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On Freud's theory of law and religion☆

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ABSTRACT

This paper is a critical engagement with Freud's anthropological theory of the origins of law and religion, which Freud developed as his representation and development of the Oedipal myth. Freud's mythology, it is argued, is the theoretical result of the essentially narrative nature of psychoanalytical praxis. Freud's myth, especially its treatment of patricide as the original sin, is seen to be a displacement of the biblical myth of fratricide as the original sin. It is argued that the biblical myth is more coherent than Freud's myth, and that it corresponds to the reality of the human condition better than Freud's myth. The paper concludes with the suggestion that the acceptance of the biblical myth in place of Freud's does not necessarily entail a rejection of psychoanalysis as a praxis.

1. Freud's praxis

As a practicing physician, *Doctor* Sigmund Freud's patients came to him for relief of their suffering. Like any good physician, Freud had to begin his work with patients by taking their case history, which begins with a patient's description of how he or she is affected by an ailment whose cause is unknown to them. This description is usually an answer to the physician's second person question: "How do *you* feel?" Since this description is given in the first person: "This is how *I* feel," it inevitably becomes a patient's personal narration of his or her own history. When the patient says "this is how I feel," he or she is in fact saying: "This is how I feel *now*." This present answer of the patient then prompts the physician to ask about the patient's past: "*When* did you start feeling this way?" So far, we see an interpersonal *dialog* between the patient and the physician, which is the narrative conversation of an *I* and a *you*. And, any such narrative conversation is essentially historical in the most personal sense, i.e., it is *me* as a patient telling *my* physician how *I* am experiencing or recalling *my* past. It is my re-living (*erleben* in German) my past rather than my simply traveling back (*erfahren* in German) to an intact past, a past as it really was (as in German, *wie es eigentlich gewesen*). That is why a good physician will want to hear some of the full life history of a patient and not just the patient reporting particularly painful episodes in that history.

After this point in the patient–physician relationship, however, the dialog between the two of them halts. The physician has to now step away from the dialog *with* the patient and begin to diagnose the patient's condition. This is best done when the patient is not present with the physician. The diagnosis involves the physician becoming a third person subject ("he" or "she") as well as the patient becoming a third person object ("him" or "her"). The physician becomes a spectator looking *at* the patient's condition. Based on their diagnostic findings, physicians are obliged to prescribe a medication or a regimen in order to cure the patient altogether, or at least to alleviate the suffering of the patient when a cure doesn't seem to be possible. Patients are equally obliged to follow what the physician has prescribed for them to do. Usually, that requires the patient to take their prescribed medication and follow their prescribed regimen. And, if the physician's prescription to the patient is to submit himself or herself to some other physician for more specialized treatment, the whole process of dialog–diagnosis–prescription begins all over again.

Like any interpersonal relationship, the physician–patient relationship necessarily involves an ethic, i.e., criteria of what is to be done and what is not to be done by both parties in the relationship. The physician–patient relationship, though, is ethically significant only when it is a commitment that has been entered into freely by both sides. Both the physician and the patient are responsible for the free choice to be committed to each other in their therapeutic relationship.

That commitment is one of trust: the patient and the physician must be committed to trust one another at the very outset of their relationship as a matter of faith, and during that relationship as a matter of emerging knowledge. Moreover, that trust cannot be imposed by one party upon the other nor, even more so, can it be imposed by a third party on the two parties to the relationship itself. As we shall soon see, the ethical importance of this mutually free, trusting relationship is especially significant in the relationship between a patient's psychoanalyst and a psychoanalyst's patient. (That is why, by the way, it is so difficult to maintain this relationship of trust between psychotherapists and patients in a setting like that of a prison or a mental institution, in

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which therapists and patients are assigned to each other by those exercising impersonal authority there, thus making the therapy seem more like indoctrination.)

Although initiated by Freud as a medical procedure, and a procedure he taught other medical practitioners who became his disciples, psychoanalysis departs from the usual medical trajectory just outlined insofar as the dialog between a patient as *analysand* and his or her therapist qua *psychoanalyst* is not just a part of their overall therapeutic relationship; rather, the dialog between the analysand and the psychoanalyst is what essentially constitutes their mutual, free, trustful relationship from beginning to end throughout. Indeed, the mutual processes of transference and countertransference make the psychoanalyst and the analysand become participants in a story they both share. Moreover, neither the patient nor the psychoanalyst can transcend what has become *their* story in advance of its being told, by coming to it with prefiguring categories. That is why the story to be told should not be prepared in advance of the psychoanalytical session, neither by the analysand nor by the psychoanalyst. Unconscious factors can only emerge spontaneously; their emergence cannot be planned or willed to emerge. The Unconscious (*die Unbewusstsein*, literally "not-awareness") is not only the beginning (*Anfang* in German) of the story; it is the story's source (*Ursprung* in German), the fathomless chasm (*Abgrund* in German) that is neither totally accessible nor totally inaccessible.

