

Ethics versus Compliance. The Institution, Ethical Psychotherapy Practice, (and Me)

Farhad Dalal

This article is a philosophical reflection on the proposed new codes of ethics and conduct for the IGA (London). The article is an exploration of the question: given that codes of ethics consist of truisms (do good and be good), what is their function? It is argued that: the expectation in the domain of ethics ought to be one of disagreement, in contrast to that of agreement in the natural sciences; that codes of ethics are the opposite of negative liberty; that disciplinary processes avoid engaging with ethics by occupying themselves with compliance. This is followed by discussion as to how these and other themes play out in all institutions including the IGA. It is further argued that some elements of such codes are cult values (Mead). The tension between virtue ethics and deontological ethics is attended to.

Key words: ethics, morals, code of ethics, code of practice, Foulkes, Elias

How this Came to be Written

I was asked to be one of the contributors to an ‘*Ethics Study Day: Conscience versus Loyalty*’ at the IGA (London), the focus of which was the first public outing of the draft of the IGA’s new *Code of Professional Conduct*. This article is an expanded version of the talk I gave, and incorporates some of the discussions I took part in on that day, as well as some of my self-reflections after the event. The fact

that my take on the subject here is primarily philosophical rather than psychological is not because I think the latter inconsequential, but for reasons of brevity.

The Question of Trust

Nordstrom is a highly successful American retail company worth multiple billions with over 50,000 employees. The entirety of all its codes and procedures, consist of 15 words:

Nordstrom Rules: Rule #1: Use best judgment in all situations. There will be no additional rules.¹

What the company is saying to its employees is that we trust you to do your best. Why are the IGA's codes not similarly brief? Is it the case that the membership is not trustworthy?

These questions beg others: What is the purpose of an institution producing codes of this kind? Are they there to provide guidance to good people in difficult circumstances? Or are they there to police bad people, to stop them doing bad things to other (good) people?

All codes of ethics can be boiled down to the rather obvious sentiments that we ought not to lie, cheat, harm our patients, and so forth. So if the IGA were to follow Nordstrom, our codes might simply say:

Be good; do your best to do the right thing.

Do you really need to be told the obvious, that you ought to be good and do the right thing? Or that:

The use of violence against a patient is forbidden. (Code of Ethics, IGA, 2004: 5)

I imagine not. So why do institutions feel the need to tell us the obvious?

Norbert Elias—Learning the Obvious

Whilst Norbert Elias' work does not exactly answer these questions, it throws interesting light on the matter. There are striking parallels between contemporary institutional codes of ethics and the treatises of etiquette that Elias studied in *The Civilizing Process* (Elias, 1994).

One of the things that Elias noticed was that over centuries, certain subjects that were given entire chapters in the earlier guides on

etiquette, reduced over time to sections then paragraphs and then eventually completely disappeared. Elias also noticed that the early books on etiquette were aimed at adults, but by the end of the Middle Ages they were aimed at children. From this he surmised that this movement reflected the fact that over a period of time, the locus of control regarding acceptable behaviour had moved from the external to the internal world. Now (in the main, and in our culture) adults do not need to be told not to wipe their hands on the tablecloth—but young children do.

He further surmised that by the end of the Middle Ages expectations had shifted—it was now expected that adults would already somehow *know* how to behave. And if by now the adults ‘know’ how to behave, then this must mean that the injunctions have been internalized during the socio-developmental processes. (Dalal, 2002; Elias 1994). This is one of the senses in which Elias is using the term *civilized*; the more ‘civilized’, the less needs to be said—it is become a part of ‘civil’ life and henceforth taken for granted.

For example, early treatises on etiquette found it necessary to tell *adults* not to urinate and defecate directly on the chair that they happen to be sitting on. Happily, in this day and age the norms and expectations during a lecture are such that whilst I might feel the need to remind you to turn your mobile phones off, I have full confidence that I do not need to tell you the social protocol regarding bodily functions whilst in the company of colleagues. To do so today, would be to state the what-is-now-obvious; whereas, it was not at all obvious a thousand years ago.

The purpose of this digression is to highlight the point that the contents of codes of ethics generally, mainly consist of stating the obvious, *as though it were not obvious*. This could suggest that there is little expectation that adults (you and me) would know what constitutes decent professional behaviour and that we need to be reminded that ‘the use of violence against a patient is forbidden’.

Surely that is not the case. Or to put it another way, if a colleague did indeed strike an annoying patient, there is likely to be universal consensus within our professional body that this was not a good thing to do (unless of course he was a *very, very* annoying patient).

