Commentary: Coming Full Circle—Psychoanalysis, Psychodynamics, and Forensic Psychiatry

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Drs. Simopoulos and Cohen argue that knowledge of one's unconscious processes improves the forensic psychiatrist's capacity to manage complex forensic situations and to generate forensic formulations and opinions that are demonstrably more valid and reliable, much like competence in cultural assessment and formulation. In practice, the challenges posed by the application of these principles in forensic settings are far outweighed by the potential benefit. Forensic practice is informed by many specialties. Forensic psychiatrists do not have to complete full training in these disciplines to make use of the knowledge and perspectives they offer. The same may not be true of psychodynamic assessment and formulation. Although much can be learned from supervision, case seminars, conferences, and reading, such knowledge does little to foster awareness of one's unconscious processes that by definition operate outside awareness and thus contribute to the vitiating effect of bias. To date, the only method whereby psychiatrists can effectively come to appreciate their own unconscious processes in action is arguably through their own analysis conducted in the course of training in analysis or psychodynamic psychotherapy.

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In reading the article by Drs. Simopoulos and Cohen[1] in anticipation of writing this commentary, the scope and breadth of the authors' argument struck me as audacious from the beginning. Unlike many articles dealing with such matters, the authors do not limit their focus to a particular psychodynamic principle and apply it to a specific problem in forensic psychiatry. In this ambitious article, the authors' goal is nothing less than to show that the principles of psychodynamic psychotherapy can be used to great advantage in all areas of forensic practice.

From the outset, the conclusions that punctuate the article made sense to me and resonated with my own experience in forensic psychiatry. The authors' position is hardly radical: unconscious defenses operating to keep problematic material out of our awareness are known to have the power to distort our understanding and interpretation of data encountered during all phases of forensic work.

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Many disciplines inform the practice of forensic psychiatry. Knowledge derived from them can be effectively used in the course of a forensic evaluation on a case-by-case basis. The authors' argument is that knowledge and expertise in psychodynamic psychotherapy will illuminate important data in all forensic cases and thus ought to be considered a core competence in forensic assessment, analogous to the status afforded cultural assessment and formulation in the practice guideline published this year by the American Academy of Psychiatry and the Law (AAPL).[2]

As I read Simopoulos and Cohen's paper, implicit and explicit parallels between the cultural and psychodynamic assessment and formulation emerged. The authors demonstrate that psychodynamic assessment and formulation will complement and perhaps further develop the stated goals of the cultural assessment: to provide better forensic assessments, to improve communication between the forensic psychiatrist and the evaluee, to aid the psychiatrist in "appreciating the evaluee's distinctiveness" (Ref. 2, p S39) in taking into account the "personal experiences that have contributed to the shaping of [their] moral life" (Ref. 3, p S39). Both approaches involve "asking evaluees questions that explore the different complex

components of [the evaluee's] identity and self-concept" (Ref. 2, p S39), so as to situate them in their social and psychic reality, allowing forensic psychiatrists to appreciate the data from the evaluees' point of view and thus increase the validity and reliability of the forensic formulation. On the face of it, the development of psychoanalytic and psychodynamic competence would expand, deepen, and further advance the goals that make cultural competence so important in forensic assessment.

In thinking about psychodynamic psychotherapy, what comes to mind is treatment at regular intervals that occurs in a doctor's office where the patient can disclose material that is shameful, painful, or just plain embarrassing. Further, the communications are privileged, and the doctor has a duty to maintain confidentiality. Such safety, many would argue, is what makes such treatment possible.

In clinical psychiatry, one's primary duty is to the patient, and clinicians are bound to the principles of beneficence (helping the patient), nonmalfeasance (avoidance of harm to the patient), and respect for the patient's autonomy concerning the treatment. Adherence to these principles is especially important when the treatment modality in question can foster regression in the patient and elicit powerful transference reactions that are known to impact a patient's decision-making capacity with respect to major life matters, especially where the therapist is involved. This possibility begs the question: how can psychodynamic principles be used ethically in forensic situations in the first place?

Psychodynamic Principles in Context: Ethical Concerns

It goes without saying that in forensic psychiatry, one's primary duty is to the administration of justice.[4] The forensic psychiatrist is enjoined to strive for objectivity in the conduct of the evaluation, in the formulation of the forensic opinion, and in the course of testimony. As a result, there is no guarantee that a forensic evaluation will be helpful to an evaluee. Indeed, given the adversarial context in which forensic evaluations occur, the interests of the evaluee are just as likely to be harmed by the results of an evaluation. The evaluee is not a patient, and the forensic psychiatrist is not bound to adhere to the principles of medical ethics that inform the doctor–patient relationship. AAPL's Ethics Guidelines[5] expressly advise against the combination of clinical and forensic roles, where possible.

