

PSYCHO-ANALYSIS AND THE ESTABLISHMENT OF THE FACTS IN LEGAL PROCEEDINGS - (1906)

Gentlemen, -There is a growing recognition of the untrustworthiness of statements made by witnesses, on which, nevertheless, so many convictions are based to-day in court cases; and this has quickened in all of you, future judges and defending counsel, an interest in a new method of investigation, the aim of which is to compel the accused person himself to establish his own guilt or innocence by objective signs. This method consists in a psychological experiment and is based on psychological research. It is closely connected with certain views which have only recently come to the notice of medical psychology. I understand that you are already engaged in testing the use and possibilities of this new method by means of what might be called 'dummy exercises', and I have gladly accepted the invitation of your President, Professor Löffler, to explain to you more fully the relation of this method to psychology.

You are all acquainted with the game played at parties or among children in which a word is called out at random and someone has to add a second word, which, when it is added to the first, results in a compound word being formed. For instance, 'steam' - 'ship', making 'steam-ship'. The 'association experiment' introduced into psychology by the school of Wundt is nothing more than a modification of this children's game, merely omitting one rule of the game.

The experiment is as follows: a word (termed the 'stimulus word') is called out to the subject and he replies as quickly as possible with some other word that occurs to him (the so called 'reaction'), his choice of this reaction not being restricted by anything. The points to be observed are the time required for the reaction and the relation - which may be of many different kinds - between the stimulus-word and the reaction-word. It cannot be claimed that in the first instance very much came of these experiments. This was to be expected, however, since they were carried out without framing any definite question and without any guiding idea which could be brought to bear on the results. They only became significant and fruitful when Bleuler in Zurich and his pupils, especially Jung, began to turn their attention to these 'association experiments'. The experiments which they carried out acquired their value from the fact that they assumed that the reaction to the stimulus-word could not be a chance one but must be determined by an ideational content present in the mind of the reacting subject.

It has become customary to speak of an ideational content of this kind, which is able to influence the reaction to the stimulus-word, as a 'complex'. This influence works either by the stimulus-word touching the complex directly or by the complex succeeding in making a connection with the word through intermediate links. Such a determination of the reaction is a very remarkable fact; you will find undisguised astonishment expressed at it in the literature of the subject. But its truth admits of no doubt. For as a rule you can lay bare the particular complex at work, and so explain reactions which could not otherwise be understood, by asking the subject himself to give the reasons for his reaction. Examples like those given by Jung

(1906, 6 and 8-9) are well calculated to make us doubt the occurrence of chance or of what is alleged to be arbitrary in mental events.

Let us now glance at the earlier history of this view of Bleuler and Jung that the reaction of the subject under examination is determined by his complex. In 1901 I published a work¹ in which I demonstrated that a whole number of actions which were held to be unmotivated are on the contrary strictly determined, and to that extent I contributed towards restricting the arbitrary factor in psychology. I took as examples slight failures of memory, slips of the tongue or pen, and the mislaying of objects. I showed that when someone makes a slip of the tongue it is not chance, nor simply difficulty in articulation or similarity in sound, that is responsible, but that in every case a disturbing ideational content - a complex - can be brought to light which has altered the sense of the intended speech under the apparent form of a slip of the tongue. Furthermore, I examined the small actions which are performed apparently by chance and without any purpose - habits of playing or fiddling with things, and so on - and revealed them as 'symptomatic actions' linked with a hidden meaning and intended to give unobtrusive expression to it. I found, moreover, that not even a first name can occur arbitrarily to the mind, without having been determined by some powerful ideational complex. Even arithmetical numbers that one believes one has chosen at random can be traced to the influence of a hidden complex of this kind. A few years after this, a colleague of mine, Dr. Alfred Adler, was able to substantiate this most astonishing of my assertions by some very striking examples (Adler, 1905). Once one has accustomed oneself to this view of determinism in psychical life, one is justified in inferring from the findings in the psychopathology of everyday life that the ideas which occur to the subject in an association experiment may not be arbitrary either, but determined by an ideational content that is operative in him.