Now, curiously, the injunction not to use violence, does not feature in the new Draft Code. What would Elias make of this? Is it because group analysts have become more civilized over the last 10 years? Surely not. And surely the Ethics Committee of 2003 did not imagine

that I, you, or themselves for that matter, would actually think it okay to strike an annoying patient in the midst of a session.

It is clear then that whilst the function of books on etiquette is to guide and educate what constitutes good behaviour, this is not the case with contemporary codes of ethics. Their content is not news to anyone.

So why are these sorts of obvious injunctions regularly to be found in codes of conduct? What sort of injunctions are they? And if their function is not to inform (because we already know it), then what is it?

Contextualization

To engage with these sorts of questions we need to step back and place the IGA in a broader social, historical and philosophical context. Several distinct but interrelated points follow.

Negative Liberty—Silence is Golden

The key ethical principle that our liberal democracy is grounded in is that of *negative liberty*, as Isaiah Berlin (1969) has called it. The intention here is to leave you as free as possible to follow your desires, *by avoiding telling you* what to do or not to do.

In contrast, codes of ethics, like the Ten Commandments, are the reverse: prescriptive sets of rules telling you what *you must do*, and *not do* on pain of punishment.

Universal rules of this kind are by their very nature necessarily abstract and are premised on ‘the simple assumption that there is something under any given circumstances, which it is right or reasonable to do, *and that this may be known*’ (Sidgwick, 1874: vi, quoted in Cavell, 1999: 248 (italics added)).

For example, the rule: Thou shalt not kill; or from the Draft Code:

2.1 Members must always act in such a way that the interests of their patients or clients are paramount. (Code of Professional Conduct (Draft), IGA 2013)

Rules of this kind simplify life, but they also oversimplify life. Schopenhauer complains that most universal moral injunctions are ‘stilted maxims, from which it is no longer possible to look down and see life as it really is with all its turmoil (Schopenhauer, 1903: 133, quoted in Cavell, 1999: 248).’

If we actually look at life ‘with all its turmoil’, then very quickly we come across scenarios in which some of us might sincerely believe

that the ethical thing to do would be *to* kill (a mother protecting her innocent infant from a deranged psychopath for example). Others, like Kant, would emphatically disagree with this, saying that the rule ‘not to kill’ must apply regardless, in all conditions.

What we have stumbled across here is what we usually think of as an ethical dilemma. ‘Testing’ the universal rule in a particular circumstance. This is a top-down kind of approach—at the ‘top’ is the belief, which we test by applying it in the ‘real world’.

But how did we get ‘to the top’ in the first place? How was the rule arrived at? The thing about a rule is that all must agree to it, precisely because it is a rule (drive on the left hand side of the road). But in the case of an ethical dilemma, even if there is agreement about the rule, there is dispute about whether the rule should be applied or not. This is what makes it a dilemma: precisely the lack agreement.

Rational versus Ethical

This lack of agreement, when one *sincerely* believes a course of action to be right and another thinks otherwise, troubles us deeply. The philosopher Stanley Cavell (Cavell, 1999b) gives one explanation of why we are so troubled, and what we tend to do about it.

He begins with the fact that we are in thrall to the rationalism of the natural sciences. This form of rationalism generates conclusions that we expect to be in agreement with others. For example, that iron is heavier than water; that $2 + 2 = 4$. These conclusions are universal, and they apply in all conditions. This is objectivity—an agreed truth independent of viewpoint, arrived at through rational means. And if we do not end up at the same conclusion, then at least one of us is not being rational (many a marital conflict turns on this belief). Anyhow, Cavell’s point is that we tend to conflate ‘agreement’ with ‘rational’. And because modernity is so in thrall with positivist rationality, our expectations are that regardless of the subject matter, that as rational beings we are bound to (and ought to) eventually arrive at a point of agreement with others.

In contrast to agreement being the norm in the natural sciences, difference of opinion tends to be the norm in the moral domain. This point is key and bears repeating: the ‘natural’ state of affairs in the domain of ethics is not agreement, but diverse opinion, passionately held and sincerely defended.

On this basis some think that therefore our moral codes must be fundamentally non-rational and derived by other means, perhaps

supernatural. Meanwhile other philosophers like Kant think that morality is to be rationally calculated; and that differences of opinion are due to the incorrect use of the rational faculties. In this sense, our codes are Kantian as they are declaiming agreed ways of behaving, and we (allegedly) agree to them because we think them sensible (i.e. rational).

