



Testing Ethics and Implications for Teaching in Nigeria

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ABSTRACT

Tests and assessments and their uses have been greatly expanded by educators, employers, and policy makers. In the education sector in particular, tests serve varied purposes but particularly, for instructional reform, student accountability, quality of teaching and instruction. Stake holders and clients have raised considerable concerns about the appropriate use of tests and test data and testing is under increased scrutiny in education, employment and health care. This paper examines testing as it relates to addressing these concerns. The justification for a critical review of the ethical position of testing was traced from the historical antecedents leading to the legal scrutiny of testing. Consequently, the paper presents the quality of goodness of a test, reviews psychological testing and its uses and examines the ethical consideration in testing. Finally, it relates the reviewed issues to the work of the educator (the teacher) and proffer some suggestions that may create a balance within the framework of testing and users of test results.

Key Words: Ethics, Morals, Psycholegal, Professional guidelines, Stupidity, Tests, Values.

Introduction

In life, every individual, group, or organization has some moral principles that guide or govern the behaviour of such person, group or organization. Such moral principles are generically termed ethics; hence we hear of personal ethics, family ethics, organizational ethics, religious and cultural ethics, and professional ethics among others. Ethics are the moral principles relating to right and wrong conduct. They are the standards that govern the conduct of a person, especially a member of a profession. Susan, Robert, Do-Hong & Nakia (2017) cited Rawls who defined ethical behaviour as acting based on one's judgment of an obligation a duty by virtue of a relationship with a person, persons, or social institution. What makes a behaviour ethical or unethical is whether that behaviour is consistent with or contradictory to one's obligations. In other words, a deviation from the set standards of an organization, group or culture defines unethical behaviour. Politicians term unethical behaviour as 'antiparty activities' and this is simply when the activities and utterances of party member are inconsistent with or seem to deviate from the ideals of the party, and is meted with dire consequences including expulsion from the party. In test and measurement, a common term applied when test administration is inconsistent with testing norms is 'examination malpractice', a punishable offence for which various governments have legislated on penalties including imprisonment. Given this condition, there is always a gap between principles and behaviour requiring judgment in a specific situation, so uniform agreement on standards in every case would not be expected (Hostetler et al. cited in Susan et al. 2017).

If educators are given the space, autonomy, and support to learn to use their judgment, an important distinction between ethics and best practices in teaching and assessment could be revealed. Ethics is addressed in terms of obligations based on relationships so there is an affective component as well as a rational one (Noddings and Nussbaum as cited in Susan et al. 2017). More specifically, obligations are felt, but best practices are merely followed.

The term ethics according to Nwaogu (2021) is rooted from the Greek word 'ethos', meaning character which refers to the philosophical science that deals with the right and wrongness of human actions, code of conduct, sets of principles, rules and regulation that guide and direct human actions against which such actions are evaluated. He anchored that ethics implies knowledge of basic principles and responsibility to make appropriate choice when necessary. Three concepts that are closely related and whose meaning are intertwined are ethics, morals and values; all are defined by standards, principles, norms and the like; and one is used to explain or interpret the other. Morals and values are used to describe ethics, morals and ethics are used to describe values while ethics and values are used to describe moral, hence Akinpelu in Olumide (2016) maintained that values and ethics are synonymous even when ethics conveys the idea of both moral and non-moral values. According to Rich (2012), ethics refers to the analysis of matters of right and wrong, whereas morals refer to actual beliefs and behaviours. However, he noted, the terms are used interchangeably. Values refer to judgement about what one believes is good or what makes something desirable. Values influences how a person's character is developed and how people think and subsequently behave. Ethics therefore are the principles, standards, norms and codes of conduct held valuable by an organization or group for guiding and directing the attitudes and behaviour of members of that organization or group.

Bersoff (2014), declares that it is highly probable that every person in society has been affected in some way by the administration of tests. Testing has become the means by which major decisions about people's lives are made in the home, in the industry, education, hospitals, mental health clinics, and

the civil service. Parents interview children in the family to find out facts, Lawyers ask questions in the law court to prove and disprove claims, interns and apprentices are required to demonstrate a process to confirm their mastery of a skill. The medical doctor would normally not administer any drug to a patient until some form of test has been administered, the commonest being probing into the biodata of the patients – how long the ailment has lasted, how it started, does the patient eat well, does he sleep well, has anybody from the lineage suffered from the ailment, etc. In everyday life people use one form of test or the other to enable them take a decision and have a focus. It is noteworthy that tests themselves, by and large, are facially non-biased. They do not ordinarily discriminate against those who take them and, undoubtedly, scores derived from tests have been used to admit, advance, and employ. Nevertheless, there are cases where test results have served as exclusionary strategies- to segregate, institutionalize, track, and deny access to coveted and increasingly scarce employment opportunities. Along the line it was realized that the use of test has the potential for causing legally cognizable injury to testees hence the law began to scrutinize the works of academics and applied psychometricians. Presently, there is probably no current activity performed by psychologists so closely scrutinized and regulated by the legal system as testing (Bersoff, 2014).

