Consenting and Assenting to Psychoanalytic Work[1]

This paper hopes to contribute a psychoanalytic view on the question of informed consent, a crucial concept within the professional practice of medicine and psychology. Consent is less about the patient's intellectual awareness of the various aspects of the analytic setting proposed at the beginning of treatment, and much more about *the patient's ongoing learning about his or her unconscious response to the setting and to the analyst who presides over it*. This learning makes possible the patient's active assent to starting and continuing a psychoanalytic process. This unconscious response inevitably entails a remobilization of the patient's particular infantile wish to be loved and regarded. How many times do details in how the analyst manages the frame (for instance, policy regarding missed sessions, how the analyst presents her own absences, how phone calls, texts, and email are responded to, how deaths in the family, illness, or breakdowns in public transport are dealt with) become critical events in the relationship insofar as they are experienced as failures in love or empathy on the part of the analyst. In our view of informed consent, on each of these occasions an effort of psychic work is required by both members of the dyad to discern and work through new unconscious reservations which curtail full engagement in the treatment. Some reflection exists in the literature about what might hold back the analyst from fully "consenting" to accepting a new patient in analysis (Ehrlich

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2004, 2010, 2013; Rothstein 1995a, 2010). The focus here will be on the patient's side of things, since until recently the literature on informed consent has been particularly meagre in this respect. In this paper, no distinction is necessary between a classic analytic framework and psychoanalytically-oriented psychotherapies. As long as the aim is to increase the ego's scope over the irrational forces within the « soul » of the individual -- without coercion, suggestion, or an invitation to an alienating copying of a non-self-generated ideal -- the conundrums we are attempting to look at will be essentially similar[2].

We find it useful to introduce a distinction between **informed consenting** and **good enough assenting**. Inspiration for separating the two terms comes from the unlikely source of an article on sibling rivalry by Paul-Laurent Assoun (2001). Assoun contends that the birth of a sibling throws the elder and formerly only child before a trial or ordeal of consent (an "épreuve du consentement" in the original French). Without a psychic "treatment" of the initial murderous refusal of fraternity, the child cannot move to an acceptance of narcissistic loss and an "assent" ("assentiment" in French as opposed to "consentement") to a brotherly or sisterly tie (p. 44). There are subtle differences in meaning between the two terms in both English and in French that can help bring out clearly the main contention

[2] Though, for simplicity of presentation, the terms analytic setting, framework, and situation will be here used interchangeably, several authors have offered distinctions (cf Cooper, 2019, Donnet, 2001, Tabakin, 2017) -- indirectly relevant to the concerns of this paper -- by seeking to include representation of the non-material, inter-subjective aspects of the relationship emanating from both patient and analyst and the related qualitative changes in their working alliance.

in this paper: while the patient needs to have access to a certain amount of information about the analytic setting in order to consent to beginning treatment, deeper *assent* will come through the insight about himself in the form of the working through of unexpected emotional responses to aspects (usually disruptive) of the frame and of the person of the analyst. Assent and consent are mostly synonymous—they both mean to agree—but assent connotes a greater degree of enthusiasm, and consent often comes with reluctance. To consent is to give permission, which could have been withheld. It implies a power relationship where the consent is granted by the party with more power. To assent is to agree with a statement made by an equal. So, consent is historically associated with the granting of permission while assent has been used to express agreement. For expository reasons, let us carve out a distinction from these nuances. One can consent to a set of conditions proposed by the analyst as part of a project of self-development aimed at learning about mysterious parts of oneself or of one's behaviour. After all, very few would openly admit that self-knowledge is not a worthy goal for anyone. However, the direct experiencing of unpleasant reactions to, or unexpected implications of, the specialized relationship with the analyst can throw this project into disarray. As well, the patient may not comprehend at first, or may periodically lose sight of, the symbolic potential of thought.

Our investigations into what a consent procedure specific to psychoanalysis would look like has been spurred in part by the realization that for those patients

whose internal life is not felt to be interior[3], or in moments of intimate crisis with other patients, the analyst's offer to listen beyond the manifest content and manifest demand may make no sense. The prospect then becomes a communication operating on different levels: one interactive and cognitive, and the other blind drive and wounded narcissism. Can there be – at least with certain patients - an *illusion of informed consent* insofar as the operating assumptions of the framework consciously or unconsciously assumed by the patient are not necessarily identical to those held by the analyst?[4] In fact, the very discovery of transference implies that at some level, at some moment, in every psychoanalytic treatment -- and these moments are, as noted above, frequently precipitated by some kind of "misunderstanding" about the frame -- "consent" can be expected to vacillate. *We will argue that true assent to the psychoanalytic process has to be arrived at after a struggle, that is, after experiencing an inner movement of refusal and/or questioning which if sensitively addressed leads to a deeper appreciation and engagement with the process*[5]. We also advocate using the

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[3] For these patients, the drive can be as much external "as can a clap of thunder or a hit" and thus, not a part of the self (Winnicott, 1960, p. 141).

