

Sigmund Freud: Forensic Psychiatrist

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As a forensic psychiatrist, I have written extensively about my own routine application of psychiatric and psychoanalytic principles to my practice.¹⁻⁷ However, until very recently, I was unaware that Freud, in addition to supplying the indispensable theoretical underpinning, had made direct contributions to forensic psychiatry. Sigmund Freud requires no introduction. His theories and their therapeutic applications, the history of his movement, and his own biography are familiar fixtures in the cultural landscape. There is no region of the intellectual or social life of mankind that has not received some measure of attention in his writings. Thus it is no surprise, although not heretofore acknowledged, that Freud made infrequent ventures into that specialized interface between psychiatry and the law, forensic psychiatry. In four of his writings, Freud dealt with issues that still interest and challenge forensic psychiatrists. These were:

Theoretical

- Psychoanalysis and the Establishment of the Facts in Legal Proceedings (*Tatbestandsdiagnostik und Psychoanalyse*)⁸
- Some Character-Types Met with in Psychoanalytic Work: Chapter III: Criminals from a Sense of Guilt (*Einige Charakter Typen aus der psychoanalytischen Arbeit*)⁹

Practical Applications

- The Expert Opinion in the Halsmann Case (*Das Fakultätsgutachten im Prozess Halsmann*)¹⁰
- "Memorandum for the Defense" (A psychiatric report written in a temporary insanity case) (Not extant)

In these forensic psychiatry writings, Freud made some original contributions, outlined areas for future investigation, and constantly advanced the thesis that "Psychology is a knife that cuts both ways"¹¹ and therefore that psychoanalytic principles should be applied very cautiously (if at all) in legal proceedings. I will briefly outline the scope of each of these productions in order to delineate the substance of Freud's contributions to forensic psychiatry.

Psychoanalysis and Establishment of Facts

In 1904, Freud was informed by Bleuler that he and Jung had been acquainting themselves with psychoanalytic theories and seeking practical clinical applications for them. Jung had carried out a series of word association studies on normal and neurotic subjects and had applied his findings to both psychoanalysis and the diagnostic process in criminal cases.¹²⁻¹⁴ Jung's studies confirmed Freud's conclusions about how emotional factors

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could interfere with recollection. This process of interference demonstrated the presence of repressed material in the form of so-called "affective complexes." The term "complex" referred to "the totality of ideas relating to a particular emotionally coloured event"¹⁵ and later came to mean a group of related ideas that is repressed or "withdrawn from consciousness."¹⁶

This paper is of some historic import as it contains the first published mention of Jung by Freud and introduces to Vienna students the word association experiments and theory of complexes that had been developed by Jung. Freud's paper originally was delivered at the invitation of Professor Löffler in June 1906 before the Juristic Faculty of the University of Vienna. Freud notes there is an awareness that the statements of witnesses in a court proceeding are often untrustworthy. He purports to introduce a new method of investigation that will compel an accused party to establish his or her own guilt or innocence by objective signs (or alternatively, will establish whether any witness is telling the truth). The method to which he refers is the research methodology used in the word association experiments of Jung. A carefully planned succession of words is called out to the subject who replies as quickly as possible with whatever word springs to mind. The points to be observed are the reaction time required by the subject and the relation between the "stimulus words" and the "reaction words." The reactions are not chance ones, but are determined by the ideational content, the complex of repressed material, that is triggered. Abnormal responses may be characterized by prolonged reaction time, mistakes, perseveration, unusual content, and so on.

Freud wrote, "The task of the therapist, however, is the same as that of the examining magistrate. We have to uncover the hidden psychical material; and in order to do this we have invented a number of detective devices, some of which it seems that you gentlemen of the law are now about to copy from us." He goes on to draw parallels between the criminal and the hysteric, the former deliberately concealing (or suppressing) a secret about which he or she has a guilty conscience and the latter hiding the secret, which generates somatic and psychical symptoms, even from himself or herself (repressing). He compares the establishment of the facts in a criminal proceeding via psychological research techniques to uncovering repressed psychopathogenic material in psychoanalysis via free association.