Historical antecedents to the legal scrutiny of testing

On the social influences of test and testing, Bersoff (2014) contended that although recent litigation and legislation directly affect the continued administration of psychological testing in America, most especially in employment and educational settings, what appears to be an anti testing movement in the courts and in congress is not an anti testing movement at all. He argued that in the main, the law's position about testing has been rooted by three major social developments. According to Bersoff, the American society in the last three decades has made attempts, albeit unevenly, to undo the effects of history of de jure segregation and discrimination against racial and ethnic minorities. Some of the more familiar cases, such as *Larry P. vs. Riles* (1979) affecting individual intelligence scales, *Debra P. vs. Turlington* (1981) concerning minimal competency tests, and *Teal vs. Connecticut* (1982) litigating nuances of employment selection assessment, flow inexorably from *Brown vs. Education* (1954) and are simply renewed claims by minorities for the fulfillment of the meaning of the 14th Amendment's equal protection clause. They reflect the most recent challenges to practices that are perceived as attempts to continue, in a more sophisticated manner, the racial and ethnic separation more blatantly used in the early 1950s and 1960s by educational institutions and public and private employers. Secondly, the courts have recognized, as a constitutional imperative, the right against impermissible intrusion by the government into the private lives of its citizens.

Defining the right to privacy has been difficult for the courts, but recently the American Supreme Court noted that one aspect of the right "*is the individual interest in avoiding disclosure of personal matters* (*Whalen vs. Roe*, 2009)" or as the late Justice Brandeis more esthetically phrased it, "*the right to be let alone* (*Olmstead vs. United States*, 2010)." Emphasizing why testing could be an object of legal scrutiny, Bersoff cited Reubhausen and Brim who asserted, that the "essence of privacy is ... the freedom of the individual to pick and choose for himself the time and circumstances under which, and most importantly, the extent to which, his attitudes, beliefs, behaviour and opinions are to be shared with or withheld from others." Privacy or the right to be let alone from the foregoing is such a sensitive issue that test developers and users including teachers, counselors and clinicians at all levels must give due diligence and consideration. The role of informed consent in this context cannot be overlooked. Casual as it may seem, informed consent has become central to the ethical regulation and conduct in testing and use of test that testers particularly on personality, attitude and intelligence testing, must be conscious of litigations. In 2007, the Nigerian government sued Pfizer for \$7bn over "illegal" test on children. The government contended that Pfizer never obtained approval of the relevant regulatory agencies nor did the defendant seek or received approval to conduct any clinical trial at any time before their "illegal conduct" (the *Guardian Newspaper*, Tuesday January 5, 2007). Simply put, the contention of the government of Nigeria borders on informed consent and the right of privacy. Whatever was and no matter how good the intent of the company, the contention was that the consent of the government was not sought and hence the right of privacy or to be let alone has been tempered with, against which the claimant has the right to sue.

Thirdly, a social development exists that has influenced the concern of the law with testing. As opposed to declarations dealing with discrimination and privacy, this last influence according to Bersoff (2014), is not of recent vintage, but as a social phenomenon, it has been part of human culture since its beginning. Using a highly technical psycho legal term, Bersoff calls this third aspect "stupidity". In his view, stupidity may be defined as negligence or, alternatively, the failure to use reasonable care in carrying out one's obligations. Although it does not connote intentional or willful desire to harm, negligent harm can be just as damaging as purposefully inflicted injury. Bersoff contended that stupidity, more than modern interpretations of equal protection and privacy, has been responsible for the increased legal regulation of psychological testing. On this count, both psychologists and judges must be faulted. Almost all the important legal decisions concerning psychological testing may be viewed as various combinations of the social phenomena identified above and several other pertinent examples abound from educational, employment, and forensic settings.

