

## Confidentiality and professionalism

In these twenty minutes I shall discuss one obstacle to the formation and defence of patient analyst confidentiality within psychoanalysis.

It is difficult to establish standards of practise for a profession if it has yet to exist.

A group is a profession when it is self regulating in educational, ethical, organisational, and economic matters; self defining for state licensing; self promoting in its expertise and contribution to society, and self protective in appropriately vigorous ways when its ethos and organisation are under challenge.

It might be argued that because people qualify as psychoanalysts, house themselves in training organisations and societies, congregate once every two years in an international arena, and publish a journal that they are formed as a profession. Certainly much of value can be said to occur through these forms of organisation, but the constitution of a profession is not necessarily one of them. Indeed, the comparative lassitude around the question of confidentiality and privilege within psychoanalytical organisations could be taken as evidence of the reluctance of psychoanalysis to profess itself.

An obstacle preventing the ethical organisation of psychoanalysis may be this very reticence. Instead what one finds in many countries is the explicit or tacit argument that psychoanalysis is *a branch* of psychiatry or psychology. Matters pertaining to standards of practise are too often referred back to the *discipline of origin* that is seen as having set the criteria by which psychoanalysts must practise.

But even a cursory examination of the ethical guidelines of national associations of psychology and psychiatry will in certain countries reveal already existent schisms between ethic codes of the original discipline and those of psychoanalysis. For example, it is now a guideline of practise in the United States for all psychologists who have a patient whom they deem to be a candidate for civil action to take notes suitable for use in a court of law. Not to do so constitutes a failure to maintain one's professional standards. A psychologist who is a member of the American Psychoanalytical Association would be in direct conflict with the psychology profession's standard of practise if he or she agreed with a recent recommendation of the American that psychoanalysts not keep clinical notes.

In North America and in Europe legislative and regulatory bodies are establishing criteria for the qualification, practise, and accountability of psychoanalysis. Many psychoanalysts have argued that psychoanalysis was more a frame of mind and could never become a profession, but did they envision a time when the state would set the terms of reference for psychoanalytic qualification and practise? Indeed, in the United States two state legislatures—Vermont and New Jersey—have already legislated the qualifications and standards necessary for the practise of psychoanalysis, stimulated to do so not by the American or IPA institutes but by rival organisations that sought to take possession of the future of psychoanalysis in the United States.

It may very well be that other states in the US will codify psychoanalysis, just as it is highly likely that the European Union will eventually do the same. At the heart of the issue, it seems to me, is who will determine the nature of psychoanalysis as a profession? However one sympathises with the argument that it is a state of mind and should not be standardised, this point of view will only collude with state

intervention in the formation of the profession. The more serious obstacle to the formation of a profession of psychoanalysis (that among other things would set its own standards for confidentiality), however, is the view that psychoanalysis is not a separate profession but simply a branch of the other, primary, disciplines of origin.

This view is promoted by psychologists and psychiatrists who between them constitute by far the largest number of practitioners of psychoanalysis within the IPA. And although psychoanalysis continues to benefit from its historic links to psychiatry and psychology, it is time to act upon the recognition of these last forty years that the originary disciplines are too ambivalent towards psychoanalysis for it to survive as their derivative. And although the interest by psychoanalysts in neuroscience and cognitive studies will no doubt benefit psychoanalytical creativity, it may also unwittingly serve lost libido that would romance the parent disciplines with their true love objects. How many departments of neuroscience or cognitive psychology have honoured psychoanalytical interest in these areas by appointing psychoanalysts to their departments?

Psychoanalysis should broaden its intellectual, cultural, economic and political base by opening its doors to members from other disciplines who wish to become psychoanalysts.

One obstacle to this growth, however, is the dependent relation of psychoanalysis on psychiatry and psychology.

We certainly cannot invite others to join in psychoanalytical training if an entire country banishes anyone other than a psychiatrist or a psychologist from training to be a psychoanalyst, as is true in many IPA member countries. The failure of psychoanalysis to thrive in too many countries in the world, its marginalization in certain cultures and its mockery by large areas of the media may have less to do with

forces hostile to psychoanalysis than to the failure of the psychoanalytical movement to forge links with other disciplines in society.