Along these lines, Freud compared his clinical work to that of an archeologist, who brings up long buried, forgotten, articles, which he cannot predict in advance what they are.[1] Then, in the process of retrieval, the now surfaced articles have to be reassembled above ground. But, they are never the same as they were when they were buried in the ground. The surfaced articles undergo a radical transfiguration (*Verklärung* in German) in the present becoming very different, though still identifiable, from what they were in the past. Nevertheless, a person's past, even a psychoanalyzed person's past, cannot be transcended afterwards. To be sure, the process of psychoanalysis is meant to enable the analysand to "work through" (*durcharbeiten*) his or her past, yet no one can work through his or past all the way out of it. Psychoanalysis is meant to explain the past, not to explain it away. Instead, this working-through enables the persons involved in the psychoanalytic process try to bring some of their past (but never all of it) along with them as they more freely direct their own life story into the future. The working-through is so that our past is our ancestral home we can remodel in our present for the sake of our future, instead of it being our prison in which we are condemned to a life-sentence. Or, we might say Freud believed that through psychoanalysis those who have participated in it become, thereby, more the more active subjects *of* their own life story, and less the more passive objects *in* someone else's story, even if someone else's story is the one they have been telling themselves and others as if it were their own. That, ultimately, is the ethical task that emerges from within the psychoanalytic relationship.[2]

Furthermore, not only must the story emerge spontaneously *within* the psychoanalytic session so that there be an opening for some (but never all) unconscious factors to reach the conscious surface, but the diagnosis or the discernment (*diagnōsis* in Greek; literally "knowing through") of the present meaning too must emerge from *within* the psychoanalytic process. Only then can the analysand recognize himself or herself in what is said about the meaning (their *Meinung* or "meness") of the story here and now. The same is true of the psychoanalyst. (Think of how much Freud learned from his patients about them and about himself.) The meaning of the story cannot be given by one party to the other didactically.

Finally, psychoanalysis is unlike ordinary medical practice insofar as it does not prescribe a cure, for psychoanalysis doesn't *cure* anybody. When one is cured of a disease, one is able to transcend the disease by leaving it behind once and for all. But what ails the patient in this case is his or her own past (especially his or her unconscious past); and that cannot be removed from the patient's existence in the same way as a gangrenous limb can be removed from a patient's body. One's past is a vital organ, whose excision would kill the patient. In this case, it would kill the patient's *soul*. (I say "soul" or *psychē* in Greek or *nefesh* in Hebrew rather than "mind" or *mens* in Latin, because soul contains both conscious and unconscious elements, whereas mind seems to be confined to consciousness only, and even more narrowly, mind is confined to ratiocination.)

In psychoanalysis, what ought to be done (and what ought not to be done) is not something the psychoanalyst prescribes *for* the patient based on the interpretation or diagnosis the psychoanalyst brings *to* the patient's condition. Instead, what ought to be done, especially in the way a patient relates *with* other persons in his or her life, itself emerges *from within* the psychoanalytic narrative relationship itself. This is an ongoing emergence, which is more suggestive than actually commanding. It is more a patient learning from within what he or she really *wants* to do because they now know what is truly good for them, rather than being obligated from without to do what someone else wants one to do, even if that obligation wisely intends what is good for the one so obliged. (In this way, psychoanalysis' inherent ethics is more akin to the desire-based ethics of the Aristotelians than it is to the command-based ethics of the Kantians.) Moreover, what emerges from within this relationship also suggests to the psychoanalyst how he or she might relate differently with significant others in his or her life, including his or her other patients. Thus what emerges from within the relationship between the psychoanalyst and the analysand enlightens them both, and it influences their respective actions or reactions in the world. Indeed, that kind of practical suggestion occurs throughout a good psychoanalytic relationship. Certainly, the ethical freedom of choice and its accompanying responsibility, which is inherent in this therapeutic relationship, is much more central to this relationship than is the freedom that is found in any other, let us say, less existentially significant therapeutic relationship.[3]

Recognizing that the origins of Freud's thinking begins in his therapeutic praxis requires us to look at the praxis before looking at Freud as a theorist. Finally, we will have to question just how one can relate Freud's praxis and his theory in deciding how we are to relate ourselves to Freud's overall teaching.

2. Freud's theory

Sigmund Freud was not only a practicing clinician, but he was also a theorist. He was *Professor* Freud as well as *Doctor* Freud. Freud's theorizing was of two kinds.

[1] Already in his 1896 paper, "The Etiology of Hysteria," *Collected Papers*, trans. J. Riviere (London: Hogarth Press, 1924), 1:184–85, and often thereafter, Freud compared his psychoanalytic work to archeology, a discipline he had a life-long interest in.

[2] Note the French philosopher, Paul Riceour, *Freud and Philosophy*, trans. D. Savage (New Haven, CT: Yale University Press, 1970), 45: "[R]eflection is a task, an *Aufgabe* . . . reflection is not intuition . . . the positing of self is not given … it is not *gegeben*, but *aufgegeben*." Furthermore (ibid., 424), Riceour speaks of psychoanalysis as "the process of becoming-conscious (*Bewusstseinwerden*), in place of the so-called self-evidence of being-conscious (*Bewusstsein*)." Here Riceour is contrasting psychoanalysis with the phenomenology of Freud's Vienna-educated contemporary, the philosopher Edmund Husserl (even though Husserl is the most important influence on Riceour himself). Riceour then calls this "the practical and ethical side of reflection" . . . and it (a là Spinoza) "leads from alienation to freedom and beatitude" (ibid., 45). This is how Riceour characterizes philosophy, with which he wants to associate Freud, noting "one of his [Freud's] earliest wishes — to go from psychology to philosophy" (ibid., 312).

[3] The American philosopher and psychoanalyst, Jonathan Lear, makes this point most insightfully in his *Love and Its Place in Nature: A Philosophical Interpretation of Freudian Psychoanalysis* (New Haven, CT: Yale University Press, 1990): "Accepting responsibility is essentially a first-person relation. In accepting responsibility, I acknowledge who or what I am" (p. 66). He then adds: "once one has accepted responsibility for an emotion, one can . . . hold oneself responsible for it . . . I ask: is this the way I want to be? . . . because . . . I have acquired some ability to shape and control my emotional outlook" (p. 66, n. 63). See, also, Jürgen Habermas, *Knowledge and Human Interests*, trans. J. J. Shapiro (Boston: Beacon Press, 1971), 235.

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