Early in my career I worked with "another segment of the forensic population" (Ref. 6, p 1) in a maximum security forensic facility. My duties involved both treating patients and providing testimony in court, based partly on knowledge obtained in the course of the treatment. Balancing my responsibilities to my patients with my duties as a forensic psychiatrist proved challenging. Based on my own experience, to employ a treatment modality knowingly, such as psychodynamic psychotherapy, that fosters regression and elicits powerful transference responses in forensic patients about whom the psychiatrist will be called to testify ought to create at the very least a sense of heightened ethics-based countertransferential vigilance as he proceeds. Weinstock[7] repeatedly refers to the discomfort inherent in dealing with conflicting duties in complex situations such as those that arise in providing treatment in forensic hospitals and correctional institutions.

On the other hand, techniques derived from psychoanalysis and psychodynamic psychotherapy can bring to light highly salient and probative data that would be inaccessible by other means. These data can be both relevant and helpful to the individual's treatment, especially in the long run, and are immediately critical to the formulation of one's forensic opinion.

Challenges associated with the use of psychodynamic modalities in forensic settings are not limited to atypical situations in which the clinical and forensic roles are combined. In using techniques derived from psychoanalysis and psychodynamics in the course of a forensic evaluation, even when the purpose of the assessment has been explained from the outset and the evaluee is fully aware that the reason for meeting with the psychiatrist has nothing to do with treatment, forensic psychiatrists still must exercise care with respect to how the evaluee experiences and understands what is happening during the evaluation. Absent such care, the evaluation may start to look and feel like treatment to the evaluee and to others. As Strasburger *et al.*[8] have pointed out, forensic psychiatrists who act like clinicians in the conduct of a forensic evaluation may find they have inadvertently created a duty to the evaluee and opened themselves up to the risk of malpractice litigation later on.

The Reflective Practitioner: Personal Treatment in Residency Training

In working as a forensic psychiatrist, my approach to the forensic evaluation was informed by psychoanalytic theory and an understanding of psychodynamics from the outset. This understanding was gleaned during residency training at a time and in an institution when residents were not only exposed to psychoanalytic theory and psychodynamic technique in didactic courses, case conferences, and supervision, but also through first-hand experience in the course of one's own treatment. At the time, this was still rather generously referred to as a training analysis. For all psychiatry residents, personal treatment was an essential part of one's training as psychiatrists and like generations of residents before us, everyone in my class participated. The goal of treatment was to develop a self-reflective stance that brought to awareness the biases we carried with us into every situation, to have fewer blind spots (lack of knowledge) and the often cited "dumb spots" (lack of understanding),[9] in dealing with patients. The self-awareness that flowed from personal treatment was aimed at the facilitation and maintenance of neutrality in the treatment situation.

I found my experience with psychoanalytic theory and psychodynamic practice during residency surprisingly helpful in different ways during the conduct of my forensic evaluations. For example, the capacity to recognize the emergence of particular dynamics when working with violent men or with attorneys immersed in highly adversarial settings provided me with the opportunity to tailor timely and effective interventions based on the needs of the particular situation that mitigated or eliminated risk for all concerned.

Simopoulos and Cohen's assertion that reflective self-awareness, cultivated through experience in psychoanalysis and psychodynamics, has the power to bring to consciousness the biases and distortions that act outside our awareness is valid on its face, assuming sufficient immersion in psychoanalytic theory and psychodynamics. This self-awareness includes first-hand experience of one's own processes as they emerge in treatment, either during residency training or later. It is this self-reflective awareness that also allows us, when confronted with data that trigger the natural impulse to turn away in horror or disgust, to retain the capacity to see the data from the perspective of the evaluee and thus maintain something of our objectivity under the difficult circumstances that are all too common in forensic practice.

When we cannot maintain the reflective stance, we fail to appreciate how our responses and reactions influence our understanding of the case, and we can neither recognize nor ask the important questions. The distortions that emerge in reports or during testimony will be obvious to everyone but ourselves. An appreciation of the power of the dynamic unconscious at work in ourselves and others makes all the difference: when difficulties arise, we will be among the first, not the last, to recognize the nature of our situation and retain the capacity to consider our difficulties while there is still time to determine an appropriate course of action.

