

The dangers of an ethical code

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The author examines ways in which ethical codes are at times misused and the dangers this poses for analysts, patients, and the practice of psychoanalysis itself. Case examples illustrate the use of a code to provide a basis or an excuse for punishment or revenge; as a way of limiting the range of emotions aroused in the analytic session; as an instrument of state control, introducing a third party into the treatment; and as a means of regulating who may practice psychoanalysis and how it is practiced.

God save us from the innocent and the good.

Graham Greene, *The Quiet American*

History is replete with examples of ruthless and violent undertakings in the name of moral superiority. The Crusades were ostensibly an attempt to conquer “infidels” in the name of God and the Christian creed. Hitler wanted to “purify” the Aryan race and spread “morally superior” values. Senator Joseph Mc-

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Carthy sought to eliminate the Communist antidemocratic threat with methods antithetical to democracy. In Salem, a coalition of “good citizens” and judges hanged “witches” to expunge the devil’s influence from their community.

Freud advocated self-knowledge through analysis as the path to a more flexible and autonomous ego able to freely choose on the basis of knowing itself, to sublimate instinctual desires, and to formulate an ethic based on connection to others (object relations) rather than narcissistic gratification alone. In “Why War?” Freud (1933) notes:

The *psychical* modifications that go along with the process of civilization are striking and unambiguous. They consist in a progressive displacement of instinctual aims and a restriction of instinctual impulses. Sensations which were pleasurable to our ancestors have become indifferent or even intolerable to ourselves; there are organic grounds for the changes in our ethical and aesthetic ideals. Of the psychological characteristics of civilization two appear to be the most important: a strengthening of the intellect, which is beginning to govern instinctual life, and an internalization of the aggressive impulses, with all its consequent advantages and perils. (pp. 214–215)

As Freud knew, moral and ethical rules and codes can be wielded to promote the common good or to express the very instincts whose discharge they are intended to regulate, particularly the aggressive instinct. In “Civilization and Its Discontents,” Freud (1930) writes:

What a potent obstacle to civilization aggressiveness must be if the defense against it can cause as much unhappiness as aggressiveness itself! “Natural” ethics, as it is called, has nothing to offer here except the narcissistic satisfaction of being able to think oneself better than others. (p. 143)

One need only think of the self-righteous moralist, eager to pounce on others’ wrongdoing to demonstrate his own virtuousness, to foresee the dangers of an ethical code. In the hands of a zealot, a set of rules can become a formidable weapon.

Durkheim (1965), the French sociologist, understood that rules—even appropriate ones—cannot be the whole solution and that “sometimes the rules themselves are the cause

of evil" (p. 374). He warned, "As precise as the regulation may be, it will always leave a place for many disturbances" (p. 365). Durkheim's (1957) solution was a new secular morality that acknowledged that "we are not naturally inclined to put ourselves out or to use self-restraint" (p. 12). He noted that morals depend on restraint:

If we follow no rule except that of a clear self-interest, in the occupations that take up nearly the whole of our time, how should we acquire a taste for any disinterestedness or selflessness or sacrifice? . . . There should be rules telling each . . . his duties . . . in precise detail, having in view the most ordinary day to day occurrences. (p. 12)

Durkheim was arguing that employers and workers must, in their respective groups, impose restraint upon their special and selfish interests. Conflict will diminish and be moderated only when opposing groups work for the whole of society.

Durkheim (1957) argued that a rule is not only "a habitual means of acting, but above all, an obligatory means of acting" (p. 4). He concluded that a "moral or juridical regulation essentially expresses . . . social needs" (p. 5), but disagreed with Comte's argument that regulation belonged solely to the state because modern economic life is too complex for regulation by the individual. He used the "occupational corporation or guild" as an example of a historically "tried and tested organization" that had served an important regulatory function (p. 25n). Durkheim's point was that "the occupational group should become the basis of an occupational ethic, for 'an occupational activity can be efficaciously regulated only by a group intimate enough with it to know its functioning, feel all its needs, and be able to follow all their variations'" (p. 25n). This understanding is the basis of professional ethical codes.

Szasz (1974) described psychoanalysis as a "subversive enterprise" since its "task . . . is to demythologize personal and social fictions" (p. 60). The psychoanalyst true to the profession considers ethical questions from a full emotional and intellectual understanding of himself and the individual involved and refrains to the extent he is able from operating on convenient "fictions" or rules.

Badiou (2001) made a strong argument for the evil of an ethical code, noting it is often an instrument of conservatism and the economic ethos, nihilistic and dehumanizing in its very nature. Through its general rules and tenets, an ethical code dehumanizes the individual and ignores the particular. Badiou wrote, "Ethics prevents itself from thinking the singularity of situations as such, which is the obligatory starting point of all properly human action. . . . For to be faithful to this situation means: to treat it right to the limit of the possible" (pp. 14–15). When ethics is invoked, thought is suspended. As he also noted, "Ethics is thus part of what prohibits any idea, any coherent project of thought, settling instead for overlaying unthought and anonymous situations with mere humanitarian prattle" (p. 33). More ominously, ethics can be used as an instrument of evil: "Ethics feeds too much on Evil and the Other not to take silent pleasure in seeing them close up (in a silence that is the abject underside of its prattle). For at the core of the mastery internal to ethics is always the power to decide who dies and who does not" (pp. 34–35).