In a play, Euripedes has Socrates say something similar: ‘As long as man knows the good, he will do it. All that is necessary is that he has really recognized the nature of the good. Nobody commits a crime voluntarily’ (quoted in Cavell, 1999: 248).

Conscience versus Loyalty

If Socrates is right and we are naturally inclined to do good, then our codes could indeed be radically reduced to the simple pronouncement: ‘Be good; do your best to do the right thing’.

Socrates’ and Kant’s belief and expectation was that left to our own devices, our natural inclinations towards goodness mixed in with rationality, would lead us all to arrive at the *same* conclusions about good and bad.

Unfortunately, this turns out not to be true; we habitually differ in our opinions as to what ‘*the good*’ is. We ask: which good? Good for whom? Mostly our disputes are about which of several goods is the ‘greater good’.

Issues to do with ‘good for whom’ are alluded to in the title for this day, *Conscience versus Loyalty*.

But unfortunately the title makes it appear that loyalty is the opposite of conscience. It is not; loyalty is necessarily a matter of conscience. The questions reappear: loyalty to what or whom? Recall Luther’s cry: Here I stand; I can do no other.

The predicament we are faced with is not that of conscience versus loyalty, but the following:

Our ethical beliefs matter to us deeply. They are intrinsic to being itself. At the same time our deeply held beliefs are very often at odds with the deeply held beliefs of others. Despite being confronted by ethical diversity and therefore a multitude of different beliefs about what is a good life, social life nevertheless demands that there be some consensus regarding how to live with others, else social life would not be possible. (e.g. drive on the left hand side of the road).

How do we accommodate the contradictory needs of each of these realities—diversity and consensus?

Ethics versus Compliance

In authoritarian contexts, there is no problem to be dealt with, because the authority (church or/and tyrant) imposes notions of good and bad from above, with the full expectation that all will abide by them or else; in this way diversity disappears and consensus rules.

The problem of the tension between diversity and consensus is peculiar to liberal democracies such as ours. Mostly our ethico-legal 'system' manages the tension through the liberal principle of live-and-let-live (Dalal, 2012). In other words through the principle of negative liberty, which grants you the freedom to do as you desire in the private sphere, as long as it does not impinge on the freedom of others to do the same. The ideal for liberal legislation, is to legislate as lightly and as little as possible.

This works well enough a lot of the time. But when one person's way of living prevents another to do the same, how are we to judge between two positions? For the sake of argument, let us say that each position seems ethical, and each is incommensurate with the other. The cause of the breakdown might be banal to do with noisy neighbours, or more profound regarding practices around abortion, or claims of professional misconduct.

There is no objective neutral place to stand from which to pronounce on the conflict. Any place I stand will be yet another subjective ethical position, which would incline me to favour the viewpoint that is closer to my thinking over the other. And another person would decide differently to me because of their own subjective beliefs. If this were allowed to carry on, we would all swiftly drown in the sea of relativity.

This is when we would turn to the courts and judges to decide for us. And they do. But the law courts do not really concern themselves with matters of truth or justice, nor with notions of good and bad, nor with the ethics of the situation. Their task is the easier one of determining whether or not the law *as it is currently written*, has been complied with. The task is made easier by virtue of the fact that it is relatively concrete, and therefore available to the rational faculties for scrutiny.

The task looks as straightforward as asking: is the colour of your hat the same as my shoes? The rational faculties require the answer to be similarly straightforward: yes or no. But if the answer is not crystal clear, as mostly it is not in matters human, then a decision is arrived through another rational process—investigation, evidence and argument. Our legal system is an adversarial system, which

places enormous faith in rational argument. The belief being that objective truth will be found and forged through the white heat generated by the arguments between barristers. It is important to note: neither of the barristers is trying to work out the truth of a situation. Rather, they are tasked with taking an entirely partisan position (strangely it is their ethical duty to only see one point of view!), and to use all (legal) means possible to destroy the argument of the other side. This is the belief we mostly live and die by (often enough, quite literally), that if we stay true to the rational, the weight of argument will eventually forge for us, objective truth.

The legal system has split itself off from the problematic layer of ethics *per se*, where it is hard to pin anything down. This layer, in which moral rules are created, fixed and situated—has been delegated ‘upwards’ to law makers, in the belief, or should I say hope, that they are persons of integrity. Meanwhile the courts reside in the layer ‘below’ that of ethics. The task of this layer (the courts) is not that of asking ‘has this person done wrong?’ or ‘which of these persons is right?’ Instead the court asks: has the law—*as it is written into the layer above*—been complied with? It is in this sense that I say that the law concerns itself with compliance, and not ethics. Whistleblowers are habitually convicted, despite doing the right conscientious thing.