The value of experiential knowledge of the dynamic unconscious relates to an idea implicit in Simopoulos and Cohen's paper and runs like a bright thread through our discourse on cultural competence in forensic psychiatry: the primary instrument used in both clinical and forensic psychiatry is oneself.

Simopoulos and Cohen advise us that we should track the course of our responses, reactions, and distortions as the assessment unfolds, much as we need to keep track of our prejudices around race, ethnicity, or other aspects of identity, precisely to seek and find the "nuances of culture and identity [that] may facilitate increased empathy in the courtroom" (Ref. 2, p S39) and yield opinions that are demonstrably valid and reliable, not mere reflections of psychodynamic distortions arising and acting outside of our awareness in the course of an evaluation.

Pedagogic Problems: Residency Training in Psychiatry

No matter how helpful Simopoulos and Cohen's recommendations might be given the changes in residency training in psychiatry over the past few decades, forensic psychiatrists who entered residency training by the mid-1990s (in some institutions, earlier) may no longer have the kinds of experience necessary to put these recommendations into practice.

Psychiatry residency no longer affords psychiatrists the knowledge and experience of psychoanalysis and psychodynamics as once was the case. In 1975 psychoanalysis was considered the core of psychiatric education.[10] By 1992, while I was still in residency, in most programs, psychobiological approaches were beginning to dominate residency education and psychotherapy at best fulfilled a secondary role.[11]

Damas *et al.*[12] document a decline in psychiatry residents' knowledge and experience in psychodynamics, as reflected in a loss of interest in psychoanalysis. A 2004 study by Emmerich *et al.*[13] and a follow-up 2006 study by Fogel[14] confirmed that treatment during residency is no longer considered part of training and that residents seeking personal treatment during training may be stigmatized by their peers. The same year, Plakum[15] wrote of a "lost generation" of psychiatrists unfamiliar with psychoanalysis or psychodynamics. The results of the 2010 study by Habel *et al.*[16] show that residents no longer consider a personal experience of treatment as either important or necessary in their training. A forensic fellowship is too busy and too brief a time to allow for the kind of immersion in psychoanalysis and psychodynamics formerly available during residency. Based on the data, many early and even some midcareer forensic psychiatrists will not be well placed to appreciate the possibilities suggested by the authors' recommendations, much less to implement them.

Pedagogic Problems: Analysis and Psychodynamics

A key pedagogic barrier unaddressed by the authors stands athwart the path that leads to the application of psychodynamic principles to the forensic situation. Schafer defined this problem:

> It has become a pedagogical commonplace to acknowledge that, as a rule, students learn more . . . from undergoing their own personal analyses than they do from supervision and more from the supervision of their clinical work than they do from case seminars, more from case seminars than from didactic courses on technique and the theory of the analytic process, and more from these didactic courses than from independent reading [Ref. 17, p 4].

Schafer is saying that we begin to learn the meaning of psychoanalytic theory and technique and the psychodynamic principles from which they are adapted, when we experience them in practice, starting with ourselves.

It is a commonplace that the meaning of a particular term and the inferences that may be drawn from a specific utterance can change with context. Many psychoanalytic terms have made their way into common usage, where they take on different meanings. The effects of mere familiarity close off our capacity to hear more nuanced technical uses of the same terms. Such nuances may be essential to the application of those principles to the forensic situation. We think we know what the analyst is saying but in fact, we do not. Sandler mentioned a further problem that illustrates why a passive role in learning the principles of psychodynamics is even more of a concern than we might have realized:

> Psychoanalytic concepts are not all well defined, and changes in their meanings have occurred as psychoanalysis has developed and aspects of its theory have changed [Ref. 18, p 11].

When the psychiatrist's understanding of analytic and dynamic concepts is based on what is actively learned from direct experience, flexibility with respect to the definition of various terms poses less of a problem than might be imagined. Clarification of meaning is readily available upon consideration of the theoretical or clinical context in which it is used.

Defenses: The Problem with the Unconscious

Simopoulos and Cohen's position is that to apply psychodynamic principles in the course of forensic assessment, we need to be aware of the activity of unconscious defenses in the course of the work. A defense is defined as:

> . . . any unconscious psychological maneuver used to guard against the experience of a painful inner state [Ref. 19, p 50].