Psychoanalysis as a science of the individual and a process of truth-seeking is, in this sense, inherently anti-code, anti-generalities, and possibly anti-ethical. Badiou emphasized that what distinguishes man from animal and victim is what enables man to be immortal. This uniquely human capacity is thought—the capacity to seek truth, to question the ordinary and accepted, to be open to the not known whether it be in oneself (as in the unconscious), in the other, or in a system of knowledge. It is also the possibility of relationship and the artistic impulse. A code by its very nature may foreclose this open-ended questioning process.

An ethical code may be rigidly applied as an authority coming from without when a situation is ambiguous or so emotionally arousing that emotions are repressed or otherwise blocked from conscious awareness. When reason thus has no emotional guide, that is, is not grounded in consciously experienced desire or true connection to the other, the code may be adhered to as a guide for action. This emotionally empty application of the code may prove ineffective or actually harmful in the same way rules for psychoanalytic technique may be ineffective or

harmful when applied in a formulaic manner, missing the emotional point and establishing a sense of disconnection rather than connection. The patient may also utilize the ethical code as a third party in the treatment and invoke it as a weapon of revenge against a therapist who is not conducting the treatment according to the patient's wishes.

Invoking rules to avoid feelings

Rules may be used to avoid feelings or as a substitute for feelings. An analyst working with a provocative patient who brought in sexually titillating material and invited the analyst to have sex with her felt disgusted and degraded and reacted by making distancing communications to the patient. This behavior did not advance the goal of treatment to help the patient verbalize more. In another case a patient constantly asked the analyst to hug her. After several attempts at exploration, the analyst, feeling beleaguered and trapped, employed a rule by way of explanation, "I don't do that. It would not be helpful." The patient took this as a rigid rule used by the analyst blindly with no regard for her as a person. It would have been more beneficial to the patient to explore the request and help the patient voice new material.

Beginning analysts in training often follow the rules rather rigidly to avoid feelings of inadequacy or helplessness or out of fear of feelings generated by the patient. For example, the technique of reflection (reflecting a question with a question) is sometimes misapplied in the attempt not to reveal personal information. When one beginning analyst was asked about his credentials, he replied, "What do you think I am?" frustrating and confusing the patient who had no idea. In this instance, the analyst could have explored the patient's motivation to know, asking how it would help to know or what the patient was looking for. Some kinds of information, when given, can in themselves allay the patient's anxiety. Another analyst who felt overwhelmed by her patient's constantly expressed longings to be with her all the time remained disengaged, reflecting questions in a rote manner or continually asking the patient what she meant, rather than using her frustration and increasing an-

ger to formulate an intervention. (e.g., asking what would be in that for me? Or what makes you think that would be a pleasant experience? Or simply exploring the idea in a detailed way: Should we move in together? What about our husbands?)

The power to punish¹

Given the roots of an ethical code in regulating action that is based on instinctual desire, there is the potential that the code will be misused in the service of the desire that is inhibited or in the service of some other desire, for example, in sadistic punishment of those who sexually transgress or aggressive punishment of those who are aggressive. In the guise of policing practice, ethics may be wielded as a weapon in the service of instinctual pleasure, e.g., killing off rivals, vigorously punishing transgressors, or joining with other like-minded professionals in forcefully eradicating deviations and deviators.

For example, psychoeducational programs of court-ordered treatment for “batterers” are policed by state agencies often staffed by former victims of partners who battered. These programs are intense and often entail a kind of battering of the batterer, who must acknowledge his crimes and take responsibility. While battering is clearly dangerous and morally reprehensible behavior, it is usually part of a narcissistic character structure in which the batterer feels morally justified in his violent behavior, even construing himself as the victim. In fact, he is a victim in the sense that he is narcissistically dependent on his partner and blames and loathes the partner for this state. Although confrontation and psychoeducation do not work with the extreme narcissist, therapeutic efforts, which admittedly take time, are misunderstood and eschewed as too “soft” and sympathetic and are usually not approved by state agency staffers.

If the personality has been organized around rigid control and condemnation of instinct, the appearance of instinctual gratification or transgression in the other will be experienced

1 With thanks to Peter Turcotte who contributed to this paper from his experience as a probation officer. Case material is disguised to protect confidentiality.

as threatening and may lead to action to eradicate, using ethics as a weapon.

