

The Importance of Modern Psychiatry to the Lawyer

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For the contribution of psychology, psychoanalysis, and psychiatry to be available to the lawyer in a form which he can easily use, two conditions appear to be necessary. The first is that the terminology used should be clear. This means not only that special terms are translated but that the implications of those terms and their relative importance be made clear also. The second requisite is that the professions should understand a little better than they do at present the different background of values which they hold.

The fixed values of the lawyer and the physician are most firmly established, since the two professions with their different aims have thought separately and differently for so long a time. The doctor is primarily concerned with effecting a change. His diagnosis is preliminary to treatment, and in the case of the good physician diagnosis always gives place in importance. Thus the doctor attempts to establish the facts, but as he does so the question at the back of his mind is "Whatever the detailed facts, what are we going to do about this case?" Action has to be definite; it often has to be quick. The facts necessary to fully efficient action may or may not be known. The doctor picks out salient facts and hurries on to do the best he can. The lawyer, on the other hand, is trained to seize facts, cast them into established formulae, build cases of merit upon them, and judge such cases with considerable attention to verbal niceties. The presumptions of authority and the judicial process concentrate attention upon formulations and nuances, re-examination and reconsideration. There is every incentive to delay action until the meaning of words has been adequately considered. A lawyer asked to consider a medical problem would tend to concentrate on diagnosis and linger there, while the physician who directs his attention to politics will nearly always be a missionary anxious to get something done.

It should be appreciated by the lawyer that, though medicine is becoming grounded more and more upon exact science, it is not itself an exact science, but rather a mixture of science and art. This applies not least to the branches of medicine with which the lawyer is brought most into contact today. Now the lawyer in his

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search for facts has been greatly impressed with the scientific method and with the exactness of the physical sciences. When, therefore, he learns from the psychiatrist that man is not a rational being, or that appreciation of facts can be greatly distorted by emotion, or other such discoveries and impressions of the Freudian era, he naturally wishes to know the full facts about these processes of distortion in the human mind. The psychiatrist is unable to tell him the full facts. We can tell him a great deal, but every one of our confident statements about emotion, reason, and will tails off into uncertainty and inexactitude in matters of degree, completeness, or category. We have to do the best we can and the lawyer must bear with us where he finds us unscientific, vague, and inconsistent. There are certain qualitative processes which we have felt forced to introduce to his notice, and it is incumbent upon us to do all in our power to make our contributions clear and to state the limits of our knowledge and the uncertainties of our doctrines.

Fifty years after the introduction of Freudian psychology it is desirable to review the contribution of Freud, trying to separate as far as possible fact from theory, and indicating the generally current attitude of psychiatrists to both facts and theories. Here we may cite four postulates of Freud and comment briefly upon them.

1. The postulate of the unconscious mind. It is accepted nowadays that the mind operates to a considerable degree at an unconscious level, that facts can be apprehended unconsciously and that unconscious mental processes influence behavior to a considerable degree.
2. The postulate of emotional tension and repression. It is accepted today that there are links between emotion and the intellect which can result in considerable intellectual distortion, the result often of early emotional experiences which have been misapprehended.
3. Freudian "patterns of development" are, broadly speaking, accepted; though it is felt in many quarters that undue emphasis was given by Freud to many of the processes which he describes where these are applied to the development of normal people.
4. An important implication of Freudian psychoanalysis for the lawyer appears to the writer to be the remarkable degree to which judgment can be distorted by passion and the almost complete inability of the human mind to judge objectively where passion is involved.

A few words more may be said in development. "Facts" about the unconscious mind are of this order. The "remembering" that occurs in the so-called "free association" of psychoanalysis reveals that impressions of the outside world have previously entered some retentive portion of the mind with only a brief and evanescent im-

pression being made on the recollective portion of the mind. The facts of a case may be that Mr. A noticed the policeman and crossed the road in consequence, or that Mrs. B noticed a resemblance between Jack's walk and her father's and married Jack in consequence, but that both Mr. A and Mrs. B not only "forgot" the decisive incoming sense impression [Policeman, Daddy's limp], but that they "forgot" it in good faith, very honestly and very thoroughly.