¹ The Psychopathology of Everyday Life.0

And now, Gentlemen, let us return to the association experiment. In the kind of experiment we have referred to so far, it was the person under examination who explained to us the origin of his reactions, and the experiments, if they are subject to this condition, will be of no interest from the point of view of judicial procedure. But how would it be if we were to make a change in our planning of the experiment? Might we not proceed as one does in solving an equation which involves several quantities, where one can take any one of them as the starting-point - by making either the a or the b into the x we are looking for? Up to now in our experiments it has been the complex that has been unknown to us. We have used stimulus-words selected at random, and the subject under examination has revealed to us the complex brought to expression by those stimulus-words. But let us now set about it differently. Let us take a complex that is known to us and ourselves react to it with stimulus-words deliberately chosen; and let us then transfer the x to the person who is reacting. Will it then be possible to decide, from the way in which he reacts, whether the complex we have chosen is also present in him? You can see that this way of planning the experiment corresponds exactly to the method adopted by an examining magistrate who is trying to find out whether something of which he is aware is also known to the accused as an agent.

Wertheimer and Klein, two pupils of Hans Gross, the Professor of Criminal Law in Prague, seem to have been the first to adopt this change, which is of such importance for your purposes, in the planning of the experiment.¹

You already know from your own experiments that in this question of the subject's reactions, several points are to be taken into account in deciding whether he possesses the complex to which you are reacting with your stimulus-words. I will enumerate these points for you one by one. (1) The content of the reaction may be unusual, which requires explanation. (2) The reaction-time may be prolonged; for it appears that stimulus-words which have touched the complex produce a reaction only after a considerable delay (a delay which may be several times as long as the ordinary reaction-time). (3) There may be a mistake in reproducing the reaction. You know the remarkable fact that is meant by this. If the subject has been given an association experiment consisting of a comparatively long list of stimulus-words, and if a short time after the end of the experiment the stimulus words are once more presented to him, he will produce the same reactions as on the first occasion except when the stimulus-word has touched a complex, in which case he is very liable to replace his first reaction by another one. (4) The phenomenon of perseveration (or it might be better to use the term 'after-effect') may occur. When a complex is aroused by a stimulus-word which touches it - by a 'critical' stimulus-word - it often happens that the effects of this (for instance, a prolonging of the reaction-time) persist and alter the subject's reactions to the next, non-critical words as well. When all or several of these indications are present together, it proves that the complex which is known to us is present as a disturbing factor in the person who is being questioned. This disturbance is taken by you to mean that the complex in his mind is cathected with affect and is able to distract his attention from the task of reacting; thus you see in the disturbance a 'psychical self-betrayal'.

I know that you are at the moment concerned with the potentialities and difficulties of this procedure, whose aim is to lead the accused into an objective self-betrayal. I should therefore like to bring to your notice the fact that an exactly similar method of disclosing psychical material which is buried away or kept secret has been practised for more than a decade in another field. My purpose is to lay before you the resemblances and differences between conditions in the two fields.

The field I have in mind is indeed very different from yours. I am referring to the therapy employed for certain 'nervous diseases' - what are known as the psychoneuroses - of which hysteria and obsessional ideas may be taken as samples. The method is called 'psycho-analysis'; it was evolved by me from the 'cathartic' method of therapy first practised by Josef Breuer in Vienna.¹ To combat your surprise, I must draw an analogy between the criminal and the hysteric. In both we are concerned with a secret, with something hidden. But in order not to be paradoxical I must at once point out the difference. In the case of the criminal it is a secret which he knows and hides from you, whereas in the case of the hysteric it is a secret which he himself does not know either, which is hidden even from himself.

¹ Cf. Jung, 1906.1

How is this possible? Now we know, through laborious research, that all these illnesses are the result of the patient's having succeeded in repressing certain ideas and memories that are strongly cathected with affect, together with the wishes that arise from them, in such a way that they play no part in his thinking - do not enter into his consciousness - and thus remain unknown to him. But from this repressed psychological material (these 'complexes') are generated the somatic and psychological symptoms which plague the patient in just the same way as a guilty conscience does. In this one respect, therefore, the difference between the criminal and the hysteric is fundamental.

The task of the therapist, however, is the same as that of the examining magistrate. We have to uncover the hidden psychological 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.