A number of years ago a state department of corrections, in order to expedite its workload, decided that probation and parole supervisors would serve as preliminary hearing officers for parolees charged with violating their parole conditions. Commonsense judgment was to be used to assess whether the evidence in a parole violation would be upheld before the parole board, which handles all parole issues because an individual on parole is technically still incarcerated. Based on the preliminary hearing, a parolee can be held for weeks pending a full hearing. Generally the cases presented were fairly clear, involving clear infractions of well-known rules: failure to report to the parole officer as directed, changing one's residence without prior notification. There was a case involving two parolees who had been seen by a hard-line parole officer driving off together in a fierce rainstorm from their parole-report sessions. Their associating with each other was a violation of their parole and was reported by the parole officer. The officer hearing the case was informed that on the basis of the report, one parolee had already been returned to prison while awaiting his full hearing. On the face of it, the parolee had violated the rules of his release, yet the charge seemed petty to the hearing office. A dean from a local junior college testified that the defendant was an active student in good standing. The parole officer who brought the charge then testified as to what he had seen. He was asked about the weather that day and acknowledged that it had been raining heavily. The defendant then testified that he had been dropped off at the nearest bus stop because he was going in a different direction from the other parolee. The hearing officer ruled that the defendant had acted as any average individual would have, given the weather conditions. He was ordered released. Yet the hearing officer reported that he had agonized over finding a way to keep the decision consistent with policy so it would bear legal, moral, and ethical scrutiny if examined. Is the rule of law sometimes a shield behind which people act on their unconscious fears and desires?

In some cases a more subtle, but more dominant, value system may be at work: a belief in the right to indulge one's impulses

so long as these are not inconsistent with the prevailing moral values of the society or organization. In the following instance, ethics was used as a means of discharging feelings toward a colleague. Two analysts in training banded together to “report” an analyst whom they claimed had violated patient confidentiality because they allegedly recognized the patient’s identity in a case discussion in a class. They insisted the analyst should be investigated. Exploration revealed that these two “reporters” felt burdened and uncomfortable with their supposed knowledge and were in a state of negative transference toward the training institution and possibly toward their own analysts. In addition, the presenter was an enviable person in many ways and received respect and attention from others. Their pleasure in finding her “unethical” was apparent. Exploration of what the two reporters wanted to accomplish was sufficient to inhibit their persecutory action.

Pleasure in transgression and its punishment

In a famous case exploited by the news media in 1992, Margaret Bean-Bayog, a psychiatrist who worked for many years with a suicidal, borderline young man, was sued by the patient’s family after he committed suicide. She employed unusual techniques involving action, for example, sending the patient a postcard signed “Mom.” The psychiatrist’s personal notes, which included sexual fantasies about the patient, were stolen from her office. The case was sensationalistic. Bean-Bayog surrendered her license rather than go before the medical ethics board—a hearing that was to be televised in a 700-seat auditorium—and break confidentiality. She never admitted guilt and did not accept a settlement that would have led to a one-year suspension of her license because she would have had to admit guilt. While her techniques were unusual and not sanctioned by the standards of practice, her intentions seemed constructive. She had received supervision on the case from well-known analysts. However, a witch hunt-like atmosphere prevailed. The public was mesmerized, titillated by this case while morally sanctioning the psychiatrist

for inappropriate behavior, a clear example of Badiou's point on the "silent pleasure" in seeing the transgressor close up. Bean-Bayog was pilloried. Some of the effects of this case on the mental health community are discussed in a *Psychiatric Times* article on the report from the Committee on Therapy of the Group for the Advancement of Psychiatry (1995):

After witnessing the fate of Bean-Bayog, therapists may well hesitate before treating a suicidal patient or any seriously disordered individual. She attempted a form of treatment she believed might be effective, a judgment apparently supported by those respected authorities she consulted. The "take-home message" is clearly not to treat suicidal or other potentially troublesome patients who are too unstable to be seen as outpatients and whose insurance coverage usually will not allow extended inpatient care. (p. 3)

The code as third party in the treatment

Sometimes an ethical code becomes an instrument of state control as when the state chooses to regulate professional practice. This may occur when either patient or analyst involves the state as a third party. Many states now regulate the use of the title "psychotherapist." The advent of managed care has introduced third-party management into therapeutic relationships regarding aspects of the contracting process and sharing of patient-therapist information. The state has also become involved in regulating the limits of confidentiality when a party is considered at significant risk. This is evident in the Tarasoff decision (*Tarasoff v. Board of Regents of the University of California*, 1976), where the practitioner's duty of public protection was maintained over patient confidentiality. In this case, a university health service was held negligent for not warning the Tarasoff family that a young man in treatment had threatened to kill his former girlfriend, Tatiana Tarasoff. The young man's therapist had informed the police of the patient's intention and he was hospitalized. The patient was discharged alleging he no longer planned homicide, and no further action was taken by the mental health service. Unfortunately, the patient did subsequently kill Ms. Tarasoff. The duty of the therapist and the university health

service to the public, i.e., the intended victim, was spelled out by the California Supreme Court, summarized in the statement by Justice Matthew Tobiner: "Protective privilege ends where public peril begins" (cited in Holmes & Lindley, 1989, p. 180).

But how do we know when and where public peril begins? Don't we usually know only in retrospect? We don't know what would have happened had the patient stayed in therapy and continued to discuss his homicidal intention, his involvement with the therapist, and alternative actions. What import did the therapist's rejection and calling in the police have on the patient's actions and desire to punish? Many states have adopted the Tarasoff ruling, and it is part of many professions' ethical codes. The analyst, fearful of potential transgression and liability, may relate to this state-backed ethical code as a third party in the treatment. A code that specifies that the practitioner must report something immediately to an outside authority or to the potential victim puts the practitioner in the role of social control agent and usually ends the therapy. This case demonstrates the significance of a therapist's reaction to a patient's struggle with impulses. Fear of liability and proliferation of lawsuits are seriously affecting healthcare and mental health practice today. Practitioners sometimes operate out of fear of being found liable rather than out of what is in the best interests of the patient. This may lead in some cases to abandonment of the patient, a clear ethical violation.