Now such a description of the facts cannot be expected fully to satisfy a legal mind. It does not satisfy the inquiring neuropsychiatrist, and that for a number of reasons. First he would like to quantitate the processes and he cannot. Secondly, he can only visualize them by a series of hypotheses and metaphors. Freud himself postulated a layer of "conscious" mind, a sort of orange skin, through which the incoming and outgoing impulses pass on their way from external reality to an unconscious region, the fruit within. This is sheer metaphor and almost certainly very far from the actual facts of neurophysiology. Quite as good a metaphor would be that of a smugglers' coast on a dark night. The sense impressions are cargo to be landed; the shore is the retentive and utilizing mind. The authoritative government of the territory is represented by coast guard cutter and search-light—the "conscious" attentive mind. Some cargoes are conventionally landed in daylight with governmental awareness, consent, and no conflict. The rum-running is of the night: some shoreward influences desire these cargoes landed without the cognizance of authority. Then the "conscious" mind swings its search-light of attention round the horizon, focusing and arresting, or eluded and cheated as the case may be, doing its work with variable efficiency. The fact we face is that a man or woman has acted upon an impression which they *never consciously focused for long enough* for it to become part of their authoritative responsible lives. Where lies the "will" in such a picture? Within consciousness or within unconsciousness, or divided between the two? For further enlightenment both lawyer and physician must await the future of medical research. And perhaps of philosophy too! Such problems are not easily handled by either of our professions.

Client, witness, advocate, judge, all are patients to the doctor. All of them suffer from defective memory about the past (especially in any field of passion), a defective rational intellect today (especially in the same field), and a defective will—all by their being human. The lawyer may wisely re-examine the case with the doctor's question in mind: "*How ill is this man? How far does he depart from normal? What can I reasonably expect from him? What allowances have I got to make in justice to him?*" The doctor is

at least fortunate in that he seldom has to weigh up the claims of two parties, one of which may be society, offset against the individual.

Differing in many things, our professions join in their dependence upon prestige for their efficiency in action. The public must think well of the doctor; and it must think well of the law. And we must be able to think well of ourselves. There is no doubt that a healthy society needs to trust its legal machinery. Such psychiatric disclosures as that the judge represents "Father" emphasizes rather than otherwise that human need. It is a wise society that does everything possible to maintain and enhance the confidence of a progressively educated community in the integrity of its legal system. We are told that the infant accepts justice as the next best thing to what it really wants; and for that next best thing to fail is disastrous. Today we are surely intelligent enough to honor the judge the while we demand increasingly high standards from him. Equally, no "debunking" of law or lawyers, no precarious "psychoanalysis" with a flourishing of Freudian terminology need disturb the well-grounded law or the wise lawyer. The core of the very process that shows us all as irrational human beings, we doctors who dodge the scientific issue in pursuit of the possible as well as we lawyers who yearn for rules and guidance firmer than either history or science can give us, has shown us a function for law to fulfill so firm and clear as to give the legal profession the thrill of all modern thrills. *Aut lex aut nullus!* The human mind has been shown to be so full of prejudice which is insoluble by direct negotiation between parties that third party judgment, by an honest process and by any reasonable ethic, is seen to be a fundamental condition of civilized life on this globe. Science delivers the raw material of a good life and of chaos impartially. Medicine can perform wonders of rescue in the setting, whether of war or peace, that is given to it. Only the law and the lawyers can give us machinery that will maintain our lives in order and peace.

In the international sphere, only the law makers can seize the parallelism of municipal and international law and create the machinery of government and law that will keep nations from those direct negotiations that at present lead to strife. The future of mankind lies in the application of the true fact-finding, prejudice-resolving function of law to the World Community. This is the lesson of all lessons of the psychology of unconscious motivation. And lawyers who appreciate this fact will not be the least among the pressure groups that operate upon our law-makers.