adshead & Sarkar, 2005; Clements & Ciccone, 1984; Diamond, 1959; Kopsen & Nystrom, 2012). Therefore, medico-legal psychiatry must also have the ethical objective of a strict respect for impartiality.

The question of ethics in forensic psychiatry has been at the origin of passionate debates for a very long time but it is the so-called 'Stone-Appelbaum controversy' that has helped to build a truly ethical vision of the role of the psychiatric expert (Appelbaum, 1990, 1997; Stone, 1984). Appelbaum, among others, has stressed the difficulty of applying the classic principles of respect for autonomy, beneficence, non-maleficence and justice in forensic psychiatry alongside the need for the expert psychiatrist to maintain an attitude of objectivity. An ethical principle that is central to forensic psychiatry is the fact that the psychiatrist must act independently, remaining objective and not being influenced by one of the parties or by the authority that has mandated the expertise (Appelbaum, 1987; Calcedo-Barba, 2010).

The concept that most clearly summarises these aspects is that of impartiality. However, debate exists as to the limits and content of this concept. Several authors, such as Appelbaum and Gutheil, cite impartiality as synonymous with objectivity or honesty (Appelbaum, 1987; Gutheil, 1999). Other authors insist that the forensic psychiatrist should not have a 'dual mandate' (Taborda & Arboleda-Florez, 2006), while others consider that impartiality is a principle of justice (Sen, Gordon, Adshead, & Irons, 2007). In addition, there is a somewhat indiscriminate use by some authors of the terms 'impartiality' or 'neutrality', without any specification of what these terms cover from an ethical or legal point of view (Cervantes & Hanson, 2013; Combalbert, Andronikof, Armand, Robin, & Bazex, 2014).

Although it appears that the concept of impartiality is central in medico-legal psychiatry, it can be understood in different ways. However, from an ethical and scientific point of view, it is essential to have a commonly recognized definition that can be used in daily practice. The aim of this study was to explore the meaning attributed to the concept of impartiality among medico-legal psychiatry professionals in different regions of the world.

## 2. Materials and methods

Members of the forensic sections of the WPA, the European Psychiatric Association (EPA) and the AAPL were surveyed by e-mail. The survey was conducted from 1 March to 31 May 2017. A reminder was sent to all participants at the end of April 2017. A total of 2099 specialists were contacted. The survey began with a vignette (Appendix A), followed by a questionnaire concerning the problems of impartiality that could be identified in the vignette case presentation. Four potential reasons for the lack of impartiality of the expert were present in the vignette: he had been the treating doctor of the examinee; he had moral convictions with regard to the crime; he had a pre-conceived position with respect to responsibility; and he took a position on the outcome of the case.

The second part of the document consisted of 5 multiple-choice questionnaires on the influence of the criminal justice system (inquisitorial or adversarial) on impartiality, the epistemological value of impartiality, the factors that may influence the impartiality of the expert, the factors that may strengthen the impartiality of the expert, and

the factors that may cast doubt on the impartiality of the expert. The participants were then asked to give their own definition of impartiality. The survey ended with questions about age, gender, country of practice, professional experience and training.

Responses were compared by use of the  $\chi^2$  test. The Statistical Package for Social Sciences (SPSS) version 20.0 was used for statistical analysis.

The Geneva cantonal ethics Committee did not raise any objection to the study as it did not concern patients.

## 3. Results

The response rate after 2 months was 6% ( $n = 131$  responses). All responses could be used, but only 74% were complete. Answers obtained came from 18 different countries; 66% from the USA. Respondents were 74% male and aged between 31 and 85 years (mean, 53 years). Women were significantly younger ( $p < .05$ ).

All 131 participants answered the questions about the vignette. Regarding the factors likely to cast doubt on the impartiality of the expert in the submitted case, the personal moral convictions of the doctor were considered as the main factor for 80% of respondents. This was followed by the fact that he had been the treating doctor of the examinee (58%) and had a prejudice concerning the criminal responsibility or the result of the court case (56%).

One hundred and two participants answered the question concerning the influence of the legal system on the impartiality of the expert. Twenty-three percent of participants considered that the inquisitorial system was more favourable to the impartiality of the expert and 19% that the adversarial system was more favourable. For 54% of respondents, the question of impartiality was similar in both systems. However, analysis of the results showed that the majority of participants who practiced in a country with an adversarial system (64%) considered that the two systems were equivalent for impartiality, whereas only 31% of experts working in an inquisitorial system considered that the two systems were equivalent ( $p < .05$ ). In 92% of responses, impartiality was considered as a question relating to the field of ethics, and in 77% as a matter relating to the legal field.