For example, a social worker colleague reported that she had met with an adolescent who discussed her angry feelings about her school and her wish to blow it up. Rattled by publicized school shootings, the social worker told the teenager to wait in the office while she called the police rather than more fully explore the adolescent's intentions to take action. Another supervisee reported that she was so frightened of liability issues when working with suicidal patients that the very mention of thoughts of suicide was enough to lead her to terminate the treatment and refer the patient elsewhere.

Similar dilemmas regarding confidentiality and third-party involvement arise when a patient presents incidents of physical

or emotional violence toward children. The state mandates that disclosures of such behavior be reported to a protective service agency. In addition to concerns about "reporting on" a patient, the analyst may fear that such action will result in the patient's leaving treatment rather than staying and working on developing more impulse control. Exploration with the patient, including questions such as: Why are you telling me this? Should I report you? Would I be colluding by not reporting you? Should you report yourself? Should you be alone with the child? Should more family members come for sessions? usually leads to productive discussion and decisions regarding action.

Confidentiality

Sometimes state control mandates a breach of confidentiality; sometimes it insures it. Even the latter can be life threatening. A man who came to see his probation officer revealed he was HIV positive. He was in a relationship and had fathered a child. His girlfriend, however, did not know he was HIV positive. He had also had sex with other women. The probation officer was constrained by confidentiality law from revealing the information the man had shared. As Holmes and Lindley (1989) note: "There may be a direct conflict between maintaining a confidence and protecting the legitimate interests of others" (p. 177). This can be the dilemma in psychoanalysis.

On the other hand, this probation officer's caseload included cases where confidences were revealed that he was required to report because a law had been broken. For example, if a client indicated he was using drugs, the officer was obligated to report it.

In another probation case, a woman in her late thirties had served three years for assault with a deadly weapon as a result of hitting her three-year-old in the head with a mop handle and thereby causing a fractured skull. Upon leaving prison the woman and her 18-year-old daughter moved in together. The mother was pregnant again and seemed to the probation officer to have matured a great deal. She was having trouble getting work due to her record and, ironically, was only able to get

babysitting jobs. The state protective service system continued to monitor her and in fact took her baby after delivery. The probation officer felt this was unfair and was also faced with a dilemma when he observed the maturity of the woman and realized that the protective service agency was bound to call him to find out about her work. If he revealed her employment, she would lose her babysitting job. It seemed to him that the agency was not interested in an assessment of how she might have changed or how capable of parenting she had become. To see her as changed and capable would be a risk for the agency, given her past record, and could get them into trouble if she were to hurt another child. He was concerned that they were operating by projecting from the past rather than evaluating the client's current functioning.

Then there is the case of Gloria who entered the correction system when she was arrested and convicted for stealing furniture. Her attorney had insisted she plead guilty although she was innocent of the charges, a victim of a legal system where problems are resolved with shortcuts to save court time. Gloria was given probation. In the course of seeing her probation officer, an analyst in training, a therapeutic relationship developed. This created a problem for the officer, who felt caught between his personal ethics (i.e., to be therapeutic) and the codes and laws imposed upon him as an agent of the state. At one point, Gloria threatened to kill her boyfriend; another time she threatened to kill her biological mother. The latter threat occurred after arrangements had been made for Gloria to meet this woman; Gloria had just learned that the mother she had grown up with wasn't her real mother. In each instance, the officer was mandated to report the threat; in neither case did he. In both cases, the probation officer helped her "talk it through." When he was promoted, his new job did not permit him to see clients, yet he continued to see Gloria. One day his supervisor told him he had to stop seeing her, and he reluctantly agreed. Gloria was furious. The probation officer had turned out to be just another man who had abandoned and betrayed her.

These interventions by representatives of the state make little sense from a therapeutic standpoint. Whose interest is being served? In all of these examples, the probation officer is an

agent of the state who is expected to follow codes that require him to treat clients as exemplars of the general rather than as individuals and to enforce the law rather than work toward the maturation of each of his clients, i.e., their ability to accept responsibility for their own behavior and to live within the law.

Ethics and revenge

Ethics-based accusations can serve a revenge motive. A training analyst of a particular institute was friendly with analysts in another institute. It was generally believed at the first analyst's training institute that her institute was held in contempt by many members of the other institute. During a collegial discussion at the first analyst's institute of a reported sexual abuse case involving an analyst at the rival institute, the training analyst (first analyst) became annoyed and said that her group shouldn't presume moral superiority—and she went on to claim that someone in their own institute had been sexually involved with a patient. This allegation led to great concern among her colleagues, and an insistence that she reveal this ethical breach to the head of their institute. Upon discussion, she admitted that she had exaggerated an incident reported to her in supervision. An analyst-in-training had sympathetically touched the arm of a patient as she was leaving the office. If this was a violation of an analytic code, it hardly amounted to a charge of sexual abuse, as she had righteously alleged.