Despite being persons of integrity, law makers have profound differences with each other regarding what is right and wrong. There are always struggles between different interest groups as to what the law ought to be. But ultimately, it is the more powerful who have access to the pen that writes the law. And having got a hold of the pen, they mostly write laws that serve their own interests over and above those of others. The most obvious case in point being, the rights allocated by men to women, in contrast to those they have allocated to themselves over millennia. The law is ideology institutionalized; it fixes the nature of the ‘good’. And as we know, ideology is not driven by the rationality of the natural sciences, but by the rationality of power relations. In this sense our laws are always partisan, always ‘points of view’, always confronted by valid (ethical) alternatives.

We can see that even when the law makers are persons of integrity, the situation is compromised. But the situation is much worse; our law makers are not always persons of integrity, and are as infected by self interest as the rest of us. Take, for example, the current furore over what has come to be called the gagging law. Whose interest does this law, this ‘good’, serve?

The IGA

These kinds of problematic beliefs, principles and processes must inevitably find their way into our institutions and their codes of practice.

For example, our protocols² will only allow an appeal if it can be shown that procedure has not been precisely followed, rather than whether the verdict was thought to be wrong in some way.

12.1.2 . . . to allow the Appeal, wholly or in part, *provided that there were faults in the process* . . . (Disciplinary Process, IGA, 2004)

In other words, the grounds for an appeal are those of compliance not ethics. The ideological struggles that must have gone into the formulation of these codes are harder to evidence. But by chance, it is possible to catch a small glimpse of this struggle. In advance of the Study Day, the speakers were emailed a copy of the draft Code of Professional Conduct. On opening the Word document, I discovered that it was in fact a working document with some of the on going conversations and corrections still embedded within it. We see that someone has wanted to replace the term 'patients' with 'clients'.

In itself the 'correction' is innocuous. But as we know, this distinction carries two enormous histories and antithetical ideologies that shape not only how one positions the-ones-who-come-for-help (and therefore the form of help that will be deemed to be helpful to them), but also where we group analysts position ourselves in the matrix of allegiance and hierarchy that is the larger psychological community that we are a part of.

In this regard I think that the new draft code is (unconsciously) trying to have its cake and eat it too. The Code says '1.1 . . . any reference in this Code to "client" includes a reference to patient'. In the history of the psychological therapies, 'client' has been associated with 'therapist', and 'patient' with 'analyst'. And so, if 'patient' is being replaced with 'client', then why is the term 'analyst' being retained? The answers here I think are political and ideological as much as anything else. The move towards the term client suggests a lessening of the power differential in the consulting room (and so more appealing to the public), but the retention of the term 'analyst' serves to place group analysts in the same chamber as the psychoanalysts, and position them over and above the lesser mortals called therapists (whilst the term 'analyst' features several times in the document, there is no use of 'therapist').

Cult Values, the Individual and the Institution

In many ways codes of ethics are like ‘job descriptions’, which habitually tend to be bloated and unrealistic in their expectations. Job descriptions are instances of what George Herbert Mead has called *Cult Values*. Cults hold unrealistic beliefs about themselves and the world—ours is the only true way, this is the way that the world is, and so forth. Mead argues that many of our day to day, unreflected beliefs that we live ordinary life by, unbeknownst to us, are also cult values. In regards to the job description, not only do people believe that they ought to fulfil all the requirements in the job spec, but also all operate *as though this is what is actually taking place*. And whilst things are going well enough, there is tacit agreement that no one will look too closely at what is *actually* happening. But when difficulties arise, then the fictions are made manifest and exploited for other ends.

For example, the employee can use the tactic of the ‘work to rule’ to intimidate the employer: by following all the rules and protocols to the letter, there is no time left for the actual work. And contra wise, the institution is always able to demonstrate that a person is not fully complying with *all* the requirements of the job description or a code of ethics, *because they can never be fully complied with*.

Job descriptions—like codes of ethics—are potential hostages to fortune, because they can *always* be exploited in this way. If job descriptions and codes of ethics try to combat this possibility by being more and more detailed in their statements, then this only give more opportunity to use it for other ends.

So whilst both sides are always vulnerable to the other, the institution tends to be, by far, the more powerful of the two. How does it or could it exercise this power?