Until psychoanalysis becomes an independent profession it cannot adequately lobby national legislatures because it will be lumped into the practise standards of the originary disciplines. Furthermore, psychoanalysts who are also psychiatrists or psychologists may find themselves in a conflict of interest when called upon to represent psychoanalysis, as the interests of psychiatry or psychology are not equivalent to those of psychoanalysis.

When Anne Haymen, the English psychoanalyst and Member of the British Psycho-Analytical Society was subpoenaed in the middle 1960's she refused to testify about a patient. Looking back, Dr. Haymen is sure that the reason the judge did not find her in contempt of court was because "he knew I was prepared to go to jail and he did not want to do that."

Anne Haymen knew that she could not testify. For her it was not a matter of choice, but a visceral conviction: she could not do otherwise.

Council assisting someone like Anne Haymen would have to construct a legal defence around the psychoanalyst's professional code of conduct. This would not ordinarily be a problem, except that as psychoanalysis is not yet a profession, psychoanalysts—individually or in groups—ask the legal profession for guidance, not simply on what to do, *but what to believe!*

Think about the transference implications of this act.

It looks as if psychoanalysts are simply trying to educate themselves in legal procedure. But by asking another profession to define their fate in the courts, psychoanalysts continue to refer themselves for definition to yet another discipline. The continued dependence on an originary other to define their identity is transferred

now to the legal profession which is asked to tell psychoanalysts what they can or cannot believe in and practise.

All along because of the extraordinary influence of psychoanalysis on western culture the man in the streets has wrongly assumed that psychoanalysts were formed into a profession that would vigorously advocate its position in the social order. But when mandatory reporting laws were passed in differing countries, with not only no opposition from psychoanalytical societies and often active collaboration in the formation of these laws, it was striking to members of the legal and medical profession that psychoanalysis did not argue *its* case against these laws. It had been wrongly assumed that psychoanalysis was as well organised as the law or medicine, when this was not true. And one of the outcomes of this lack of professionalism was a slowly developing contempt within at least the legal profession for the failure of psychoanalysts to argue their case.

What *was* one to make of a collection of people of such outstanding qualifications who yet remained innocents in the social order?

Dependent upon original objects that now held psychoanalysis in contempt, it sought its future from yet another profession—the law—that had developed its own bemused view of psychoanalysis. Perhaps psychoanalysts are projectively identifying doubts about themselves as professionals into other professions, doubts further exacerbated by leaving it up to others to determine the position of psychoanalysis in society.

It is often argued that as psychoanalytical organisations are much smaller than realised one cannot expect of them a high level of organisation: equivalent, say, to legal or medical associations.. For example, the public might assume that the American Psychoanalytic Association is a large organisation—comparable to the

American Bar Association—but in fact its full time staff is quite small. And we might think of the IPA as also having a large full time staff, but its full time staff is also quite small.

Indeed, these bodies would collapse were it not for the mostly unpaid voluntary work of scores of psychoanalysts who fill important administrative posts. While this is admirable, it is also, in the best sense, but regrettably, amateurish. We are not forming a profession through these organisations, but instead, collections of amateurs miming the functions of professional life. Indeed, the continual rotation of Presidents of local Societies, National organisations, and the IPA, ( often accompanied by the concomitant rotation of chairs of important committees as part of presidential patronage) comes closer to the honorary activity of a Club. The kind of work needed to form the profession of psychoanalysis, especially in the arenas of national and international legislative and regulatory bodies, is hampered by the politics of the honorary, the culture of a “gold watch” rotation in which vital positions serve more an honorary than a professional function.

The constant rotation of personnel interferes with the kind of organisational continuity required of a profession in the modern world.

And is the size of these organisations a representative cause of the limitations of IPA psychoanalysis up to this point? The size of the American is indeed disappointingly small in comparison to what we might think of as the average expectable number of members because for decades the American only trained psychiatrists. Because psychoanalysis in the United States and in most other countries has tended toward a senselessly self serving elitism individuals who wished to become psychoanalysts or simply those who were deeply influenced by analytical thinking were compelled to become psychoanalytical psychotherapists or non IPA

analysts. If we *include* all those who practise within the realms of psychoanalytical thinking in the community, then it is very clear that the numbers of “psychoanalysts” is indeed very considerable, but equally, that the organisations present to represent them are paltry in comparison.