By definition, if a defense is unconscious, it is beyond the reach of awareness, as is the painful material from which it protects us. Unconscious processes occurring outside one's awareness have the power to distort one's experience and one's capacity to listen, interpret, and articulate experience, be it in the personal, professional, clinical, or forensic situation. All we may notice is that we run into the same problems or situations again and again for no apparent reason or that we are somehow stuck or blocked in a way that we cannot quite explain. As Fisher says: "The problem with the unconscious is the absence of evidence even to the person" (Ref. 20, p 7).

The Return of Psychoanalysis and Psychodynamics

Despite these difficulties, there is evidence that Simopoulos and Cohen's perspective is increasingly shared by others. For example, in a relatively recent paper, Robertson[21] suggests that, in the face of "grudging acceptance" from his colleagues, he has attracted residents to a thriving after-hours psychoanalytic reading group and started what might reasonably be considered a kind of psychoanalytic underground. Robertson expresses the difficulty thus:

> There is an analytic language that on the one hand has found its way into everyday speech, has found strong inter-

> est in non-medical academic fields such as literary theory but its theory and methods, its core concepts, are very difficult to explain to non-analytically trained colleagues" (Ref. 21, p 257).

Psychoanalysis is of major interest also in cognitive and affective neuroscience, but in psychiatry there are difficulties that still have to be surmounted. Robertson is not alone. In Europe and Central and South America, if my fellow immigrants are reliable sources, interest in psychoanalysis in particular is on the rise, often in surprising ways. Who, for example, would have expected that Lacan would be so exciting to psychiatrists in Dublin where Cormac Gallagher has initiated the first degree program in psychoanalysis in the English-speaking world?[22]

Pendulums are known to reverse their course. In the fall 2015 issue of the *Academy Forum*, a magazine published by the American Academy of Psychoanalysis and Psychodynamic Psychotherapy (AAPDP), Lopez[23] recalls how, near the end of his life, the eminent analyst Charles Brenner assured him that people would again be interested, because "these things come and go" (Ref. 23, p 6). Important developments in psychoanalysis and psychodynamics in recent decades support this trend. The scope of psychoanalytic discourse has grown exponentially, and voices that would never have been heard as recently as the 1980s or 1990s, are contributing fresh perspectives on the discipline. The interests of forensic psychiatry, psychoanalysis, and psychodynamic psychotherapy overlap in even more ways than those presented by Simopoulos and Cohen. Reading Strasburger *et al.*[10] from this perspective brings forth the realization that the exploration of an evaluee's psychic reality, such as his social reality, provides data that are both legally probative in the forensic setting and clinically relevant to psychoanalytically oriented treatment, even if the data are gathered in different contexts by different techniques.

Among practitioners of the various recognized specialties that have developed from general psychiatry, only the analyst, the psychodynamic psychotherapist, and the forensic psychiatrist privilege the content of our belief systems, our memories, or our characters above all else. The same motivational forces, the instincts, defenses, conflicts, and compromises that quietly destroy the lives of patients and lead them to the attention of the psychotherapist or analyst push others to acts that bring them to the attention of forensic psychiatrists. Arguably, what these specialties have most in common is an interest in human motivation.

A Well-Worn Path to the Desired Destination

Another reason that Simopoulos and Cohen's proposal continues to be worthy of serious consideration, is that there is a readily available means to the ends proposed, means that can also meet the needs of those early and midcareer forensic psychiatrists who were ill prepared during residency to apply psychodynamic principles to forensic practice. Not only is good training available. Programs can be flexible enough to be manageable, even while maintaining a forensic practice.

The benefits to forensic practice afforded by the removal of distortions caused by the action of unconscious processes can only be attained if the forensic psychiatrist undergoes the training and experience that bring powerful unconscious processes to conscious awareness. To achieve this end, all the psychiatrist has to do is follow a path well worn by generations of analysts and psychodynamic psychotherapists and undergo training in a reputable institute.

Pursuit of this training requires a considerable investment of time and money. Often training schedules can be adapted to meet the individual needs. Only direct experience will provide the data necessary for a decision as to whether this course is worth pursuing. If the investment is untenable, even when adapted as far as possible to meet personal needs, a professional, unlike a student, can always withdraw. An abridged experience is not without value. If, on the other hand, the course is found to be beneficial, the forensic psychiatrist may soon be asking why he waited so long to begin.

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