Let me come at the questions through the situation in which I find myself today: in electing to be a member of this Institute, I tacitly agree to abide by its codes, because this is a condition of membership. I have no choice in the matter. But in doing so, I find that I have entered into a contract that *I cannot* fully comply with.

For example,

2.3 A client *must be informed* about the nature, benefits and risks of any psychotherapy treatment offered *before it begins* . . . (Code of Professional Conduct (Draft), IGA, 2013)

Like many other colleagues, the kind of psychotherapy I have come to practice means that I cannot inform the client on any of these

matters *before the therapy begins*, because I think them entirely unknown and unknowable. This sort of code is an expression of the myth prevalent in contemporary regulatory managerialism, that we are able to predict and control the consequences and outcomes of our actions, and if we do not, then it is a failure on our part. This particular code is a cult value, and a cult value that panders to the myths of positivism.

In fact, I think that for me to make any claim about what the benefits and risks will be in any particular case, would in itself be unethical. If asked by the one-who-comes-for-help about whether and how the therapy will help them with their problem, I answer that I do not know for a fact that it will. That we will find out as we go along, and so on. Our ‘arrangement’ is never settled, it is always a work in progress.

Recall Sidgwick’s earlier statement, which reminds us that these sorts of propositions are premised on

. . . the simple [but false] assumption that there is something under any given circumstances, which it is right or reasonable to do, and that this may be known. (Sidgwick, 1874: vi, quoted in Cavell, 1999: 248)

My practice goes well enough despite not being able to comply with this requirement. But if someone did make a complaint, then I would be vulnerable because I am not following the code, because like Luther (in this minor way) I can do no other.

Nor do I agree with the part of 2.8, that says that

There should be no sexual contact between a therapist and a client or ex-client from a clinical setting. (Code of Professional Conduct (Draft), IGA, 2013)

In the working document, we discover a comment embedded in the word ‘ex-client’: ‘If this means forever, then perhaps it should be stated more strongly’.

Whilst in full agreement that should be no sexual contact between therapist and client, I think this sentiment overly draconian when it comes to prohibiting all possibility of relationship between therapist and ex-clients. I think the premises of this kind of stance to be mistaken as it consists of a mix of cult values that pander to the dogma of the indelibility of the transference, and think the patient as incapable of adult responsibility to the ends of time. Of course, many colleagues of integrity will strongly disagree with me on this matter.

In my view, this position is an expression of something that Foulkes, Bollas and many others have previously pointed out—which is that the notion of transference has become a tyranny in some quarters of our profession. The ruling ethos in many contexts is that the transference and its interpretation is the *only* legitimate way of working, and that neither patient nor analyst is ever able to break free of its spell. I see no evidence for the truth of this extreme claim, a claim being made (in my view) by an extremist mind set. This belief, which I am forced to sign up to in this code, is to my mind a cult value, and dangerous because of that. This proclamation (2.8) gives us another glimpse into the ideology, power and politics at work in these codes, and is a further reminder that they remain ethically as well as theoretically and clinically contestable points of view.

There are further complications to do with the fact that however precisely a law is written, it is always open to interpretation. And further, whatever the good intention might be behind the formulation of a law, and however ‘obvious’ it is, it is always possible to exploit it and put it to nefarious ends.

Take for example,

2.1 Members must always act in the best interests of their clients. (Code of Professional Conduct (Draft), IGA, 2013)

Over the years I have come to think that ethical practice requires of me a certain kind of transparency regarding what is arising in the clinical situation. To a certain kind of mindset, this kind of practice would be anathema. They would think it anti-therapeutic and no doubt interpret my ‘act’ as an ‘acting out’ born of ideological bias and my own unresolved needs and interests rather than in ‘the interests of . . . [my] patients or clients’.

On the other hand the way that some of my colleagues practice (for example, being overly silent, remote, only speaking to the transference, only making group interpretations, etc), I think to be positively harmful to the therapeutic process as well the client and so is not in ‘the interests of their patients’. Even more, I think they are also falling foul of point 4.4 which says

4.4 Members must not do anything to bring the profession of Group Analysis into disrepute. (Code of Professional Conduct (Draft), IGA, 2013)

This is because I think that the social consequences of this kind of practice create an experience of alienation in the one-who-comes-for-

help, which gives a bad reputation to our field and so brings our profession 'into disrepute'.

Is either of these situations a disciplinary matter? If not, why not?