[4] This point came up in a long-term seminar on *Psychoanalytic Culture* bringing together analysts from two linguistic groups. The group's exchanges made us realize the risk of dyads proceeding in an "as if," compliant mode in ignorance of a hidden mutual misunderstanding of what they are doing together. Our thanks to Ron Brown, Sylvie de Lorimier, Martin Gauthier, Gabriela Legorreta, and Jacques Mauger.

[5] Some time after writing this, I realized that I had forgotten the attention given by Piera Aulagnier (1979, 2001) *to the test/labour of doubt (l'épreuve du doute*) in the construction of the "I" (as opposed to the ego as a forum of imaginary identifications) in the face of change and disappointment. It is possible that

gerund form for these terms as a way of communicating ongoing movement rather than the acquisition of a fixed state of mind.[6]

There is also another source for our interest in this question: our discomfort with the position taken by some analysts who believe that the existence of the unconscious precludes truly informed consent. It is argued that patients cannot consent because they do not yet know enough about their unconscious motivations. For example, Jonathan Lear (2003) evokes an image of colonial bravado in questioning to what extent a person can give informed consent to the use of his clinical material outside the consulting room, another area of ethical preoccupation in current professional practice. Can a person really speak for his

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Assoun may have been influenced by her insistence on the capacity for doubt in a healthy, non-alienated, individual. However, it is equally probably that both Aulagnier and Assoun were inspired by Lacan's (2006b) metaphor of the three prisoners who must pass through the imagined subjectivity of each other and *moments of doubt* in order to reason their way to their own respective identities.

[6] In a stimulating recent article Saketopoulou (2019) also wonders whether the purview of informed consent as understood in the medical profession (what she calls "affirmative consent") is not "insufficiently nuanced" (p. 139) for our field. She too tries to articulate a different quality of consent to the psychoanalytic situation by proposing the concept of "limit consent" which "is predicated not on setting and observing limits, but on initiating and responding to an invitation to transgress them" (p. 140) which echoes somewhat our notion of the necessary "labour" of assent. Her call for the analytic dyad's openness to "excess" and "dysregulation" to allow for the creation of "new translations" of patients' core enigmas is an innovative use of both Laplanche's and Stein's work and a dramatic retake on the notion of risk both parties take in assenting to their work together. There are the arresting overlaps in theoretical references and concerns with our purpose here, though Saketopoulou's endeavour to make sense of a specific and highly charged interpersonal dynamic leads her elsewhere. To our ears, her invention of a new term "the draw to overwhelm" is more akin to Bion's negative capacity than to a way of thinking about consent to a psychoanalytic treatment.

own unconscious, wonders Lear? “[I]f I stand up boldly and say, “I hereby give you informed consent to let the unfolding of my unconscious be public property,” it is unclear . . . of whom or for what I am speaking” (p. 7).

A counterpoint to the impossibility of informed consent in analysis will be developed later in this paper. In the meantime, the real-life flag planting of Captain James Cook during his explorations of the Pacific region can provide us with a metaphor for both our first and second concerns. In a review of a new edition of Captain James Cook’s *Journals,* Uglow (2019) notes that Cook had taken with him a sealed set of instructions from the Admiralty. Besides charging him to “endeavour by all proper means to cultivate a Friendship and Alliance with [the Natives],” he was told, “You are also with the *Consent of the Natives* to take possession of Convenient Situations in the Country in the name of the King of Great Britain” (our emphasis). In uninhabited lands he was simply to “take Possession for his Majesty.” As Uglow comments, the notion of “consent” was meaningless *without any system of shared values or laws*, but Cook cheerfully raised the British flag wherever possible, marking trees as he left with the ship’s name and the date. In his journal entry for August 23, 1770, at Possession Island off present-day northern Australia, he wrote that,

I now once more hoisted English coulers and in the Name of His Majesty King George the Third took possession of the whole eastern coast . . . , together with all the bays, harbours rivers and islands situate upon the said coast, after which we

fired three volleys of small arms which were answered by the like number from the ship (quoted by Uglow in his review).