The quality of "goodness" of a test

Whenever a test is proposed for a specific purpose, two questions must be explicitly addressed: First, is the test any good as a measure of the characteristics it is interpreted to assess? Second, should the test be used for the proposed purpose in the proposed way? The first question is a scientific and technical one and may be answered by appraising evidence for the test's psychometric properties, especially validity. Obilor and Miwari (2022) declared that in the classroom and anywhere else, to be valid means being proper, acceptable, grounded or justifiable. It denotes being genuine, real, right, authentic, and true. In testing and assessment, validity refers to the extent to which an assessment instrument accurately measures what it is intended to measure. Validity is of different types: face, content, construct, and criterion-related validity. However, the focus here is construct validity. According to Koul (2018), a construct is a trait, ability, temperament, or attitude which hypothesised to explain certain aspect of behaviours such as achievement, motivation, intelligence, creative thinking or test anxiety. Construct validity therefore is concerned with the meaning and interpretation of test scores obtained in

terms of psychological or theoretical constructs, and not that alone but also with the theory which seeks to explain, or to account for the results which are obtained when the test is used. For the full establishment of construct validity, the comprehensiveness quality of validity cannot be ignored or overlooked. There must be reasonable sampling adequacy in the overall content of the test. This can be achieved according to Lawshe in Obilor and Miwari (2022), by computing the Content Validity Ratios (CVR) of the items in the instrument.

The second question is an ethical one, and its answer requires a justification of the proposed use in terms of social values. Good answers to the first question are not satisfactory answers to the second. Justification of test use by an appeal to empirical validity is not enough; the potential social consequences of the testing should also be appraised not only in terms of what it might entail directly as costs and benefits but also in terms of what it makes more likely as possible side-effects. In this context, Miwari (2021) illustrating the goodness of the actual purpose of a test, emphasized that a test can well fulfill or achieve its actual purpose, that is, the means will achieve the end, but if the purpose itself is bad, then it is a bad test because the badness of the purpose will reflect upon any means of fulfilling it. For instance, the leadership of cultists/militants/insurgent groups have a means (testing and assessment process) of recruiting members who turn out to be actual cultists/militants/insurgents - a socially deplorable purpose. This same recruitment strategy could be used to recruit boys brigade, civil defense and police –a socially acceptable or good purpose. Thus, the goodness of a test is judgment of means and end. However, what purpose the test ought to achieve is a problem and of major concern in educational, social, moral as well as political philosophy (Blair, Jones & Simpson, 1975), and this underpins the reason for considering the goodness of the test.

Psychological testing

Psychological testing involves the process of evaluating individuals' skills, behaviours and personal attributes using various psychological methods such as interview, observation and other assessment tools (Welfel, 2013). It makes a major contribution to the decision making process for determining the most appropriate research method to be implemented; additionally, when performed at certain intervals during an ongoing treatment process, psychological testing helps to understand whether the implemented treatment is effective (Groth-Marnat, Hood & Johnson in Arslan, 2018). Consequently, psychological testing aims to provide information as to the individual's cognitive skills, behaviours and abilities; experienced psychological issues, constraints and the underlying factors; and the individual's functionality and therapeutic requirements. In this respect, psychological testing holds critical importance as it may change the course of an individual's life through determining the direction of his/her treatment (Meyer et al., cited in Arslan 2018). Psychological testing does not only underline an individual's weaknesses, but also lays emphasis on his/her strengths. In this way, it helps individuals to use their existing capabilities in a more efficient way through rehabilitating their weaknesses or selecting a program that helps to enhance their strengths (Koocher & Keith-Spiegel, 2015). Psychological assessment does not rely merely on test scores; since each individual features diverse skills that can be evaluated through various methods. Against this background, the court held in *Larry P vs. Riles* (1979) that IQ test may not be sole assessment - over placement of minority students in special education (SPED). In other words, decisions about students are to be based on more than their performance on a single test or a single type of test; and this defines continuous assessment in the Nigerian context. Accordingly, a psychologist is not the person who merely performs and grades psychological tests (Groth-Marnat, 2019), although such tests are widely regarded as beneficial tools for the assessment process (Hambleton, Merenda & Spielberger, in Arslan 2018).

Assessment of the individuals' mental, emotional, social, linguistic and psycho-motor development and providing an account of their personalities, behaviours and skills constitute the intended use of psychological tests which are indispensable tools for psychologists in a psychological assessment process (Koocher and Keith-Spiegel cited in Arslan, 2018). Psychological tests can be also useful in diagnosis; however, diagnosing on the sole basis of test results should be strictly avoided (Szasz, in Arslan 2018). Certainly, no psychological assessment method alone could suffice to evaluate a specific attribute, skill or tendency of an individual and it would not be possible to obtain an accurate result regarding that subject (Groth-Marnat, 2019). Consequently, psychological assessment methods involve all processes of measurement and evaluation stages in which various tests, clinical observations and interviews are used to determine the tendencies of individuals in specific subjects, their skills, personal attributes and psychological problems. The therapy process is specified with an integrative approach through gathering the information obtained via interviews with the client and/or his/her family, observations and test results. As a result of these efforts, the course of treatment is determined by the joint decision of client and the psychologist (Welfel, 2013).

