

# Commentary: Forensic Psychotherapy

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Yakeley and Adshead present a broad view of the increasing influence of psychodynamically informed thought and practice on the British criminal justice system, adumbrating a model they call forensic psychotherapy. They explore such topics as mitigating factors, influences on recidivism, and psychotherapy with incarcerated inmates. While I am sympathetic with their overall aims, I outline some theoretical and practical difficulties in attempting to wed two very different systems of thought and the limitations that these difficulties impose.

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As an analytically informed, nonforensic American psychiatrist, I find it interesting to think about Jessica Yakeley's and Gwen Adshead's humane and scholarly advocacy for the use of psychodynamic concepts in the British criminal justice system.<sup>1</sup> I understand from an editorial published in the December 2012 issue of *The Journal*<sup>2</sup> that it parallels efforts on this side of the Atlantic to do the same. Surely anyone with psychodynamic sophistication would sympathize with the authors' effort to replace the cognitive model of psychopathology current in Anglo-European mental health systems with a richer, less sterile psychodynamic one. The name they give to this newer model, forensic psychotherapy, rife as it may be with potential theoretical contradictions (to which the authors allude), seems to me an intriguing and attractive one.

Their exposition of the psychological nature of *mens rea* is almost all I could wish for, a literate explication that draws largely on post-Freudian theoretical paradigms from the British object-relations school, attachment theory, relationality and intersubjectivity, and concepts of mentalization formulated by Fonagy and Target.<sup>3</sup> I admire the intellectual breadth of this survey and the authors' willingness to tap into multiple theoretical frameworks that may not always mesh easily with one another. Their discussion of the roles of shame and humiliation in the eruption of criminal behavior is a model of clarity and insight; I find myself grateful to

them for helping me understand such behavior more deeply than I had.

I should mention one intriguing omission: Freud's seminal 1916 article, "Criminals From a Sense of Guilt."<sup>4</sup> As far as I know, this is Freud's only attempt to explore the criminal mind, and the formulation he proposes has been refined and added to, but not refuted. He suggests that an unconscious sense of guilt, which he posited as arising from forbidden oedipal wishes, may lead one to criminal behavior out of a simultaneous need to concretize guilty strivings and to provoke one's own punishment. This formulation was powerfully dramatized by Eugene O'Neill in his 1939 play, *The Iceman Cometh*, in which the protagonist Hickey murders his wife because he cannot tolerate her relentlessly forgiving kindness in the face of his repeated mistreatment of her. The play's enduring popularity and power are testaments to the aptness of Freud's insight.

The paper by Yakeley and Adshead<sup>1</sup> is rich, multifaceted, and humane. There is so much to admire in it that I wish I were not distracted by gnawing reservations I continue to have about some of its conclusions. I would like to address three such reservations in turn.

## Psychotherapy With Incarcerated Patients

The authors movingly describe some of their psychotherapies, both individual and group, with incarcerated patients. I have no doubt that the therapies are conducted skillfully and that they are experienced as helpful by the patients. However, I think one should be guarded about their postincarceration effect. If the therapy ends when the prisoner is set free,

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one should not assume that any therapeutic modulations of internal processes will be remembered and retained in the context of a dramatically different external environment and a radically new and anxiety-provoking set of challenges. The authors do not say whether therapy continues after release, or if so, for how long; I assume that the prisoner either leaves without a referral or with a referral to another therapist. If the latter, I would not be sanguine about its chances. Many of us have had experience with court-stipulated psychotherapies and are well aware of their limitations.

### **The Claim That Psychodynamic Formulation of Criminal Behavior Will Aid in Prediction of Future Risk**

The authors may know of random, double-blind, controlled studies that show a reduced rate of recidivism in offenders receiving psychotherapy; I do not. I would be suspicious of studies purporting to show such a reduction, wondering about such methodological problems as author bias and sampling error. In my own experience and in that of many colleagues with whom I have spoken, I am struck by how often we are burned by predicting that a given offender will not repeat his offense, only to be proven wrong in short order. Returning to the ideas of Freud, we should never lose sight of the power of the repetition compulsion, a concept he formulated in "Beyond the Pleasure Principle."<sup>5</sup> While it may be no easier to explain now than it was in 1920, the truth and tenacity of his theory have more than withstood the test of time. Moreover, we should always be mindful of our own vulnerability to the principle of *tout comprendre, c'est tout pardonner*. As we get to know a patient better and become more aware of his life history, the sympathy we develop tends to blind us to the more intractable traits of his character, and we lose our impartiality and distance and thus, at times, our judgment.