I have a further more important concern with 4.4, as it lends itself to being used as a gagging clause. If I was of the opinion (which I am not) that group analysis as a whole has taken a turn that I profoundly disagree with, and I said so publicly, then would I be construed as bringing group analysis into disrepute? I imagine that the intention of this code is to ensure that members do not act in indecorous ways that might shame our profession through association. Yet these sorts of codes are being increasingly used to silence debate and criticism. Currently I know of a situation at a local university in which a senior member of staff was subject to a disciplinary because of having expressed at an informal party their ethical opinion critical of certain institutional practices. This person was deemed to have fallen foul of a similar code, as by voicing their opinions they were construed as bringing the university into disrepute. Today, these sorts of situations have become commonplace. It is an irony that this kind of unethical, anti-democratic sentiment is found in a code of ethics.

Group Analysis South West's (Bristol, UK) codes are even more dangerous, saying

3.3.2 . . . a Member of GASW shall not speak unfairly, professionally or personally, of a colleague or group of colleagues to a patient or to potential patients, either privately or in public, or to members of the public in general. (GASW, Code of Practice)

The question of what is unfair and who deems it so, leave codes like this wide open to abuse, and easily put in the anti-democratic service of silencing legitimate criticism.

But the way that the GASW Code is formulated, is even more troubling on two further counts. First, it is in effect requiring me to say nothing to a vulnerable individual about to approach a fellow professional whose attitude to the work and way of working I think to be deeply problematic. To my mind, to do nothing would be to sacrifice this individual to some perverse notion of loyalty and professionalism, and as unethical as passively watching someone drive towards a precipice.

I will surely be told that there are right ways of doing things, that I should follow protocol. If I think this colleague problematic for some reason, then I should *first* bring the matter to the attention of the Ethics

Committee. Maybe so; but what happens meanwhile to the one looking for help? Here too, compliance is being privileged over ethics.

I know of a similar situation pertinent to this theme from many years ago. Someone in the middle of a five times a week analysis came to think that (possibly) there was something untoward with his aging analyst. He initially presumed that these difficulties were expressions of the transference and so diligently carried on working within the analysis. After two years, with the situation deteriorating, and much heart searching, he nervously wrote to the institution in question with his concerns. He received a swift reply thanking him, because his letter now allowed them to do something. They had known for some while about the problem, but their protocols did not allow them to act without someone blowing the whistle. Once more protocol and procedure trumps the rights and wrongs of a situation.

Even more troubling is the second issue, which resides in the pronouncement regarding groups of colleagues. 'a Member . . . shall not speak unfairly, professionally . . . of a . . . group of colleagues . . . '.

It seems to be that this code has the potential to totally undermine my ethical, clinical and democratic right to voice views and opinions that are critical of schools of psychotherapy—be they Rogerians, Kleinians, Winnicottians, whoever. Schools, are 'groups of colleagues'. So it can easily be argued that my negative views are due to my bias, my ideology or my lack of understanding, and so they are unfair to this group, and therefore constitute a disciplinary matter.

At this point I will be told that surely I can trust my colleagues sitting on investigative panels to be sensible; and mostly I am sure that this is the case (no irony intended or implied).

But there have been instances in our organization in which the 'accused' has been treated in a manner that by many accounts, has not been reasonable nor proportionate.

The Life of Committees

Committees, populated as they are by ordinary persons like you and me, can on occasion get overly zealous and overstep their remit. When this kind of thing happens, it is difficult to get the organization to listen, because the default mode of organizations is defensive, to stay loyal to its committees and back the decisions made by them. This stance is rationalized by saying that it can do no other, as it has to follow formal protocols. Committees no less than individuals, can dissemble and turn defensive.

Where are the codes that would police the unethical behaviour of the institutions who take it on themselves to police the unethical behaviour of its members?

The well known Stanford Prison Experiments (Haney, Banks and Zimbardo, 1973) in which participants were *randomly* allocated to be prisoner or guard in a real life simulation are pertinent here. The experiment had to shut down because of those designated to be guards very quickly found themselves becoming nasty and sadistic to those designated to be prisoners. This and other similar substantiated findings from social psychology show us just how vulnerable we all are to finding ourselves blindly (unconsciously) and overly identifying ourselves with the groupings we are located in, however arbitrary the allocation. This tendency is at the root of the us–them dichotomization process we habitually find ourselves in the grip of. Those not–us are prone to be experienced at the very least as difficult and often enough as the ‘enemy’, even though they might be the very reason for *our* existence. For example, schools as well as psychotherapy trainings can come to think of the students and trainees as annoying difficulties. The transport service thinks of the passenger similarly, hospitals with patients and so on. I too am in the grip of this kind of process as much as anyone else; for example, I became aware *after* the study day (in other words once the spell had dispelled) that my unconscious attitude during the day to some degree was of thinking of ‘the ethics committee’ as a thoughtless yet powerful ‘them’, despite its members being colleagues that I know, am well disposed towards and have friendly relations with.