He is careful to point out that Jung's findings are merely special applications of underlying psychoanalytic principles that also demonstrate psychic determinism (for example, parapraxes), a principle which Freud had described in detail in 1901.¹⁷

Freud went on to emphasize the dangers involved in drawing too hasty conclusions about applying these techniques to the legal situation. He cautions against the half-baked application of psychoanalytic theories to the courtroom and explicitly recommends these methods be more fully studied on a research basis only and without influencing the decision-making process in an actual proceeding. In his discussion of psychiatric involvement in

the establishment of facts in legal proceedings, he anticipated many of today's controversies regarding the use of the lie detector, hypnosis, amyltal interviews, and psychiatric and psychological testimony on the issue of the credibility and reliability of testimony.^{18,19}

Character-Types Met in Psychoanalytic Work

Freud advanced a hypothesis about the psychology of crime. A number of his "respectable" patients revealed that in their youths (or even during their analytic treatment) they had committed criminal acts (frauds, thefts, and even arson). Analytic work demonstrated these deeds had been carried out precisely because they were forbidden, and their commission had resulted in a state of emotional relief. The patient in these cases had been suffering, according to Freud, from an oppressive feeling of guilt of which he or she did not know the origin. The preexistence of the guilty feeling was determined by a multitude of other factors from material produced during the analysis. The criminal act was then used by the patient to rationalize a pre-existing sense of guilt. This curious finding led Freud to seek the answers to two further questions: what was the source of this obscure sense of guilt before the crime, and was it probable that this mechanism of causation plays any considerable role in criminal behavior in general?

Freud concluded, on the basis of extensive psychoanalytic investigation, that this obscure sense of guilt derived from the oedipus complex as a reaction to the "two great criminal intentions of killing the father and having sexual relations with the mother." He continued, "in comparison with these two (parricide and incest), the crimes actually committed, to fix the sense of guilt to something, came as a sense of relief to the sufferers." This line of reasoning reinforced Freud's hypothesis that the conscience of mankind was acquired in connection with the vicissitudes of the oedipus complex.

In response to his second question, Freud speculates that such a motivation for crime might very well be taken into consideration in the majority of offenders: "It might throw light on some obscure points in the psychology of the criminal and furnish punishment with a new psychological basis." He notes that Nietzsche had called attention to these "criminals from a sense of guilt" in Zarathustra's sayings "On the Pale Criminal." He notes that only future research will decide how many criminals are to be reckoned among these "pale ones." Once again, almost as an aside, Freud drew astute clinical distinctions and with a few broad brush strokes indicated directions for future research to illumine various aspects of the phenomenology of crime.^{20,21}

Expert Opinion and "Memorandum for the Defense"

These writings were actual psychiatric reports rendered by Freud, as an expert consultant, working in the "front lines" of forensic psychiatry. Both were submitted on behalf of the defendant in cases involving parricide and

attempted parricide. Only the former report is extant.

A young student, Philipp Halsmann was charged with parricide in 1929. The court requested an expert opinion from the Innsbruck Faculty of Medicine as to the mental state of the defendant. Their report described some disagreements between father and son and concluded, by a wild leap of interpretation, that the crime represented an acting out of the oedipus complex. The defendant was found guilty but subsequently was pardoned. Joseph Hupka, a Professor of Jurisprudence at the University of Vienna, waged a campaign to overturn the original court decision and clear the young man's name. He engaged Freud to write a memorandum to rebut the original psychiatric report. Freud argued that it was dangerous to take too literally the concept of the oedipus complex in adult life without unmistakable evidence of its operation. He also noted that, since there had not even been objective proof that Halsmann had murdered his father, therefore the introduction of testimony about the oedipus complex would have a misleading effect. He concluded "Precisely because it is always present, the Oedipus Complex is not suited to provide a decision on the question of guilt."

In 1922, the son of one of Freud's former servants shot his father (not fatally) as the father was allegedly raping the boy's half-sister. A leading forensic psychiatrist of the day, Professor Sträussler, had submitted a report to the effect that the excitement had caused a short circuit in the boy's mind, which was tantamount to temporary insanity. Freud, suspicious of the wild application of psychoanalytic theories, wrote a memorandum saying that "any attempt to seek for deeper motives would only obscure the plain facts."²² The trial ended in an acquittal. Thus in both cases, Freud argued against the half-baked application of psychoanalytic theory to legal proceedings, just as earlier he had warned against wild analysis as a reckless and blind misuse of his theories and techniques.²³ It is apparent that in his forensic work, as elsewhere, Freud always attempted to be precise, cautious, and aware of his limitations. This is a lesson that the forensic psychiatrists of today would do well to heed.

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Sigmund Freud: Forensic Psychiatrist

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