Psychologically naïve patients are not at first in the position of sharing our psychoanalytic assumptions about the value of the framework we propose to them, nor may they have any idea of the unconscious "flags" burning within them until they stumble upon them in the course of treatment. But whereas Lear's solution in 2003 was to "think hard about how we might build up a good analytic character" (*op. cit*., p. 17), the thrust of this paper will be elsewhere. We will argue that internal effort is called upon from both analyst and patient in moving from the initial "flag-planting" of the first meeting to informed consent to treatment, and that a meaningful assent can only be achieved over time and repeated psychic labour.[7] We should not forget how often Freud referred to psychic work, *arbeit* in German standing for work, job, test, effort, labour, such as in his terms *abarbeit* (working-off mechanism), *culturarbeit* (the work of culture), *durcharbeitung* (working through), *trauerarbeit* (work of mourning), and *traumarbeit* (the work of dreaming). Not being aware of certain responses to the analyst and to the setting complexifies the process of consent but does not negate

[7] I want to thank Mitchell Wilson for drawing my attention to a noble precursor in Immanual Kant's moral philosophy for our proposition that assent involves a labour which has had to overcome ambivalence and resistance. This precedent might be discerned in Kant's view of the participation of an act of "will" in moral reasoning. For Kant, "willing an end involves more than desiring: it requires actively choosing or committing to the end rather than merely finding oneself with a passive desire for it" Kant's Moral Philosophy in the *Standford Encylopedia of Philosophy*, p. 7). Virtue is, for Kant, "strength of will" (p 16) and thus would seem to entail effort.

it, particularly if the analyst remains attuned to signs of the patient's unconscious ambivalence.

Some prior analytic contributions to the subject of informed consent

Before developing this idea further, let us look at pre-existing contributions from writers of quite different theoretical orientations who have already given reasons to suppose the risk of misunderstandings about consent. Lacan's warnings about the analyst's imaginary position in the transference as the subject-who-is supposed to know (1977) remains a valuable guide in these matters. In order to be able to listen carefully to manifestations of the unconscious in the dyad's work, the analyst needs to separate herself in her own mind from the analysand's idealized projections of superior knowledge and mastery which can easily lead to the latter's unconscious submission. Similarly, Kohut (1971) pointed out the clinical virtue of respecting the patient's idealization while gradually reserving the right to interpret it. On yet another continent and in another language, Bleger (1967) argued that "there are actually *two settings*: one which is proposed and maintained by the psychoanalyst, and accepted consciously by the patient, and another, that of the 'phantom world' into which the patient projects" (p. 233, original emphasis).[8] It was "the desire to put thinking to death" that concerned Aulagnier (1979) when both partners in treatment want to put the analyst's

[8] The *International Journal of Psychoanalysis* 1967 version of Bleger's paper uses the term "ghost world" but I agree with Bleger & Churcher's (2013) proposed alternate translation of "phantom world" as truer to Bleger's evocation of body schema and a loss inflicted upon it.

theories on a pedestal. In the alienation she observed in certain patients coming for second analyses, she found a total lack of awareness of the violence being done to them in the first analysis by virtue of an uncritical introjection of the former analyst's socially trendy theory. We view this as a possible outcome if informed consent is assumed to be a rather straight-forward process of intellectually informed acquiescence where the analyst is not listening for warning flags of unconscious incomprehension or unease in the patient about beginning treatment. Other French writers such as Laplanche (1999), Green (2005), and Donnet (2001) have all pointed out the trap of the analyst substituting her thinking for that of the patient. If the analyst merely "recommends" an analytic treatment with a list of requirements, and awaits a global agreement, is there not a chance that the analyst is substituting her thinking for that of the patient? In America, the thoughts of A. Goldberg (2001, 2004) on insufficiently elaborated moral and technical tenets of the framework are both pertinent and provocative:

> There should be little doubt that many if not all of the tried and true principles of psychoanalysis may profit from being subjected to periodic re-examination and scrutiny to see if their status remains as telling and relevant today as it did when first developed and observed (2004, pp. 301-302).

We can give an example from our own background. Having cheerfully born the cost of missed sessions during the vagaries of life's existence in our own analysis, and proud of our enlightenment, the present author only achieved a less defensive

and idealized appreciation of the representational value of some form of "rule of indenture" (Eissler 1974) for financial responsibility for missed sessions when shaken by transferential explosions in our own practice. Confronted by patient rebellion vis-à-vis ourselves as analyst, a belated reworking of our unrecognized ambivalence about this aspect of the frame was required of us (Furlong, 1992). As we now see it, periodic recasting of one's assent to the analytic setting is a necessary part of the process of self-inquiry and self-knowledge acquired in the relationship with one's analyst.