The Australian Psychological Society (2014) highlight the following broad areas of knowledge that underpin competent use of psychological tests:

- a) understanding the nature of the construct(s) underlying a test score, as this is essential to the way in which inferences are to be drawn from test results;
- b) understanding basic psychometric principles and procedures, and the technical requirements of tests;
- c) understanding the technical properties and limitations of the particular instrument or instruments used
- d) awareness of the context in which the test is being used (e.g., for clinical diagnosis, personal/relationship counselling, school achievement, personnel selection, diagnosis of brain functioning) in order to be able to integrate the test results with other pertinent information about the individual(s) being tested.

Ethical considerations in testing

As a helping professional, according to Foxcroft, Roodt, & Abrahams, cited in Foxcroft 2013, the psychological testing practitioner's core ethical responsibility can be summed up as being that nothing should be done during testing to harm the client. There is a power relationship between the testing practitioner and the test-taker in which the practitioner holds most of the power, to which the client is in a vulnerable position. This relationship transcends the classroom situation where the teacher holds most of the power, leaving the student in a vulnerable position. Given the imbalance of power, the testing practitioner (the teacher) should ensure that the test-taker (student) does not perceive the testing process and its outcome as being negative and disempowering because of unfair or 'unethical' testing practices. In the classroom situations, it is the responsibility of the teachers to ensure that they follow ethical and best practices that will gain students' confidence that testing is fair and constructive (helpful), Foxcroft (2013), advised. The testing practitioners should bring to bear the basic ethical testing practices which have been listed in the *International Guidelines for Test Use* developed by the International Test Commission (ITC; 2001). The Guidelines can be found on the ITC's website (www.intestcom.org). The ITC Guidelines stipulate for ethical testing and assessment practices the *appropriate and professional use of test; and in an ethical manner, paying due regard for the needs and rights of those involved in the testing process, and the broader context in which the testing takes place*. The ITC Guidelines indicate further that the goal of ethical testing practices will be attained by practitioners who have (a) the necessary competencies, spanning the entire process of testing; (b) a sound knowledge of psychometrics and testing; and (c) an understanding of the broader social, cultural, political, and legal context in which testing is applied and the way in which these factors might affect test results, their interpretation, and the use to which they are put. It is particularly this latter aspect that testing practitioners in the developing countries in general, and Nigeria in particular, need to pay special attention.

The core ethical consideration facing those who conduct psychological testing in the culturally and linguistically diverse societies relates to how best to cater for this diversity so as to be sensitive to test-takers' cultural backgrounds and values during the test selection, administration, interpretation and reporting phases of the testing process. In this regard, Korman (2013) asserted that: The provision of professional services to persons of culturally diverse backgrounds by persons not competent in understanding and providing professional services to such groups shall be considered unethical; it shall be equally unethical to deny such persons professional services because the present staff is inadequately prepared; it shall be the obligation of all service agencies including the state and local education boards and the tertiary institutions to employ competent persons or to provide continuing education for the present staff to meet the service needs of the culturally diverse population it serves. Consequently, a challenge facing those involved in psychological training and continuing professional education in developing and culturally diverse countries is to seek ways of developing assessment practitioners and researchers with an increasingly multicultural awareness and worldview. Driving this context home, the multicultural and multiethnic diversities in Nigeria demands deliberate intentional focus on identifying those with requisite testing foundation and are willing to wear the crown as testing practitioners and develop same. Furthermore, more practitioners from indigenous communities, who have often had no access to psychological services, need to be trained. In this way, the provision of ethical psychological testing services will be facilitated, enhanced and guaranteed.

Ordinarily, it may be difficult to distinguish and define boundaries between professional, ethical and legal issues or concerns regarding the development and use of tests and assessments. This is rather more difficult with the context of internal assessment spanning through all levels of educational institutions and institutionalized counselling environment. Legal, ethical, and professional issues form a continuum of standards for professional conduct in testing, assessment and other areas (Camara, 2014). Laws and government regulations are legal mandates that affect all individuals living in a society. Ethical codes may range from enforceable to exemplary to educational principles that guide the professional behaviour and conduct of members of any profession. Professional guidelines, principles and standards are also developed to educate and guide professionals in more technical activities. Camara maintained that all three layers of regulations or standards exist in testing and assessment.