¹ Cf. Breuer and Freud, *Studies on Hysteria*, 1895.3

It will interest you, from the point of view of your own profession, to hear how we doctors proceed in psycho-analysis. After the patient has given us a first account of his history, we ask him to give himself up to the thoughts that occur to him spontaneously and to say without any critical reserve whatever comes into his head. We start, as you see, on the assumption, which he does not share in the least, that these spontaneous thoughts will not be arbitrarily chosen but will be determined by their relation to his secret - to his 'complex' - and may, as it were, be regarded as derivatives of that complex. You will note that this is the same assumption as the one with the help of which you were able to interpret the association experiments. But although we have instructed the patient to follow the rule of communicating all the thoughts that occur to him, he seems to be unable to do so. He soon begins to hold back first one thought and then another. He gives various reasons to account for this: either the thought was quite unimportant, or it was irrelevant or it was totally meaningless. We thereupon demand that he shall tell us the thought in spite of these objections and shall follow it up; for the very fact of his criticism proves to us that the thought belongs to the 'complex' which we are seeking to uncover. We recognize in this behaviour of the patient's a manifestation of the 'resistance' present in him, which we are never free from through the whole duration of the treatment. I will merely indicate briefly that this concept of resistance has acquired the highest importance for us in understanding the origin of an illness as well as the mechanism of its cure.

In your experiments you do not directly observe criticisms like these of his spontaneous ideas by the subject; while we, on the other hand, are able in our psycho-analyses to observe all the indications of a complex which come to your notice. When the patient no longer ventures to evade the rule which has been laid down for him, we nevertheless note that he stops or hesitates from time to time or pauses in the reproduction of his ideas. Every hesitation of this kind is, as we see it, an expression of his resistance and serves as an indication of a connection with the 'complex'. Indeed, we regard it as the most important sign of such a connection, just as is in your case the analogous prolongation of the reaction-time.

We are accustomed to interpret hesitation in this sense even when the content of the idea that is being held back does not seem to be at all objectionable and when the patient assures us he cannot imagine why he should hesitate to tell it to us. The pauses which occur in psycho-analysis are as a rule many times longer than the delays that you observe in the reaction experiments.

Another of your indications of a complex - the change in the content of the reaction - also plays its part in the technique of psycho-analysis. We quite generally regard even slight deviations in our patients from the ordinary forms of expression as a sign of some hidden meaning, and we are quite willing to expose ourselves for a while to the patient's ridicule by making interpretations in that sense., all that we require in order to uncover the complex.

The third of your indications of a complex (mistakes - that is, changes - in the reproduction) is also employed, though in a more restricted field, in the technique of psycho-analysis. One task which often faces us is the interpretation of dreams - that is, the translation of the remembered content of a dream into its hidden meaning. It sometimes happens that we are uncertain at which point to set about the task, and in that case we may make use of a rule, discovered empirically, which recommends us to get the dreamer to tell us his dream once more. In doing so, he usually alters his modes of expression in some parts of it while repeating the rest accurately. The points at which his reproduction is defective owing to changes, and often owing to omissions as well, are the points which we fasten upon, because the inaccuracy guarantees a connection with the complex and promises the best approach to the secret meaning of the dream.¹

You must not get the impression that we have come to an end of the points of agreement which I have been following up, if I admit to you that no phenomenon similar to perseveration is manifested in psycho-analysis. This apparent difference only arises from the special conditions of your experiments. For you do not allow the effect of the complex time to develop. Scarcely has it begun to act than you distract the subject's attention by a new and probably innocent stimulus word; and then you may observe that he sometimes continues to be occupied with the complex in spite of your interference. In psycho-analysis, on the other hand, we avoid such interferences and keep the patient occupied with the complex. Since in our procedure everything, so to speak, is perseveration, we cannot observe that phenomenon as an isolated occurrence.

We may justly claim that, in principle, techniques of the kind I have described enable us to make the patient conscious of what is repressed in him - of his secret - and thus to remove the psychological causation of the symptoms from which he is suffering. But before you draw any conclusions from these successful results as to the possibilities of your own work, we will examine some points of difference between the psychological situations in the two cases.