In another case, a patient angrily left a session—and treatment—when the analyst explored his suicidal threat and asked if she, the analyst, should kill him. (This intervention was made in order to reverse the direction of the hostility from against the self, toward the analyst.) When the analyst had earlier asked the patient to go for a psychiatric evaluation if he wanted to continue in analysis, the patient had refused. It seemed that the patient was attempting to provoke a forced hospitalization, an event that would recapitulate his mother's experience. His mother had been forcibly hospitalized numerous times for manic episodes. The patient did not show up for his next session. Some time later he called the analyst to report that he had "taken her advice" and gone to stay with a relative. Some

months later the patient sent a letter to the analyst, threatening to bring her up on ethics charges since the patient had recently been hospitalized and tried to commit suicide while there. The analyst invited him to come in to meet, but the patient said he was too frightened to come and that he was seeing another therapist. The analyst hasn't heard from him since. The analyst presumed that the patient was frightened of his own aggressive wishes toward the analyst, partially expressed through the accusation.

Ethics as a weapon

Ethics can also be used as a weapon in a multidetermined fight. At a conference held by an ecumenical psychoanalytic association that brought together diverse analytic schools, a controversial and charismatic supervisor conducted supervision of three cases on stage, a common presentation style for him. In one case presented for supervision the presenting candidate-in-training revealed that she had invited the patient to attend the conference, and that he was sitting in the audience. Furthermore, the problem to be explored was how to get the patient back into treatment because the candidate wanted to finish writing a paper on him. The supervising analyst advised the patient, whoever he might be, to leave if this was too stressful and worked with the presenter on her desire to get the patient back into treatment, asking in whose interests would this be and who would pay whom. In general he protected the presenting candidate from criticism by the audience. During the presentation a contingent of analysts from another institute walked out in protest.

Following this conference a dispute broke out within the association and continued for a number of months at board meetings over the issue of ethics. Had patient confidentiality been violated? Should cases be screened in advance before such a presentation? Should a committee, with one member from each institute, be formed to review ethical issues around presentations? While there were known differences in ethical codes among the constituent institutes, the dispute that erupted was heated and led to threats of leaving the association, and

eventually to the withdrawal from the association of the two institutes with which the controversial supervisor was affiliated. Interviews with participants in these discussions revealed that the ethics issue was a catalyst for simmering rivalries to break out into open dispute. One party interviewed stated he found the eruption of hostilities confounding as this group had shown forbearance with each other's points of view for many years. Why had they suddenly, as he put it, decided to "go to war"? Why had they sunk to "the lowest common denominator, just rage"? Another board member described what occurred as a "brouhaha" over who was going to be in control of the organization and an attempt to discredit the supervisor-leader of the dominant group in the organization.

A number of factors seemed to be involved. The association had been founded and presided over by a powerful president whose mentor was in fact the supervisor at the controversial conference. Her institute had the largest number of members in the association and filled many important roles. She had resigned her post after many years just prior to the controversial conference. Some jockeying for power among the member institutes had been going on. The most ardent critics of the conference presentation, who filed a complaint afterward and insisted on the formation of an ethics committee, were part of the second largest membership group in the association. The dialogue became increasingly bitter and heated, with the split strongest between these two schools. Special meetings were held; threats were made. One group threatened to leave if the ethics committee was formed; the other group threatened to leave if it wasn't. Members of the school supporting the supervisor and the ethics of the presentation (since the patient had agreed to be presented and had wanted to attend) insisted more was going on than just a discussion of ethics. Members from other institutes insisted this was not the case. The board voted to form an ethics committee to review policy on case presentations as well as the technical approaches to treatment espoused by the supervisor's school. At the next meeting, the two institutes affiliated with the supervisor dropped out of the association on the grounds that the founding principle, ecumenicalism, was violated by this decision to monitor what

can be said. At their following meeting, the board dropped its decision to monitor presentations, but the rift was not healed. A secondary consequence of the process that led to the split was the loss of contact with a group that, because of its broad representation within psychoanalysis, could best further the common goal of creating an accrediting authority for psychoanalysis. This setback cost years of work on the part of all of the institutes in setting up new organizations to represent psychoanalytic interests.

What caused the argument to become so heated and to bring the association to the point of splitting and losing its ecumenicalism? Some analysts were horrified by the presentation of a patient who was in the audience. Others felt that since the patient had been informed and had agreed to be presented, the ethical concerns had been addressed. Those who walked out of the presentation felt the supervisee should have been stopped once she said that she was operating for her own advantage, wanting the patient to stay in treatment so that she could finish her research paper on him. Others believed that the supervisor was able to guide her through an examination of her motives to a healthier resolution of her dilemma. She was advised by the supervisor to call the patient in "to discuss these questions: whether he should help you finish the paper and whether you should pay for him to help you finish." During the discussion the supervisor joined what he experienced as the supervisee's feelings: "Once they get what they want and feel cured, patients are unlikely to stay around to help the analyst, and it's best to think 'to hell with these patients, they are not going to appreciate what you do for them.'" In this statement the supervisor indirectly addressed the analyst's wish for payback from the patient and her wish to operate in her own interest rather than the patient's at this time. In this, she demonstrated a countertransference resistance, her difficulty in the proper handling of her case. Rather than chastise her, the supervisor worked for resolution of her resistance to more therapeutic conduct. In the discussion that followed, the supervisor addressed the issue of using a patient's material in a paper without his permission by characterizing it as "against the law," applauding the therapist for being "honest and upright." He also led her to the idea she

might need to choose to write her paper on another patient and let this patient go since the patient didn't like what she was writing about him. In the discussion, the supervisor made clear that a genuine emotional connection between the analyst and the patient is needed for cure.