The main factors considered as likely to affect the impartiality of an expert were to have been the treating doctor of the examinee (97%), past personal experience (92%), and personal beliefs (90%). The main factors considered to strengthen the impartiality of an expert were training in forensic psychiatry (94%) and past professional experience (77%). From a legal point of view, the main factors believed to call into question the impartiality of the expert were having been the treating psychiatrist (93%), expressing personal convictions (78%), and having already carried out an examination of the same person (70%).

Ninety-seven participants gave their own definition of impartiality. These responses could be grouped into two categories: 70% of participants defined impartiality as a choice specific to the expert (e.g., be aware of the risk of bias, not to be swayed, make an effort to be objective), and 27% of participants defined impartiality as a result of external factors (e.g., not being a treating doctor, not depending financially on the person requesting the expertise). Only 3% of participants mentioned both aspects. The term 'objectivity' was used in 30% of responses and 20% of participants considered that impartiality should be based primarily on a thorough clinical or psychopathological knowledge of the case.

Participants had a high level of education and experience as 95.4% were graduate psychiatrists, with an average of 18 years' experience in forensic psychiatry. Training in forensic psychiatry had been followed by 65% of participants during their general psychiatry studies. Eighty-two percent of participants had completed additional certified training in forensic psychiatry and 69% reported individual theoretical training or practical training with (54%) or without (35%) supervision.

Comparative analyses indicated that age, gender, level of education, country of practice, type of practice, seniority in the profession and

training in forensic psychiatry did not affect whether participants considered that having been a treating doctor implied a questioning of impartiality in the role of expert. However, it appeared that older respondents (> 55 years) considered that personal beliefs can reduce the impartiality of the expert more than younger colleagues ( $p < .05$ ). The same age group also reported more personal and unsupervised training ( $p < .05$ ). Similarly, participants with the most years of practice in psychiatry (> 16 years) were more likely consider that impartiality is influenced by training, personal experience and personal convictions compared to those with fewer years of practice ( $p < .1$ ). Men believed that personal experience and work experience could influence expert impartiality more than women ( $p < .05$ ).

#### 4. Discussion

In this study we surveyed professionals from a range of different countries on their views of impartiality using a vignette and a questionnaire online. The key finding from this survey is that respondents have a rather unified view of the issue of impartiality in forensic medico-legal psychiatry. The vast majority of study participants identified the expert's personal beliefs and experiences as the main factors that could alter his/her impartiality, whereas professional experience and training were considered as reinforcing impartiality. Participants' personal definitions of impartiality most often referred to a question of an individual's behavior rather than structural issues.

Participants positioned impartiality as an ethical duty for the expert. Of note, most also considered impartiality as a legal issue. The notion that the psychiatrist cannot be an expert for a court of law if he/she has previously been a treating doctor was clearly identified by participants, but this notion appeared less practical (58% of the participants concerning the vignette) than theoretical (97% of the participants for a theoretical question). This difference shows that the debate continues and that, in certain circumstances, it could be admitted that treating clinicians act as an expert witness (Barry-Walsh & Norris, 2013).

The legal and ethical considerations are two sides of the same concept. Ethically, impartiality corresponds to the concepts of non-maleficence and justice (Niveau & Welle, 2018). By being impartial, the expert psychiatrist does not harm the accused or the victim. He/she does not interfere in the balance between the rights of the prosecution and the rights of the defense. He/she promotes a fair treatment for any person, regardless of the acts committed, ethnicity, social status or any other aspect. In that sense, impartiality belongs to a consequentialist dimension of ethics because it aims for 'the greatest good for the greatest number' (O'Gorman, Macken, Cullen, Dunne, & Higgins, 2013). Certainly this consequentialist ethics can only achieve its purpose in the context of a democratic and fair justice (Stone, 1980).

Legally, impartiality includes the same concepts in a more concrete way. Indeed, the legal objective of impartiality is to allow a trial that is not biased by false or inaccurate psychiatric opinions (Vollm et al., 2018). Impartiality thus favours the proper functioning of justice and, in a democratic state, it contributes to the public good. It is significant from this point of view that participants defined impartiality independently of the justice system in which they practiced.

The study has some limitations. The main one is the small number of respondents, which is the consequence of the usual low rate of response in surveys carried out using computerized means of communication, particularly among doctors (Sebo et al., 2017). It is difficult to assess whether a selection bias that might have affected the representativeness of the sample was present. However, the sample of participants was generally homogeneous, with the exception of the country of origin of the participants. Taking into consideration the evolution of the medical demography and the origin of participants, the high representation of individuals working in an adversarial system, of masculine gender and of a relatively high age, the participants in this study are not atypical from the expected profile for the role of a psychiatrist expert in a court of law. Since no similar survey has been conducted to the best of our

knowledge, our results cannot be compared with previous work.