All of this is the case with committee life generally in all organizations including ours. We become identified with the committee and find ourselves doing things that we (unconsciously) think are furthering the interests and power bases of the committee over those of other individuals and other committees. A committee delegated with the task of (say) creating a list of boundary violations, will do just that, and come to think the bigger and more elaborate the list the better. The flourishing of the task becomes identified with the flourishing of the committee, which becomes identified with the flourishing of the individuals that constitute that committee.

Institutional Denial and Defensiveness

Looking at society at large, on the whole institutions have not shown themselves to be very trustworthy. When accused, institutions tend to

act self protectively, and in that process sacrifice individuals as well as ethical principles. Institutions employ a two fold tactic defensively.

When accused of some failing, the institution's first port of call is mostly denial and obfuscation. They hide behind compliance, which is used to deflect attention from the charge itself. Challenge or make a criticism of an institution, and you are likely to get a bland letter saying that they comply with all legal requirements, and are following all procedures, etc. The response is a non-sequitor which does not engage with the actual complaint.

But when the tactic of denial and obfuscation does not manage to neutralize the complaint, then the institution can turn on the 'culprit' with brutal ferocity in order to demonstrate its purity to the world. Accused individuals often find themselves in Kafkaesque scenarios. Allegations automatically trigger procedures—the accused person is immediately suspended, pending an inquiry. This inquiry often consists of making a virtue of *not speaking to persons, but examining paper work behind closed doors*. Whilst this is going on, it has become the norm to keep the accused in the dark about the nature of the allegation. Of course this generates paranoia and insecurity in the accused. This insecurity is further intensified by the commonplace practice of forbidding the accused having any contact with other colleagues, thus isolating them from all support networks. These inquiries can go on behind closed doors for months and even years. Many an individual has lost their sanity in this process.

For example, as I write, I know of a senior well respected practitioner in the health service, who is still suspended on full pay as of nine months ago, who still has no knowledge of the nature of the complaint made against them, and who meanwhile is banned from having any contact with anyone in the organization. It seems to me that we have evolved an exquisite torture, all in the name of ethics.

Conclusions

To be on an ethics committee is a thankless task, because you are always going to get it wrong for someone (remember, ethics is forever the domain of difference and dispute). It seems to me that on the whole the new Draft is a much better piece of 'law' than the one it intends to replace from 10 years ago. In comparison to the old piece of legislation, it gives more weight to principles (which encourage reflection) rather than procedures (which encourage compliance).

The ethics committee, like our law-makers, have to strike a balance between ‘virtue ethics’ and ‘deontological ethics’. Virtue ethics are premised on the Socratic idea we met earlier, that people are naturally inclined to do good. On this basis, individuals should be left alone to do their own thing in accordance with their character, beliefs, etc. Meanwhile deontological ethics impose a set of requirements and rules telling us all what to do and not do, because we cannot be trusted to do so.

Those trying to write codes of this kind are necessarily caught in a cleft stick. Because about virtue ethics, the code can say little, as the idea here is not to say much! Here, quite literally, the less said the better—we are back with the notion of negative liberty again. What codes of ethics primarily comprise of (necessarily) are deontological ethics—sets of rules that all are to abide by (if not necessarily agree with). My current view then on this draft, is that it has moved significantly in the right direction when compared to the protocols currently in place. But it is still too mired in the territory of deontological ethics and ought to give more ground to the notion of negative liberty. I would argue that our code of ethics ought to be much leaner and tending towards the example set by Nordstrom. The more rules we write, the greater the possibility that they are able to be used to gag legitimate dissent. Most importantly, once rules like GASW’s 3.3.2 and the IGA’s 4.2 become formally instated, then members are likely to start gagging themselves for *fear* of being disciplined.

This sort of moment (the rewriting of codes) is critical in the life of institutions (a moment in which shamefully, I previously had no interest having dismissed it as dull bureaucracy). Consider, in this moment, our Ethics Committee embodies all three powerful functions, which in larger society are allocated to three relatively autonomous institutions. In this moment the Ethics Committee is parliament (writing the law—ethics), the court (testing whether the law-as-it-is-written has been complied with), as well as police. Potentially, this makes the Ethics Committee a terrifying institution, because it writes the laws that it will judge me by. If it writes one kind of law, then I will be ‘legal’ and if another kind, then I will be ‘bad’ and ‘wrong’.