The public enactment of a treatment impasse with potential exploitative wishes on the part of the supervisee may have been threatening to every analyst's less-than-conscious wish to benefit in some way other than financial from her work, particularly with difficult patients. One of the seminar participants mentioned an analyst who expressed the wish that her extremely interesting but very difficult patient might die so she could write a book about her as a kind of reward for years of suffering.

In addition to these underlying dynamics, and perhaps most important, the supervisor at the conference was highly admired by a majority of association members but was controversial in his techniques for treating psychosis. He was a pioneer in the field of treating the very regressed, narcissistic patient and had developed techniques to foster the development of a preoedipal transference. These techniques respected the defenses of the patient and fostered what he called a narcissistic transference. He also experimented with treating multiple members of the same family and working with large groups. Some of these techniques were controversial, particularly those that involved reflecting the patient's hostility and reversing the direction of aggression to the person of the analyst.

Some members of the board who were interviewed indicated they thought the controversy revolved around this supervisor and his unorthodox methods. Boundaries considered inviolate by some schools were broken by him, such as treating multiple members of a family. In addition, he had a large following that an analyst from other schools described in an interview as "cult-like." This led to discomfort (and possibly envy) among members of other schools. A board member from another institute described the supervisor's style as "inflammatory and offensive, he didn't address the boundary issues." In addition he claimed that the supervisor "functioned like a tribal leader." This partic-

ular analyst felt that the supervisor had disregarded the patient at the presentation; he also perceived the supervisor as sadistic. In fact, at the conference presentation the supervisor's technical approach, in which he used emotional communication to convey his understanding of the treatment problem, protected both the supervisee and the patient. The joining technique he used mirrored the supervisee's perception of the patient as ungrateful since he wasn't willing to stay to help her finish her paper after he got the treatment he wanted. In this technical approach, the patient as well as the therapist can be joined in one intervention. The response he made also joined the patient's feeling of being exploited for the analyst's purposes. This level of sophistication, speaking as it does to the unconscious, is successful when the receptor feels understood. Most members of the audience at the conference did seem to have that experience of recognition.

While it was clear that underlying rivalries and conflicts were feeding the controversy, there were some thoughtful differences of opinion on such matters as how one worked with patients, the boundaries of confidentiality, and the acceptance or prohibition of extra-analytic contact. The dominant group in the organization worked with extra-analytic contact and emotional communication in treatment and in supervision. The group most opposed to the presentation adhered to more conventional guidelines for treatment and case presentation. While this could have been the basis of a discussion or even research into the effects of these different standards of practice, instead a battle erupted on the issue of moral superiority versus analysis of a treatment enactment. The ethical conflict was a mask for underlying rivalries within the organization as well as an expression of intense disagreement on issues of boundaries, use of negative transference and countertransference feelings in the treatment, and the wish for everyone to adhere to a common and more limiting set of rules. According to some, it was also an enactment of the overthrow of a powerful leader and her followers. If this can be the result when groups try to reach an understanding about a single specific incident, it suggests that reaching a consensus on an ethical code would be a long and arduous task, particularly if it masks other conflicts, rivalries, and unconscious agendas.

As one protagonist said regarding this incident:

They went into action. There was no resolution. Everyone wanted their own way or they threatened to leave. This is not proper behavior. In the name of being ethical, people become unethical. The whole field is open to discussion; any intervention is open to discussion. Anything other than interpretation is questionable. However, just because something is ethical doesn't mean it is curative. It just means it lives up to a standard. Sometimes you need to be unethical to cure a patient, or be ethical and kick them out. Especially with preoedipal patients, they stay and are cured with unethical techniques (i.e., not just interpretation).

Ethics as a means of exclusion: who can be trained?

Meant to foster and preserve libidinal ties, ethics may be used instead to divide and exclude, as one group declares itself the arbiter of proper practice and of who can practice. The unacknowledged motive in such boundary-setting is often restraint of trade and self-aggrandizement rather than a rational and individually based examination of criteria for training.