### **The Applicability of the Psychodynamic Perspective to Court Proceedings**

With some exceptions, the authors appear to envision a court ethos that looks kindly on dynamically oriented clinicians and welcomes input from them. They do an admirable job of describing the exceptions, but appear to conclude that on balance they do not constitute an insurmountable barrier to the ap-

plication of dynamic principles to judicial processes. My admittedly limited experience with courts would lead me in the opposite direction, and I would like to address some of my reservations both with regard to the components of the court and to the more general structure of legal thinking.

My impression is that even the most liberally minded judges feel deeply ambivalent about psychodynamically informed testimony. While they wish to appear, and to be, broad-minded, tolerant, and sympathetic, they justly fear that such testimony might beguile them into more lenient positions than would be justified by other aspects of the case. They are charged with, and deeply feel, the responsibility to protect society, a responsibility that must be balanced with the need to be fair to the defendant. It is asking a great deal of judges to be able to handle these conflicting influences in a seamless and welcoming manner. Moreover, even the most enlightened among them is as subject as anyone else to idiosyncratic, defensive, and resistant responses that may distort their impartiality in either direction.

Many of the same considerations would apply to jurors, with the additional caveat that they are less likely than judges to be conversant with psychodynamic principles. Their relative unsophistication might lead them either to be defensively dismissive or inappropriately credulous. I would have some concern about the effect of such testimony on the nature of their deliberations in the jury room, even if the jurors have been appropriately charged by the judge. Again, it is asking much of a group of (psychologically speaking) laymen not to be distracted by psychological factors from the task of determining guilt or innocence.

The defense attorney might understandably wish to introduce psychodynamically informed testimony in the hopes of mitigating the response of the jurors and judge to the defendant, but he knows that he does so at his and his client's peril. As has often been described elsewhere, he is always in danger of having his witness's expert testimony ridiculed and savaged by the prosecutor. For the same reason it would take an especially intrepid expert witness to face the same danger without undue anxiety.

My own view is that psychiatrists should not be asked to testify as expert witnesses for either prosecution or defense, but rather, if desired by the judge, in an *amicus curiae* role. If they do testify for either side, they should strive to avoid a position of advocacy,

both in the eyes of the court and within their own subjective dispositions. In view of the pressures inherent in any adversarial situation, this may be more easily said than done, but it is important for them to try to safeguard their own professional self-esteem as far as possible.

Finally, I would like to call attention to the incompatibility between the structures of legal and psychodynamic thinking. I tend to state this position in rather more absolute terms than many scholars would think appropriate, partly to illustrate a fascinating paradox. Traditional concepts of jurisprudence will view issues as divalent: guilty or innocent, responsible or not responsible, sick or well, yes or no. The psychodynamic thinker, engaged in a tentative search for plausible explanation, can make no sense of this style of thought. He thinks of may and might and possibly, not of is or is not. In grammatical terms, the language of psychodynamics is spoken in the subjunctive mood, that of the law in the indicative. In purely philosophical terms, the languages are not intercommunicable; that is, neither can logically hope to find confirmation in the premises of the other.

In practice, however, we find an increased welcoming on the part of the courts (particularly family and juvenile courts) of concepts such as mitigation and decreased responsibility. The law does in fact show curiosity about the contextualization of events that the courts are debating and the complexity and storied quality of life events, but it attempts to do so within a linguistic structure that tends to resist shading, contextualization, and nuance. I believe that the tension between the two systems inevitably creates pressure on the courts to revert to dichotomous thinking, a pressure that must be consistently dealt with constructively if they are to remain open to more humane, psychologically relevant viewpoints.

The case presented by the authors to illustrate their argument well describes the dilemma. The for-

mulation offered by the psychodynamically oriented witness is recited as if it were a real process, a series of interrelated facts about the defendant's psychological makeup. It is not. It is a sequence of conjectures that hang together in a psychologically plausible fashion. It may be the best formulation available at the time of the evaluation—surely it is among the most sympathetic to the defendant—but I submit that it is far from the only one possible. That is why we often get two entirely different but equally plausible formulations from psychiatrists on opposite sides of the case. The jury is justly confused about how two experts can offer diametrically opposed visions; it has not been adequately instructed that the testimonies are convenient constructions, not facts.

## Conclusion

I have presented some reservations about the applicability of psychodynamic principles to judicial and legal processes, as well as some reservations about the limits of psychotherapy as a means of reducing recidivism. Nevertheless, I remain deeply sympathetic to the authors' aim of increasing the influence of psychological thinking and practice in court systems. They describe a humane, sophisticated, and civilized position, and they describe it in a thoughtful and scholarly manner. A large part of me hopes they can prove me wrong.

## References

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