Implication for the teacher

The International Testing Commission (ITC) guidelines emphasized that the goal of ethical testing practices will be attained by practitioners who have:

- (a) the necessary competencies, spanning the entire process of testing;
- (b) a sound knowledge of psychometrics and testing; and
- (c) an understanding of the broader social, cultural, political, and legal context in which testing is applied and the way in which these factors might affect test results, their interpretation, and the use to which they are put.

It need be emphasized that testing practitioners in third world countries in general, and Nigeria in particular, pay special attention to the later part of these guidelines. In discussing the causes of examination malpractices, Ajayi (2021) listed 'recruitment of incompetent teachers' as a major factor. The concept of incompetence of the teacher will be inexplicit except the incompetence in testing and assessment is emphasized. Standing on Bersoff's view of 'stupidity' as negligence or, alternatively, the failure to use reasonable care in carrying out one's obligations, so much stupidity has been exhibited in the testing process in all levels of education in Nigeria. From the primary to post primary, there have been experiences where teachers are accused of failing or being the cause of a child's failure. The question is how? Yet in the tertiary institutions, there have been incidence where students express deep sense of dissatisfaction with examination results; some went further to take the risk of paying for a remark of their scripts and in some cases the lecturers are faulted or found culpable. Why? All because of 'stupidity'; which corroborate Bersoff's contention that stupidity, more than modern interpretations of equal protection and privacy, has been responsible for the increased legal regulation of psychological testing. In Nigeria, the Examination Malpractice Act, Cap E15 Laws of Federation of Nigeria, 2004 explains examination malpractice as any act of omission or commission by a person who in anticipation

of, before during or after any examination fraudulently secure an unfair advantage for himself or any other person in such a manner that contravenes the rules and regulations to the extent of undermining the validity, reliability, authenticity of the examination and ultimately the integrity of the certificate issued. The act of omission or commission is sheer negligence or failure to follow due process which is the stupidity so defined by Bersoff.

It is the teacher's one major responsibility to assess his students, through testing, to enable him take proper decision concerning the learner. In other words, the teacher stands the risk of facing litigations should he be 'stupid' in the course of his testing and assessment. This does not pose a threat to the teacher rather it calls for professionalization. The teacher must equip himself through trainings, with relevant skills and procedures of testing and assessment as provided for by the ITC. He must be abreast of the legal implications and at the periphery, the embarrassment faced when accused of improprieties of examination results.

As tests are increasingly used for distinct and multiple purposes negative consequences and misuse are more likely to emerge. The use of performance tests and portfolios in high stakes assessment programs can also raise additional issues about standardization and fairness. Nowhere are these concerns more evident than in educational testing and assessment today. The teacher must realize that the raw materials for his job is the stakeholders' wards and his product is the stakeholders' wards. He must be held responsible and accountable should the quality of his product fall below standard of the stakeholders' expectation.

State and local boards of education and state and local departments of education translate test performance to make decisions about schools and/or individuals. School administrators come under increased pressure in such high-stakes testing programs to defend instructional practices and student achievement. Classroom teachers who implement the testing and assessments, and increasingly view them as a driving force for instructional change and educational reform also have a role in such testing and assessment programs. Parents, students, and the general public who demand improved quality in education, business leaders who are often critical of graduates for lacking appropriate workplace skills, higher education which finds an increasing proportion of incoming students requiring remedial instruction, and policy makers who must respond to all these diverse stakeholder groups represent many different types of secondary test users who are at all times curious about the integrity of the assessment practitioners.

Suggestions

National, state, and local testing programs should provide comprehensive data that can supplement other sources of information in both informing stakeholders of student skills and knowledge today and the growth in learning over time.

Legal, ethical, and professionalism are issues that concern the proper use of tests and the probable consequences of using tests. Consequences of testing are in the eye of the beholder. The same test and assessment which present several potential benefits to some groups (e. g., policy makers, community, business, educators) may also result in negative consequences to individuals (e. g., test takers, students). A paradigm is needed to assist test and assessment practitioners identify and evaluate the potential consequences that result from test use and the consequences which would result from alternative practices.

Additional attention to the consequences of unethical testing, and how these are determined and evaluated by the various stakeholders is essential to reduce the misuse of testing and improve assessment practices among the increasingly diverse types of stakeholders in testing.

The right of test takers must be recognized and they must be treated with courtesy, respect, regardless of age, disability, ethnicity, gender, national origin, religion, sexual orientation or other personal characteristics. Test and assessment should not be seen a tool for witch hunting but rather individual's freedom to decline, and freedom to withdraw, should be respected.

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