

A psychodynamic approach to our relationship with our family law clients

The aim of psychoanalysis is to relieve people of their neurotic unhappiness so that they can be normally unhappy. (Sigmund Freud (1856-1939))

This article explores an approach that is tangential to our legal practices, but nevertheless is an experience common to us all, which is how we, as family lawyers, relate to our clients. In this article I consider our relationship with our clients through the lens of a psychodynamic framework. I hope to provide family lawyers with another tool to help to manage the emotionally challenging issues with which we have to deal.

May be the title of this article conjures up an image of your client/patient lying next to you on a couch pouring out their conscious and unconscious desires whilst you, as the solicitor/therapist listen and feedback reassuring and containing advice/interpretation?

Object relations

Metaphorically that is not far from what we, as lawyers in a family law context do, day in day out. And this article is aimed at bringing a psychoanalytic understanding to how the setting between solicitor and client can be viewed in a similar way to that of therapist and patient. Of course our primary task as a lawyer is to give legal advice and to get the best outcome for our clients. But I hope to provide a greater understanding about the importance that we as family lawyers hold in relation to the psychic functioning of our clients. If we understand the unconscious motivations of our clients we can utilise this way of thinking in our work. We can understand how we become the object to whom our client's relate in psychoanalytic terms. Sometimes we are the good object, bestowing the much desired outcome. But sometimes we are the bad or withholding object, who cannot fulfil our client's wishes.

What is psychoanalysis?

It is a common misconception that Sigmund Freud (1856-1939), who was the architect of psychoanalysis, was a psychiatrist. In fact he was a neurologist who was born in an area that is now part of the Czech Republic and lived most of his life in Vienna until he fled to London, to escape the Nazi regime. Freud founded this new branch of psychology.

Psychoanalysis is concerned with the subjective experience and is a way of investigating how the mind works. It is both a theoretical approach and a treatment.

The unconscious

Central to psychoanalytic theory is the idea that much of our mental life is unconscious. Early experiences, particularly our relationships with our mother, father and early caretakers, who become internalised objects, interact with our innate endowment to shape the personality. Our early experiences structure our modes of relating to other people and our conscious and unconscious perceptions of the world. Normal development involves acquiring a stable sense of self and an increasing capacity to relate to others as separate and unique. In a family law context, the ability to relate to a partner as separate and unique is often illusive and we observe an extension of the interpersonal relationship between two people locked in battle in which they are unable to see themselves as separate from their ex spouse; there is at work unconscious unfinished business. Our clients often have a sado masochistic way of relating to each other and are addicted to an abusive way of behaving which is hard to relinquish.

The psychoanalytic setting

The setting for psychoanalysis is designed to allow both the analyst and patient to focus on the patient's inner world with minimal interference from outside. In a psychoanalytic setting ordinary social chat to make our patients think we are benign and friendly and put them at ease is avoided. The patient comes in to the room and rather than being directive the therapist sits quietly waiting to hear what they bring in to the room. So your client comes to your office, and you do not immediately start asking questions and taking a history of their marital breakdown and you are not interrupted by telephone calls from other clients or emails from the other side and, of course, you can provide a safe,

controlled environment in your office/ therapy room to focus upon their case. You sit and you let your client do the talking. Well of course not....so the comparison between the solicitor/client relationship and analyst/patient and the true analytic setting can only be taken so far.

Free Association

However, our clients often start their relationship with us by what in psychoanalytic terms is called free association. This was a method used by Freud in his early work with patients, which encouraged them to relax and to voice whatever thoughts arose. Your client comes in to your office to say whatever is on their mind, to report thoughts feelings and experiences without censorship and often in an incoherent chaotic format. Your role as the solicitor /therapist is to work out what is your client's desire and to provide a supportive and containing environment in which you quickly become clothed with maternal and paternal transference.