The longstanding, and for many years successful, efforts of medically trained analysts in the United States (Fine, 1979; Hale, 1971, 1995; Bergmann, 1988) to restrict psychoanalytic training to medical practitioners in the guise of providing proper analytic treatment and preventing quackery is an example of an ethical motive being used as a smokescreen for baser motives (i.e., restraint of trade). The argument proffered was that the ability to make medical assessments and proper diagnoses was necessary for analytic work because regression could result in more severe psychopathology and the need for medical treatment. Another motive was to establish psychoanalysis as a legitimate field and keep a strong psychoanalytic influence in psychiatry, offsetting the somatic reductionism influence (exclusive focus on biological factors) within the field (which seems to have returned) (Hale, 1971). Prior to a class action suit brought by psychologists in 1985, American Psychoanalytic Association institutes in this country restricted training to physicians and a select number of psychologists who held doctorates and who signed agreements to

see only a few analytic patients for research purposes. Psychiatrists trained at New York Psychoanalytic and elsewhere were instructed not to train (supervise) “lay” (nonmedical) analysts because it was a violation of the medical institute’s training guidelines. However, in discussing the growth of nonmedical training centers, Wallerstein (1996) notes:

[These centers had] the unofficial support of major figures in the New York Psychoanalytic Society, mostly, but not entirely, immigrant European analysts who were out of sympathy with the prevailing regulations of the American [Psychoanalytic Association], and who enacted this opposition by training the psychologist candidates in the nonmedical institutes outside the American. . . . Until these “outside” training centers had been in existence over a long enough time to have generated their own classes of graduates who had matured to become new generations of teachers and training analysts, they had in fact depended for their very existence upon this covert participation in training [by] these highly respected members of the American, often with the stipulation that the analyzing or supervising role not be publicly revealed. (p. 8)

The “official” position was a contradiction of Freud’s (1926) position, laid out in “The Question of Lay Analysis.” He argued that psychoanalysis should not be a subspecialty of medicine. So-called lay analysts often went to Europe for training, where the International Psychoanalytic Association supported the training of nonmedical analysts (Menaker, 1988).² When Theodor Reik came to this country in 1938, he was not accepted as a practitioner by New York Psychoanalytic, despite his intimacy with Freud and his reputation in Europe. Sherman (1988) describes the events that occurred at this time and the contribution of Reik’s rebellious personality to those events. Reik formed an association of lay analysts that later became the National Psychological Association for Psychoanalysis (Theodor Reik Institute) and published *Psychoanalysis*, the first nonmedical psychoanalytic journal in the United States, which later merged with the *Psychoanalytic Review* and is now known by that title. Reik, himself a psychologist, thought that literature majors were easier to train than mental health specialists (Meadow, 2003).

2 Menaker (1988) details her own and her husband’s quest for training in the 1930s in Europe.

Although the battle between medical and nonmedical institutes has dissolved, the issue of who can be trained and what is appropriate training continues. There are now many so-called lay institutes. Some restrict themselves to training in the tri-disciplines: psychiatry, psychology, and social work. Others are true to an open admission policy. As Menaker (1988) concludes at the end of her article:

It seems to me that the struggle over the legitimacy of the practice of psychoanalysis by nonmedical persons—a cause that Freud defended so eloquently—is basically a question of power, prestige, and economics. Unfortunately, within the nonmedical group of analysts, the same struggle for dominance that formerly existed between medical and lay analysts still persists, either in the form of competing ideologies within psychoanalysis itself, or in the setting up of criteria for training and for acceptance as an analyst. The legitimacy for being an analyst should depend on ability, talent, and proper training; but what constitutes proper training is still being disputed. (p. 379)

This was written in the 1980s, but today we discover the same rivalries and rancor.

Who can be trained? Who regulates training? There is a split in the field on this issue. The struggle continues between groups wishing to co-opt psychoanalysis and subsume it under another discipline or triad of disciplines and those seeking to maintain it as a separate discipline with separate training. A psychoanalytic consortium consisting of the American Psychoanalytic Association, the National Membership Committee on Psychoanalysis in Clinical Social Work, the Division of Psychoanalysis of the American Psychological Association, and the American Academy of Psychoanalysis has set up a credentialing body for psychoanalysis (Accreditation Council for Psychoanalytic Education), affirming its belief that, since psychoanalysis is a subspecialty of mental health disciplines, training in one of these disciplines should be required before embarking on psychoanalytic training. This group seeks to become the prime credentialing body for the field. The American Board for the Accreditation of Psychoanalysis, the credentialing body for the National Association for the Ad-

vancement of Psychoanalysis, takes the opposite stance, that psychoanalysis is a separate discipline with unique training requirements and accepts candidates with master's and doctorates from any human science field. They require no prior mental health training, incorporating it into the curricula of their institutes. The turf wars continue.

In Peter Fonagy's interview (2003) of Glen Gabbard and Paul Williams, the new editors of the *International Journal of Psychoanalysis*, Glen Gabbard calls for dialogue among schools of psychoanalysis, noting:

The history of psychoanalysis is checkered with divisiveness, back-stabbing, and petty bickering about whether a particular approach is truly "psychoanalytic." Our favorite insult used against colleagues who don't share our personal point of view is to say that what they are doing is "not psychoanalysis." Psychoanalysis is a beleaguered enterprise these days, and it behooves us to try to get all of our brethren under one tent, so to speak, so we can identify our common and uncommon ground. We need to spend more time listening to each other and reading what others have to say to understand how their theory informs their technique and how other psychoanalytic models differ from our own. . . . Psychoanalysis has a much stronger voice if we stand together than if we fragment into dissident groups taking potshots at each other. (p. 35)

Ethics short-circuiting enactment

Reliance on an ethical code can be used to forestall or short-circuit enactments that are valuable for revealing the unconscious wishes of the patient, especially transference wishes. The analyst may be uncomfortable with the enactment and respond based on the code instead of making therapeutic use of her countertransference feelings and impulses.