¹ See my Interpretation of Dreams (1900a).5

The chief difference has already been named. In the neurotic the secret is hidden from his own consciousness; in the criminal it is hidden only from you. In the former there is a genuine ignorance, though not an ignorance in every sense, while in the latter there is nothing but a pretence of ignorance. Connected with this is another difference, which is in practice of importance. In psycho-analysis the patient assists with his conscious efforts to combat his resistance, because he expects to gain something from the investigation, namely, his recovery. The criminal, on the other hand, does not work with you; if he did, he would be working against his whole ego. As though to make up for this, however, all you are endeavouring to arrive at in your investigation is an objective certainty on your part, whereas our therapy demands that the patient himself should also arrive at the same certainty. But it remains to be seen how far your procedure will be rendered more difficult or be altered by the lack of co-operation on the part of the subject of your examination. This is a situation which you can never create in your experiments in seminars, since the colleague who is playing the part of the accused man remains a fellow-worker after all, and assists you in spite of his conscious determination not to betray himself.

If you look more deeply into the comparison between the two situations it will become clear to you in general that psycho-analysis is concerned with a simpler, special, form of the task of uncovering what is hidden in the mind; whereas in your work the task is a more comprehensive one. That the case of the psychoneurotic is invariably concerned with a repressed sexual complex (in the widest sense) is a difference which you need not take into account. But there is something else that you must. The aim of psycho-analysis is absolutely uniform in every case: complexes have to be uncovered which have been repressed because of feelings of unpleasure and which produce signs of resistance if an attempt is made to bring them into consciousness. This resistance is as it were localized; it arises at the frontier between unconscious and conscious. In your cases what is concerned is a resistance which comes entirely from consciousness. You cannot dismiss this difference out of hand. You will first have to determine experimentally whether conscious resistance is betrayed by exactly the same indications as unconscious resistance. Further, you cannot yet be certain, in my opinion, whether you may interpret your objective indications of a complex as a 'resistance', as we psychotherapists do. It may happen with your experimental subjects - even though not very frequently with criminals - that the complex you touch on is pleasurable toned; and the question then arises whether such a complex will produce the same reaction as a complex that is unpleasurably toned.

I should also like to point out that your test may possibly be subject to a complication which does not, by its very nature, arise in psycho-analysis. In your examination you may be led astray by a neurotic who, although he is innocent, reacts as if he were guilty, because a lurking sense of guilt that already exists in him seizes upon the accusation made in the particular instance. You must not regard this possibility as an idle fiction; you have only to think of life in the nursery, where such events can often enough be observed. It some times happens that a child who has been accused of a misdeed strongly denies the charge but at the

same time weeps like a detected sinner. You may perhaps think that the child is lying when he asserts his innocence; but this is not necessarily so. It can be that he has in fact not committed the particular crime with which you have charged him but that he has committed one of which you know nothing and of which you are not accusing him. He therefore quite truthfully denies being guilty of the one misdeed, while at the same time betraying his sense of guilt on account of the other. In this respect - as in so many others - the adult neurotic behaves just like a child. Many people are like this, and it is still open to question whether your technique will succeed in distinguishing self-accusing individuals of this kind from those who are really guilty. Finally, one more point. You know that, according to the rules governing criminal proceedings, you may not subject the accused to any procedure which takes him by surprise. He will therefore have been made aware that in this experiment it is a matter for him of not betraying himself. It must then be asked whether one can expect the same reactions when the subject's attention is directed towards the complex as when it is directed away from it, and how far the intention to conceal something may affect modes of reaction in different people.

It is precisely because the situations which underlie your investigation are so various that psychology takes a very lively interest in its results, and I should like to beg you not to despair of their practical utility too soon. Although my work is so far removed from the practical administration of justice, perhaps you will allow me to make one further suggestion. However indispensable experiments in seminars may be for preparatory purposes and for the formulation of problems, you will never be able to reproduce in them the same psychological situation as in the examination of a defendant in a criminal case. The experiments remain dummy exercises and they can never afford a basis for practical application in criminal trials. If we do not want to abandon such an application of them, the following expedient suggests itself. You might be allowed - indeed, it might be made your duty - to undertake such examinations over a number of years in every actual instance of a criminal prosecution, without their results being allowed to influence the verdict of the Court. It would, indeed, be best if the Court were never informed of the conclusion which you had drawn from your examination on the question of the defendant's guilt. After years of collecting and comparing the results so obtained, all doubts about the serviceability of this psychological method of investigation would surely be resolved. I know, of course, that the realization of a proposal such as this does not rest only with you and your valued teachers.