

Never Mind the Question; Evidence is the Answer

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The question of *ethics* in the vast range of practices of psychological therapies (which I will refer to as ‘psy’ practices) is ubiquitous, to the degree that, substantially, it comes to form a distinct discipline of its own. Aside from the power imbalance between practitioner and patient, and the private context in which the sessions occur, the *psyche*, as the object of examination and target of treatment, cannot be pinned down in the same way as bodily organs can. Furthermore, it is only from a positive relationship between practitioner and patient, in the sense of rapport, trust, and openness, that the work of such practices is possible, and that these practices can thereby continue to exist. In this brief paper, I argue that the existence of regulatory, professional bodies is superfluous, but not without effects. The desire to bring legitimacy to an artifact of a profession which only serves the market and a sociopolitical agenda has led to the popularization of terms such as ‘informed consent’, ‘evidence-based’, and ‘unethical’, to name a few, in the contemporary mental health clinical discourse. As the question of regulation of psy practices is prominent in the field, with many countries of the Western civilization being largely against its implementation, I examine the role and purpose of regulatory bodies in relation with the *reality* of these practices, a reality which escapes any guarantee, control, or regulation, and thereby, with the implicit risk that is omnipresent regardless of a *symbolic* regulation. The aim of the paper is to show that without the kind of evidence that can be used in the legal context, there can be no punitive action for malpractice. Even if such evidence is obtained or obtainable, and appropriate punitive action is applied, the harm done cannot be measured, captured, or compensated by it. Moreover, ‘malpractice’ is always susceptible to interpretation and argument, and thus without expandability of the particular malpractice to a wider context, the punitive action can be minimal, in the form of a verbal disapproval, instead of an actual consequence, in the form of some sort of disciplinary action. The paper ends with some concluding remarks on the effects of the act of legitimizing

an impossible profession and on the implications of the regulatory bodies holding a purely symbolic function.

The role and purpose of regulatory, professional bodies is to invent and reinforce amongst their registrants a ‘code of ethics’ whose supposed function is the regulation of their actions and behavior when in professional capacity. ‘Harm’ in this context is thus conceptualized and any alleged violation of this ‘code’ is individually investigated on the basis of whether it falls within the parameters of this conceptualization. However, even though there are repercussions for the practitioner in case of *proven* - by means of *legitimate evidence*, namely evidence that is usable in the legal context - malpractice, the regulatory bodies cannot offer assurance on the registered practitioner’s ethical conduct or their refraining from any form of malpractice that may be harmful to the patient. In the ‘find a psychologist’ section of the BPS website, this *reality* is accentuated in a way that echoes a *warning*, excluding the professional body from any culpability: “the BPS does not endorse or recommend individual members and makes no statement as to their experience or competence. It is then the responsibility of the user to verify the background, qualifications and experience of any member whose services they are considering.” ([https:// www.bps.org.uk/public/find-psychologist](https://www.bps.org.uk/public/find-psychologist)). The patient bears the sole responsibility for the choice of a practitioner, and in case of maltreatment, there will be ‘punishment’ for a wrong already committed, but the harmful effects of which, in terms of intensity and extent, will always fall within the register of the subjective. These effects solidify something that the subject will have to live with and which cannot be compensated by the punitive action of the Other. The typical process of addressing a complaint and reaching a decision in a preliminary investigation is one well-described by UKCP, and it is based on the following criteria: “1) Is there a realistic prospect of being able to prove the allegations against the Registrant, and; 2) If so, are they so significant to indicate that the registrant’s suitability to practice is, or may be impaired to a degree that justifies action being taken on their UKCP registration.” As a third point, another major organization and training provider for psychological therapies in the UK, the British Association for Counseling and Psychotherapy (BACP) states that the process of assessing complaints being made against members entails checking “that the complaint is not vexatious or frivolous – ie made to cause annoyance and with no serious purpose or value”. In December 2018, following several years of working closely with members, “other concerned bodies and the Professional Standards Authority for Health and Social Care (the body that accredits our Register)”, BACP revised its professional conduct procedure, on the basis of the conclusion “that it privileges the client’s perspective; that it is unduly punitive; that it is too cumbersome and often disproportionate to the seriousness of the complaint; and that members feel unsupported and punitively judged by the process itself, even when the complaint is not upheld”. To articulate the position and func-

tion of regulatory bodies cogently, we can say the following: they embark from assuming no responsibility for a registrant's competence or conduct, assess the report/ complaint for provability in the legal context, assess the risk of the malpractice being expanded onto wider context and hence being a 'public threat', and, finally, evaluate the seriousness of the alleged act and interpret the style of the report/ complaint writing as being indicative of the reporter's intention. The requirement of proof legally admissible in court, interpretation of the maltreatment on the basis of a supposed interpersonal context and of whether it constitutes a direct cause of harm on one's physical wellbeing, as well as the evaluation of its wider applicability, render the very existence of such professional bodies superfluous and purely symbolic.

In 'Boundary Violations in Therapy: The Patient's experience of Harm' (2018), the underreported patients' experience of harm by practitioners is exposed and strongly condemned. The result of this underreporting in academic and research literature is evidently the resorting to blogging in an effort to seek peer support and raise awareness (for example, <https://therapyabuse.org/p2-emotional-abuse-in-therapy.htm> and <https://psychopathsandlove.com/first-do-no-harm-abuse-and-harm-in-psychotherapy/>). Indeed while the subject of harm in psy practices has been acknowledged, and there are some 'universally-valid', general guidelines with regard to what is unethical, exploitative, and abusive, there has not been any progress in this research area due to the subjective and interpersonal factors which determine it and hence to the difficulty in universalizing and concretizing this notion (Castro Batic & Hayes, 2020). As all that the regulatory bodies can do, without tangible evidence, is explore the interpersonal context on which an alleged maltreatment took place, being open to believing and validating the patient's words as being the truth, without resorting to interpretation and pseudo-intellectualization - dismissing it as 'perception' or 'experience', for example - then the following method by psychoanalyst Aron Lewis appears to be the most aligned with this attitude:

"In the clinical situation I often ask patients to describe anything that they have observed or noticed about me that may shed light on aspects of our relationship. When, for example, patients say that they think that I am angry at them or jealous of them or acting seductively toward them, I ask them to describe whatever it is that they have noticed that led them to this belief. I find that it is critical for me to ask the question with the genuine belief that I may find out something about myself that I did not previously recognize. Otherwise, it is too easy to dismiss the patients' observations as distortions. Patients are often all too willing and eager to believe that they have projected or displaced these feelings onto their analyst, and they can go back to viewing their analyst as objective, neutral, or benignly empathetic." (Lewis, 1991)

The superfluity of regulatory bodies has a particular relation with the effects that their symbolic presence induces. They are superfluous in the sense of acting strictly as legal agents

and not investigators of truth pertaining to the psychological. The effects of their symbolic existence are those of security and safety, as well as expectation. Since the psychological is in fact invisible, those 'bodies' prove themselves as disabled in the face of lack of a kind of evidence that stands in law. Their superfluity functioning as a 'surplus' reveals the paradox around which such practices are centered: they operate on trust and confidentiality, outside the suffocating confines of surveillance, which do not give space for singularity and freedom of expression, and yet there can be no malpractice without evidence. Furthermore, a converse effect of regulation is the infantilization of the practitioner in the eyes of the patient, who is placed in a less dominant position, and hence sabotages the very *lure* of psy practices. In the end we are faced with the question: is the lure worth the risk for a vulnerable individual or for one actively suffering?

References

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