A patient who was studying to be an analyst often discussed techniques with her own analyst, discussions that seemed mutually stimulating. Through these talks the patient developed new ideas and insights about cases and technique. The analyst, too, was developing his theory and was invited to publish his findings. The patient, unaware of this development, was busy talking to him about her new ideas on technique. The

patient worked on her own book, and they continued to share ideas. The experience was mutually rewarding. The patient's treatment was enriched by use of her intellect around the ideas discussed, but from the analyst's point of view the goal was to lead her to deeper self-knowledge. The symbolic enactment in the treatment, the fertilizing of each other's ideas and the creation of two books, was complicated and practically inhibited by the introduction of the analyst's secretary as an intermediary when the talking advanced to the stage of actual co-writing of the books and sharing of material. Once the secretary was brought into the picture, the sharing and the writing relationship on the patient's book, including ownership of chapters and other possible authorship arrangements, were never fully discussed and analyzed. The employment of the secretary was a partial attempt on the analyst's part to curb extra-analytic contact.

Publication of a book brought their co-authoring relationship (and symbolic baby) to public attention. The analyst reported that another patient, aware of the writing arrangement and envious of what he believed was a primary scene enactment, left treatment. Other patients were also envious. A positive result ensued for the patient as she found her own voice through the process and was freed from a writing block that had started at age 19 when her father encouraged her to write and persisted until this enactment in the analysis.

Increasingly it is understood that enactments are a key to understanding transference and unconscious wishes. Yet enactments are often the very thing prohibited by ethical codes. In some schools, for example, particular kinds of talk and action have to be reported or curtailed (e.g., receiving gifts, taking class with one's analyst, seeing multiple members of the same family).

Standards and innovation

Establishing who can and cannot be treated by a particular technique is part of a code of practice, yet sometimes the boundaries become reified and innovation is discouraged. Merton (1968) writes:

[Because] the range of alternative behaviors permitted by the culture is severely limited, there is little basis for adapting to new conditions. There develops a tradition-bound "sacred" society marked by neophobia. Between these extreme types are societies which maintain a balance between emphasis upon cultural goals and institutionalized practices and these constitute the integrated and relatively stable though changing societies. An effective equilibrium is maintained . . . so long as satisfactions accrue to individuals conforming to both cultural constraints. (p. 231)

Freud maintained that schizophrenia was untreatable using psychoanalysis because schizophrenics could not form an object transference. In the 1940s Hyman Spotnitz adapted psychoanalytic technique to the treatment of schizophrenia, experimenting with frequency of sessions and developing reflective and joining techniques to promote a narcissistic transference. When he presented a schizophrenic patient before New York Psychoanalytic, his case was not accepted.

Standards for psychoanalytic practice promulgated by the American Council for Psychoanalytic Education require that psychoanalysis should occur at least three times a week. Modern psychoanalysts (and many others, by report) often see people only once a week. Although the American Psychoanalytic Association considers this frequency insufficient to meet the criteria for psychoanalysis, lower frequency has proved successful with certain regressed patients who could not tolerate a four times a week analysis (see, for example, Aizley, 1999; Miller, 1985; Silver, 1997; Wein, 1985; White, 1985). Gutowski (2000) reports on a gender-dysphoric patient, seen once a week, who cut back on the frequency of her sessions and attempted to leave treatment as an enactment of the need to leave a despised part of herself with the analyst and leave it up to the analyst to maintain the connection. This was also an enactment of the split between the male and female parts of the self. At the analyst's insistence that she continue, the patient came in once a month, expressing contempt for and resistance to treatment until the enactment was worked through and she returned to a weekly schedule. The patient took the motivation for continuing treatment back into herself following the analyst's threat to discharge her for nonpayment of

the fee. In an earlier enactment in this case, the analyst asked the patient if she needed to move in with the analyst in order to keep her behavior under control. The patient seriously considered the pros and cons of this proposition for nine months before deciding it would be better for her to live in her own place, preferably across the street from the analyst, close by but not inside.

Modern psychoanalysts engage in other practices that would be considered non-analytic by the APA. They have, for instance, experimented with treating patients individually and in group treatment, treating members of the same family (Meadow, 1985), members of their own family (Liegner, 2003), and large groups (Spotnitz, 1985).

In summary, there are many dangers inherent in the establishment, use, and misuse of an ethical code. A code of ethics should protect connection to others as well as protect individual autonomy. However, its purpose may be subverted to maintain the social status quo, or it may be used as a weapon or camouflage for destructive purposes. Using a code or rule to stop anxiety or a feeling or an action based on feeling is a danger, as is using ethical rules without any feeling at all. When ethical rules are applied without any feeling toward or consideration of the person or persons they apply to, the individual is lost to "the rule" and her humanity is violated rather than protected.

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