These results have important implications for practice, especially for teaching forensic psychiatry. On the one hand, it is important for young psychiatrists practicing forensic psychiatry to be aware of the importance of knowing their own situation in relation to the person being evaluated. These include not having been their treating doctor, not acting to satisfy personal convictions or not to do an assessment without the informed consent of the person (Buchanan & Norko, 2013; Nedopil, Gunn, & Thomson, 2012; Vollm et al., 2018). However, it is also important to draw their attention to the need to become aware of their own subjectivity and their own limits, as well as the absolute necessity of controlling this subjectivity, if necessary with the help of supervision by a more experienced psychiatrist (Abdalla-Filho, 2013).

The AAPL guidelines, first issued in 1987, revised in 1995 and updated in 2005, do not directly mention impartiality. However, they evoke 'honesty and striving for objectivity', with a comment that insists on the psychiatrist's responsibility not to be influenced, although he may be retained by one party (American Academy of Psychiatry and the Law, 2005), acknowledging that 'the adversarial nature of most legal processes presents special hazards for the practice of forensic psychiatry'. Our study showed that forensic psychiatrists are not worried about the risk of partiality associated with the nature of the legal process itself.

The AAPL guidelines also affirm: 'It is the responsibility of the psychiatrists to minimize such hazards by acting in an honest manner'. This is in line with the opinion of most of the study participants that impartiality depends mainly on the will of the experts themselves. The psychiatric expert witness must base his/her conclusions on verified facts and objective findings and not on personal interpretation or moral judgments (Abdalla-Filho, 2013; Appelbaum, 1984). By contrast, the guidelines mention the need not to be both a treating doctor and expert witness for the same person as of secondary importance, mentioned in a commentary, whereas this seemed to be a very important concern for study participants.

The consensus guidelines for independent medical examination issued by the WPA forensic section evoke impartiality in the expression 'the report must be unbiased', but directly links this with the fact that the forensic psychiatric expert should not be equally engaged in the treatment of the person (World Psychiatric Association, 2010). The consensus of the WPA takes the expressions of honesty and objectivity to define the personal ethical attitude of the forensic psychiatric expert. Although the 2014 ethical guidelines of the WPA are very close to those of the AAPL, which had been enacted prior, the legal aspect of impartiality seems to be more prominent in the directives of the WPA than in those of the AAPL. Similarly, the ethical guidelines of the Royal Australian and New Zealand College of Psychiatrists concerning 'reports and independent medical examinations in medico-legal settings', published in 2015, evoke the importance of honesty and striving for objectivity, i.e., the ethical principles already present in the first version of the AAPL directives (Royal Australian and New Zealand College of Psychiatrists, 2015). Finally, the responses of the participants concerning impartiality in the survey appear in accordance with the main guidelines of forensic psychiatry societies and associations.

#### 5. Conclusion

This survey shows, on a small international sample, a rather clear and unified perception of the notion of impartiality on behalf of professionals in forensic psychiatry. The fact that a large majority of participants believed that impartiality is primarily a matter of personal conviction paves the way for a more in-depth investigation of the question of the relationship between normative ethics and the consequentialist approach of ethics. Similar to other specialists, forensic psychiatric experts need ethical guidelines that serve as benchmarks in the daily practice of the profession. However, clinical practice often exposes them to situations that go beyond the usual normative

framework and necessitates a consequentialist vision of medical action. Forensic psychiatry should be the field of reflection for a unified theory of normative and consequentialist dimensions of ethics in forensic sciences.

### Declaration of competing interest

The authors declare that they have no conflict of interests.

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### Appendix A. Clinical case submitted to survey participants

A psychiatrist who works in a psychiatric emergency department is requested by a prosecutor to conduct a psychiatric assessment.

The case to assess is a young man accused of committing sexual acts with children. The psychiatrist is interested in the prosecutor's request because he is a patient he has examined, in emergency, once for an anxiety attack 1 year ago.

However, he doesn't like to be in contact with pedophiles because he thinks their behaviors are obnoxious and he considers that they should be severely punished. Moreover, he doesn't really understand the prosecutor's request because, in his mind, those who commit sexual acts are responsible for their behavior and there is no real need for a psychiatric report.

The psychiatrist, nevertheless, accepts the assessment mission for the proper functioning of Justice. He wouldn't have accepted this if it had been proposed by the defense counsel, but he accepts in order to support the attorney representing the State and to protect the victims.

Mention the reasons(s) why the impartiality of this psychiatrist could be called into question?

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