

JLS-10 ARE WE LEGALLY RESPONSIBLE FOR THE CONTENT OF DREAMS? (3)

29 West 17th Street  
New York, New York 10011  
October 16, 1974

Richard H. Nolte  
Institute of Current World Affairs  
535 Fifth Avenue  
New York, New York 10017

Dear Mr. Nolte,

Early readers of JLS-7 and -8 have raised several points I thought I'd mention before continuing with diagnostic categories.

1. Concerning the notion that the psychoanalytic idea of the unconscious might be a source of distress for law: Reading legal journals from the early part of this century, I've tried to see how psychoanalysis was received in its youth and what effect it might have had on legal thinking. The first substantial instance I came across was a 1918 article in the California Law Review by one T. Schroeder called "Psychologic Study of Judicial Opinions," and the author's thesis was that "...the written opinion is little more than a special plea made in defense of impulses which are largely unconscious." (my emphasis) So psychoanalysis was first taken to warrant brushing aside the superficiality of the manifest to get to the truer unconscious. "Every opinion thus amounts to a confession,"

---

Jeffrey Steingarten is an Institute Fellow investigating the relevance of psychoanalysis, psychiatry, and law.

T. Schroeder wrote. "We must...fix our attention wholly upon the discovery and understanding of the character-impulses which the opinion always defends." To do this we scrutinize the judge's use of precedent, with an attitude like Freud's as he analyzed slips of the tongue: 'When we see what is avoided, slighted, or emphasized we already see the submerged personality unconsciously revealing itself."

Schroeder analyzes in this light an unpublished judicial opinion (without knowing the judge personally, always a tricky business) dismissing charges against a defendant who had been the judge's enemy. Almost ignoring the facts of the case and contrary precedents, the judge seemed drawn to a singular precedent he clearly detested--all to exonerate an enemy. Why? Schroeder figures that the facts of the precedent case reminded the judge of some shady business he himself had once been involved in and that this aroused guilt feelings that compelled him to follow it.

Maybe Schroeder was right about the case, but there's no way for us to know because we lack the free associations customarily required to reach unconscious content. But the more general point is that this young science of psychoanalysis was indeed taken to authorize a disrespect for the evident and an inclination to replace it with something else. Would Schroeder have written differently in 1940, after the development of ego psychology? How is the problem treated by Lasswell, Cardozo, Frank, and the legal realist school of the 1920's? Most jurisprudential theories (perhaps all with the exception of the realist position) consider a judicial opinion to be for the most part comprehensible on its face without knowledge of the judge or his unconscious, to be analyzable in terms of its own facts and logic and its place in history. Psychoanalytic insight into the hidden dynamics of the decision process may,

according to this view, undermine general acceptance and finality of judicial decisions without supplying an alternative. The legal reception of psychoanalysis will be the subject of future newsletters.

2. On Freud's choice to interpret: I did not mean to imply that Freud invented the distinction between manifest and latent. Lionel Trilling, referring to a book by Henri Ellenberger, traces this disposition of mind to the French moralists of the seventeenth century and after them in Schopenhauer, Marx, Ibsen, and Nietzsche. So the climate of assumptions that the 19th century intellect was willing to entertain about itself was favorable to Freud's decision to replace the manifest. Writes Trilling:

...if we try to say why the idea that there is a mental system which lies hidden under the manifest system has won so wide an acceptance among us, doubtless one reason is that it accords with the firmly entrenched belief that beneath the appearance of every human phenomenon there lies concealed a discrepant actuality and that intellectual, practical, and (not least) moral advantage is to be gained by forcibly bringing it to light.

More about the interpretive relationship anon.

3. About the technique of entering one's dreams: There is nothing essentially 'supernatural' about the Senoi technique of introducing consciousness into the unconscious, regardless of the mythical terms in which the Senoi couch interpretation and suggestion. The Senoi believe, much as we do, that in the process of adaptation to our natural and cultural surroundings, we internalize within our mind images of the outside world and that some of these images will be in conflict with each other and with ourselves. Such conflict


gives rise in turn to dissociation, to organic and psychological tensions, and to derangements in the relations of men. Dreams allow men to recognize these conflicts and with the help of their fellows to work them out--by re-entering a dream to solve a problem left unsolved in waking life or in a previous dream, and by bringing back into culture dream elements and images, solutions expressed in visual designs and dances.

I referred in passing to Carlos Castaneda's description of "setting up dreaming," as Don Juan calls it, and the reader who wishes can find the description in Journey to Ixtlan, pages 96-104 and 148-155, and in A Tale of Power. Setting up dreaming parallels the Senoi technique of instructing the dreamer to remember a thought or an act inside his dream:

Don Juan's praxis of "dreaming" was an exercise that consisted of finding one's hands in a dream ....After years of unsuccessful attempts, I had finally accomplished the task.... I dreamed that I was walking on an unknown street in a foreign city and suddenly I lifted my hands and placed them in front of my face. It was as if something within myself had given up and had permitted me to watch the backs of my hands....

Once the dreamer is inside his dream, the analogy to the Senoi seems at an end.

Regards,

  
Jeffrey Steingarten