SYMPATHY AND EMPATHY IN THERAPEUTIC JURISPRUDENCE FROM A PSYCHOANALYTIC PERSPECTIVE

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Questions posed:

What is the place of sympathy and empathy in therapeutic jurisprudence from a Freudian psychoanalytic perspective?

What techniques of psychoanalysis may be useful when sympathy or empathy are experienced as part of the practice of therapeutic jurisprudence?
For Freud, *sympathy* is necessary to establish a therapeutic relationship. It should be understood as limited to what might be called a “benign interest” in the patient.

*Sympathy* in that sense is also appropriate in therapeutic jurisprudence – it demonstrates a genuine interest in the individual before the court.
Empathy (originating as “einfühlung” in German) was a new and contested concept in Freud’s time and remains the subject of debate today.

Neuroscience now distinguishes two types of empathy as distinct mental phenomena: cognitive and affective empathy.

The value and use of empathy is debated in law, health and human services.
Affective empathy involves emotional “resonance” between two people.

Cognitive empathy is the experience of believing one understands the motivations and thinking processes of another.

Affective and cognitive empathy may co-exist but each may also be experienced on its own.
For Freud, emotions are implicated primarily in *transference* – the displacement of the patient’s extraneous experiences onto the person of the analyst and the therapeutic situation.

Jerome Frank noted a transference phenomenon concerning the *super ego* and disciplinarian thought onto the persons and processes of the law identified with authority that enforces strict and certain rules of behavior.
Following Freud, Melanie Klein and Wilfred Bion explicated the central place of emotion in thoughts and thinking. For them, emotion is incorporated in objects, concepts, and ideas by mental processes of synthesis operating on experience, affect, and evaluation.

All human meaning and understanding arise through such synthesizing processes as shown in the following figure.
Human development of thought and thinking

Neonate

Stimulus + Excitation \rightarrow Affect

Affect + Percept \rightarrow Object

Object + Other/Mother \rightarrow Concept

Concept + Negation \rightarrow Idea

Idea + Absence \rightarrow Thinking

Thoughts + Language \rightarrow Communication

Pre-schooler

Stimulus + Excitation + Communication \rightarrow Behavior

“+” stands for synthesis, association, identification, assimilation, merger, increasing entropy, projection, confounding, confusing, linking, coupling, amalgamating, annexing
Affective empathy is useful to psychoanalysts when experiencing transference involving the patient’s super ego and other mental states heavily laden with emotion.

However, most legal officials are not trained to work with emotions in transference phenomena through analysis and interpretation.
Cognitive empathy is useful to psychoanalysts when detecting, exposing, and exploring a patient’s faulty or abnormal mental associations or identifications to enable and enrich interpretation and suggestion.

It may also be useful for jurists practicing therapeutic jurisprudence, but within wise limits of intervention.
Thus, understanding of others is gained through both affective and cognitive empathy, the products of which are subjected to mental processes of analysis.

Analytic thought questions, deconstructs, and interprets inappropriate, faulty, or abnormal synthetic associations and identifications in the mind of the other as shown in the next figure.
Psychoanalysis as applied to human thought and behavior

Early Stage

- Behavior → Excitation  —  Stimulus
  - Communication → Language  —  Thoughts
  - Thinking → Absence  —  Idea
  - Idea → Negation  —  Concept
  - Concept → Other/Mother  —  Object
  - Object → Percept  —  Affect
  - Affect → Excitation  —  Stimulus

“—” stands for analysis, distinguishing, differentiating, decoupling, disaggregating, disassociating, individuating, deconstructing, de-linking.
Therapeutic jurists may use analysis as practiced in Freudian psychoanalysis applied to the products of cognitive empathy exercised in relation to litigants or other parties.

The purpose of such analysis is to reinforce the parties’ perception and acceptance of reality and to prevent or disrupt negative or inappropriate transferences which may occur in legal proceedings.
Analytic techniques which may be used by therapeutic jurists include:

- **Personalizing legal actors**
- **Explaining events and proceedings**
- **Individuating parties through personal interaction**
- **Summarizing chronology and providing reminders**
- **Drawing distinctions between legal and non-legal situations**
CONCLUSION

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