Transference

Part of your role as solicitor/therapist is to act as participant observer. You will listen to your client but at the same time try to listen beyond the words to what is being hinted or evaded. You have to take in what your client is saying and you become affected and involved, all the while trying to observe and to think of solutions and outcomes that would achieve your client's wishes. So you are on the receiving end of the emotional affects of your client in order to understand your client's ways of relating to their ex partner. And that is what in psychoanalytic terms is called the transference. At the same time, you too bring in to the room your own experiences and weaknesses that may be triggered by your encounter with your client's experiences. You may feel the quality of your client's rage and frustration towards you personally based upon the fact that his ex partner is obstructing contact. You may experience feelings of guilt or be defensive when a judge does not deliver the outcome that you had reassured your client would be achieved. You may feel sadness about something that lies buried in your unconscious that bears a similarity to your client's experience. Beware of what belongs to your emotional experience and what belongs to your client.

So what do you do with that feeling? In a psychoanalytic setting, in the consulting room, you would think to yourself what does this feel like for me, and what does it feel like being the patient at this

moment? What internalised figure is your client reacting to? Is it a parental figure whom he experienced as authoritarian and dismissive or at that moment are you someone who enrages him by reminding him that he is not the centre of the universe? If you can pin point precisely what your client is feeling and acknowledge it, it may give him or her relief and understanding.

Containment

So the solicitor/therapist tries to acknowledge and to hold on to the distress of the client and to bear it and make sense of it rather than pushing it back dismissively or relieving him or herself of it defensively by a quick apology. The process of holding on to the way your client is feeling while you find a helpful way of talking to the client about it is called containment. You are able to interpret your client's feelings, come up with a solution or action plan and in the counter transference you will reassure and help him to bear his painful feelings.

Conflict

Psychoanalysis sees conflict as intrinsic to mental life. So what greater opportunity for conflict than the attritional dynamics of family litigation in which your client is caught up as he or she is pulled in different ways by love and hate for his or her ex partner.

Id, ego and superego

You may have heard of Freud's structural model of the mind containing the identities id, ego and superego. These are ways of conceptualising important mental functions. The id encompasses wishes and impulses, which push towards fulfilment. The superego represents the moral demands and prohibitions coming from our childhood and social influences. The ego is the rational part of the mind, which strikes a balance between our impulses and our moral constraints and conforms to the demands of reality. So when conflict occurs your client is full of id (impulses). These may be constrained by the superego, which in the context of family litigation is the moral demands and restrictions imposed by the court. And you are the client's ego, mediating between the demands of the id and the superego to enable him to manage the external reality.

Defences

I referred in the last paragraph to how your client/patient's inner psyche interacts with external reality. You are likely to experience

your client manifesting various defence mechanisms as he or she wrestles with their impulses towards wish fulfilment. That might be a wish to retain their oversized five bed family home whilst their ex spouse continues to rent a one bed flat versus the external reality of a judge making an order for sale of the property and an equal division of the equity or it might be the desire to split their child's time absolutely equally down the middle to the last bank holiday and inset day versus the judge telling your client that it is the quality of time spent with parents that matters not the quantity and children are not parcels to be passed around to fulfil their parent's wishes. Your client may be desperate to cling on to a home or daily interaction with their child but it may not be possible for you to deliver the outcome that your client desires.

In our psychic world we need to protect ourselves against overwhelming feelings caused by loss of what is familiar and reliable. Defences are employed against feelings of loss. We can see these defences manifest in our clients. At one end of the spectrum disengagement with the proceedings, not answering letters or not giving instructions or at the other end bombarding us with emails and detailed spreadsheets. These types of behaviour can be seen as defences employed by our clients to protect themselves from the feelings of loss or powerlessness engendered in the process of litigation. Some of our clients will find it unbearable to experience needs and vulnerabilities. They may create a narcissistic picture of the world in which they are the omnipotent centre, which is a serious impediment to reaching a settlement or consensual outcome of their case.

Your client might feel furious with her ex husband and the father of her child and see him as the embodiment of evil with no good characteristics of any sort. This entirely negative view may be her way of protecting herself against the guilt of the marital breakdown. Or it may be protecting her from the sadness she would otherwise feel at the loss of a person who has characteristics she once loved as a husband and father. So there is mourning for losses and sometimes there is guilt and regret about attacks on loved ones.