Here is a not uncommon but chilling example from a prestigious charity: In a recent meeting which (unusually) included some of the employees as well as the Chair of the Board of Trustees, the Chair heard for the first time about certain troubling practices which had been going on for some years. When the Chair inquired why it was that no one had flagged this up to the Trustees previously, he was

informed that one of the codes made it a disciplinary offence to speak directly to the Trustees without going through the CEO first. The rationale being that employees had to voice concerns to their line managers whose duty it was to pass these concerns up their managers and so on. It is easy enough to see through this kind of rationale to the real function of this kind of code: to control and manipulate information. I cite this as an example of a 'law' that makes it wrong and bad for an employee to speak out their legitimate concerns.

To repeat the earlier point: the world of ethics is intimately linked to that of politics. So one of the reasons that it is shameful that I (and perhaps you, dear reader) have not participated more fully in this process, is that in doing so I have relinquished my political duty to make the world try to fit my moral principles; and in neglecting this duty, it is not only shameful but foolish, because now I am answerable to, and vulnerable to some principles that do not fit my ethical and clinical frameworks.

But it could have been much worse. I would have been entirely disenfranchised and lost my livelihood if our Ethics Committee had decided (as has happened in some other psychotherapy and psychology institutions) that—*obviously*—it is the ethical duty of practitioners to *only* offer treatments that are evidence-based (in the very narrow understanding of evidence that positivism harkens to) and validated by NICE. Anything else is snake oil, and so (obviously) unethical and a disciplinary offence.

I want to return to the question that was posed at the start of the article—which was, what is the function of a code of ethics, given that much of consists of the obvious (do good and be good)?

As the content is already known in some way, clearly the function of the code cannot be to inform, educate or guide. I now come to think that codes of this kind serve two interlinked functions. First and foremost it is there to police the membership. In this regard the code functions as an instrument of control for those who dare wield it.

Its other function is that the code of ethics serves as our creed. Although the creed is 'obvious' to the faithful—X is the one and true God, and so forth—everywhere the faithful find it necessary to recite the obvious, the creed, over and over again, many times a day.

There are two issues here. First, this goes some way to explaining why codes are full of apparently redundant obvious truisms. Second, it is hard to recognize codes of ethics as creed, because they are thought of as belonging to the bureaucratic apparatus of an institution. I certainly have been guilty of this, and so have taken a rather

dismissive superior attitude towards this kind of bureaucratic 'housework'.

Whilst much of the code is 'obvious' that is uncontroversial, there remain a few key points (detailed above) where I have strong ethical, clinical and theoretical disagreements with the premises codified as good practice, and these I would strongly urge changed.

I end with some questions:

In writing our codes in this way, have we gone down the easier but mistaken road of casting our codes in the bureaucrat's language of rules, regulations and compliance? A language that serves the interests of the bureaucrat and their regulatory tick box ethos.

Which and how many of the conditions within the codes are cult values? The harder, perhaps impossible road, is to have the courage like Nordstrom, to try to cast our codes in a language that truly reflects the *values* of psychotherapy in general and group analysis in particular, rather than the values of the bureaucrat (which values a draconian vision of efficiency and consensus).

In our rhetoric, we appear to value a diverse range of elements like negative capability, openness, compassion, agenda-free non-directive conversation, acceptance of human-failing, transparency, non-judgementalism, authenticity, unconscious processes.

What would a code look like if couched in terms that incorporate these sorts of elements? How could we construct a code that did not just point to a set of ethical principles, but which would actually embody the ethical principles that it seeks to advocate? (And then, would they even be called 'codes'?).

Notes

1. http://en.wikipedia.org/wiki/Nordstrom#Employee_handbook
2. Whilst our codes and protocols are not 'laws' as in the legal sense of the term, they nevertheless function in the same sort of way: that when they are transgressed, some form of trial and punishment follows.

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Farhad Dalal works with organizations and also has a psychotherapy practice in Devon. In his first book *Taking the Group Seriously* (1998) he argued against individualism and for the relational nature of human life. His second book *Race, Colour and the Processes of Racialization* (2002), focuses on the causes of the hatred of Others in general and racism in particular. His current book *Thought Paralysis: The Virtues of Discrimination* (2011, Karnac), is a constructive critique of the Equality movements. Address: 4 Glenarm Terrace, Castle Street, Totnes, Devon TQ9 5PY, UK. Email: Farhad.dalal@devonpsychotherapy.org.uk