If we look at the curricula of psychoanalytic psychotherapy training courses we will not find seminars or workshops on psychotherapy. Where do they discuss, for example, the characteristics of once weekly psychotherapy, distinguished from twice or three times a week? What we see are courses on psychoanalysis, by candidates usually in analysis with a qualified psychoanalyst. The majority of these courses are, in effect, unrecognised psychoanalytical trainings.

Lacanian psychoanalysis has blossomed since the middle 1970’s in many countries around the world not only because of the interest found in Lacan’s thinking, but because Lacanian institutions were prepared to train non medical psychoanalysts. One result has been a birth boom from Lacanian trainings which have a vigor, intellectual energy, and public presence rare amongst IPA institutions.

It is not accidental that Lacanian societies are competing around the world with IPA and other psychoanalytical organisations for the right to represent psychoanalysis in national and international forums. The struggle, in part, is who shall constitute and operate this profession?

I understand the arguments for high standards, but IPA *exclusionism* is a disaster for the preservation of psychoanalysis.

IPA psychoanalysis must wake up out of some anaclitic relation to the primary objects both to define, advocate, and develop psychoanalysis. To do so requires a minimum recognition of the consequences of dependence on ordinary objects, which

continue to disable psychoanalysts from taking the lead in determining their standards—no where more important than over the issue of confidentiality.

It should also foster a new spirit of inclusion, one that follows the life instincts, rather than the history of its exclusionism, under the sway of a death instinct. Psychoanalysis should invite other organisations to join the IPA (either as members or in a confederation) to define, promote, and struggle for psychoanalysis as an independent profession.

Psychoanalysts can, *if they wish*, find legal council that will construct a defence of strict confidentiality. If like Anne Haymen they are prepared to go to jail rather than to compromise their practise-- as happens with journalists who refuse on similar grounds-- they will eventually earn privilege. Psychoanalysts have what we could term *de facto* privilege in many parts of the world, because even though non compliance with a court order is contempt, and even though the judge will very often have to find the psychoanalyst in contempt of court, when it comes to sentencing one can see in the overwhelming number of cases the judiciary's recognition of the psychoanalysts privilege. The law may have to speak up against such civil disobedience, but judges and others recognise the integrity of the psychoanalyst who by virtue of conscience—and I would hope profession—cannot violate his patient's confidence or the pledge of confidentiality to all patients in psychoanalysis: past, present, and future.

Without an uncompromising position on confidentiality psychoanalysis cannot exist in any meaningful form.

The new IPA Ethics code not only separates psychoanalysis from formal definition from some originary other, it now puts psychoanalysis in a position to define itself.



The new code is simple and to the point: psychoanalysis is a confidential relation.

The Ethics Committee's position also separates psychoanalysis from the primary objects and creates a potential space in which psychoanalysis can define its own standards of practise.

That cannot be done, in my view, by remaining attached to the originary objects of psychiatry and psychology. Look down that road a bit and all one sees, I think, is a kind of anaclitic death by starvation. The psychoanalysis that was to see itself as a branch of psychiatry, psychology, or social work, has long since died on those trees. To thrive, psychoanalytic training must in principle be open to *anyone* who wishes to train: from linguists, mathematicians, and fine artists to film makers anthropologists, historians, philosophers and many others. Other disciplines bring vital additional perspectives to the project of comprehending the human mind and its expressions in the analytical space.

Psychoanalysis must form itself into an independent free standing profession, seek legal council that comprehends it and is prepared to form a strong legal argument for its ethics, represent it in courts of law, lobby for its position in legislatures, and advocate it before national and international regulatory bodies that are meeting now to consider its fate.

A challenge for the prospective leaders of the IPA is to see that the continuation of the gold watch culture—of a society serving more to honour its leaders, their colleagues and friends—does not serve the formation of a profession. Psychoanalysts would have to satisfy the wish for such celebration by relocating this ritual from its organisational structures to new forms of ceremony, in favour of a transition to an organisational leadership with long term stability, and with coherent

legal and technical support able to implement a sustained strategy for the entrance of psychoanalysis in the legal, legislative, and regulatory complexities of the modern world.

Psychoanalysis can develop important strategies for the preservation of confidentiality, but only after it has worked its way to “a sense of profession.”<sup>1</sup>

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<sup>1</sup> From “How the concept of profession evolved in the work of historians of medicine” by John C. Burnham (p.10). Downloaded from the internet: <http://muse.jhu.edu/demo/bhm/70.1burnham.html>