Mourning and melancholia

Psychoanalytic theory sees mourning as central to development. Most if not all of our clients are experiencing loss and ending in their relationships. Mourning and working through involves the gradual relinquishment of loved but lost people and ideals. This

involves psychic work and pain and involves the giving up of wished for but unrealistic old patterns of living and relating. So, old family life is mourned before your client can become free to experience a new life.

Development always results in gains and losses. Your client may be very attached to their ex partner but in an ambivalent hostile way. If she leaves him he may nevertheless be particularly hard to mourn and to let go of. Instead he or she may be taken inside your client and unfinished business in the relationship will continue. Aggressive impulses and desires may emerge as increasingly important and depression may also be experienced.

The life and death drives

Freud deduced from his clinical work that humans have two innate drives which cause life long conflict. According to Freud the life drive is towards union, growth and new creation while the death drive represents the innate tendency to give up the struggle, move towards quiescence and fragmentation (Milton, Polmear and Fabricus, 2004). You will want to help your clients to fight against the death drive and move towards the new creation of a life after separation and marital breakdown.

The depressive and paranoid schizoid position

Melanie Klein was a child psychologist who was inspired by Freud's early writings and who developed a theory of object relations out of Freud's work. She called the state in which people are seen as all good or all bad, in a cardboard cut out way, as the paranoid schizoid position. The word schizoid here refers to the spilt between good and bad and the word paranoid refers to the means by which good or bad qualities are disowned and attributed to others who are then either idealised, feared or hated. We will often see our clients in this state of mind and in psychoanalytic terms the solicitor/therapist will want to work with the client to help them to move to what Klein termed the depressive position. This is nothing to do with depression. It is a state of mind where an individual is able to see both him/herself and others more or less as they are. To recognise that their ex spouse or father of their child has both positive and less positive characteristics and to accept human frailty and see him in a multi dimensional way rather than as a hateful bad partner/parent.

As the client goes through the process of FHDRA, DRA and final hearing or FDA, FDR and trial the hope is that with you as the containing parental figure, they will move from their angry persecuted self righteous state against the wholly bad ex spouse and through the process of mourning they will relinquish this view and be able to take on the new reality of life after relationship breakdown in a realistic way and to accept that the other parent/spouse is no longer in their control.

Endings

Your client in a family law context will inevitably be experiencing endings. It may be the end of a long relationship with their ex partner. It may be that having gone through the litigation process, having received your realistic advice, backed up by the judge's indication they are having to let go of hopes or expectations as to an outcome that is unrealistic. There will also be an ending to the supportive containing relationship that you have provided to your client week in week out (sometimes on a daily basis) where they have unburdened themselves and projected on to you their emotions during the harrowing or enraging roller coaster of their divorce or child care dispute. They may have developed a feeling of dependency upon you similar to that of a child being with a parent.

Gratitude

The end of their relationship with their ex partner may be loaded with anticipation and dread. Similarly the end of their retainer with you (despite the invoices you send them regularly along the way) may also be a source of anxiety and is a journey that has to come to an end. There may be a feeling of abandonment as the client faces the reality of being separate from you. Rather than sending you daily updates about the calumnies perpetrated upon them by their former partner, they now have to communicate about arrangements for contact over half term directly with their ex rather than instruct you to write a letter on their behalf at great financial cost. In psychoanalytic terms endings involve re-owning projections. Over the course of your relationship with your client you will have become the container of your client's projections, a repository for the split off parts of themselves. Your client will have to re-own what belongs to themselves and bear it within themselves.

And finally ending involves gratitude. The capacity to be grateful represents one of the most significant psychic achievements as it involves acknowledging our dependence on another whilst recognising separateness and autonomy. Hopefully your client will feel enriched by the solicitor client relationship and you will be able to warmly wish your client well as you close his file.

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Bibliography:

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