Other than an initial minimal setup, Freud paid scant attention to other aspects of the frame, such as conflicts of interest, confidentiality, informed consent, third party payment, record-keeping, and related administrative offshoots of clinical work. As his international reputation increased, most of Freud's patients came having read some of his writings and with an explicit request for "psychoanalysis" from the now famous man, a request which could be – and was – taken at face value. In the spring of 1921, Freud accepted into analysis Anna G. (May 2009) without having met her nor having evaluated the appropriateness of her request. He based his agreement entirely on the letters of recommendation of two Swiss colleagues and on the patient's written agreement to abide by his conditions of time and fee. We know that this was the way he proceeded at the time with other patients (*op. cit.,* p. 267). In the early decades of the psychoanalytic movement, patients seem to have more or less submitted wholesale to the conditions of analysis as it was explained to them. It was only gradually, painfully, and, on occasion tragically, that the first generation of analysts came to appreciate the

ethical and clinical implications of details of framework management on their own internal frameworks and those of their patients. A more rigorous procedure seemed called for which became almost sacrosanct in some institutes with candidates regularly instructed on how to assess the analyzability of potential patients and warned about the pitfalls of anti-analytic parameters. While there were authors who, as we shall see, questioned the legitimacy of this approach, on the whole a broad cultural agreement may have existed (at least for a time in the mainstream psychoanalysis in North America familiar to us) about what strict framework analysts were expected to impose. Patients "knew" (or at least thought they did) what they were getting into in consulting a psychoanalyst: use of the couch, the analyst's relative "reserve," free association, confidentiality, expectations of interpretation and not advice, payment for missed sessions, avoidance of social interactions outside of the office, etc.

This consensus about the analytic setting has buckled under the scrutiny of the latest generation of psychoanalysts, both from those purporting to extend the Freudian vision and those who have found it wanting in various ways. But the psychoanalytic situation also finds itself increasingly out of sync with ethical, legal, and administrative standards that have derived from other, non-analytic, types of practice. Focussing on informed consent, the present article would like to contribute to discussion among analysts about consideration from a psychoanalytic framework of the latest professional norms in medicine and psychology. In the perspective to be presented here, it is assumed that the frame is not just a helpful container for analytic work but an integral part of the method's

associative-digestive-thinking apparatus. The concern about proper technique among second-generation analysts may have inadvertently externalized the issue of consent and displaced it onto to evaluations of patient analyzability, thus bypassing the patient's self-reflective participation in the decision. One hears and reads of analysts « recommending » psychoanalysis, as though placing themselves in a position of medical expertise, with the patient seemingly in the passive position of acceding more or less globally to their suggestion. There is merit therefore in the opinion of a recent commentator (Dailey 2013) that « analyst practice on the initiation of psychoanalytic treatment is in urgent need of review and revision » (p. 1123). We have a responsibility (Wilson 2016) to try to explain to ourselves (and if need be to our patients, though that may not be necessary if we understand ourselves) why the usual conditions of informed consent in other fields feel so uncomfortable for us.

What does the patient understand?

In any cure, though it is not usually cast in this manner, various dimensions of the framework itself – here gathered under the rubric of their contribution to informed consent - need periodic analysis. We have been slowly appreciating, as mentioned earlier, that the interpretive approach can miss the mark for patients of sub-neurotic structure, whose subjective assumption and mentalization of drive and emotion are insufficient. An example comes to mind from the present author's

experience as outside reader of a candidate's fourth-year clinical case study. In the report a patient had been persuaded to move from face-to-face psychotherapy to a classical psychoanalytic position to serve as a training case. There was little description of how this transition had been handled, yet it was clear from the detailed clinical material that though ostensibly agreeing with the transformation, the patient had reacted with a great deal of anxiety. The analyst-in-training's efforts to understand this anxiety in terms of the patient's history seemed to be having little effect. Moreover, though the patient repeatedly referred to the new setting as culprit for her malaise, the analyst did not take up the possibility that she had agreed to something the rigours of which she had not really understood and for which she was not psychologically ready. Perhaps in her wish to please her therapist, she had not fully appreciated the psychological implications of the new setting and the archaic fears which it was mobilizing. One could argue that her consent had not been adequately "informed" and that it might have been more helpful to address her new wave of disquieting transference as it related to the change of setting which had been asked (unconsciously required?) of her.[9] In this project of an analytic cure, the analyst may have failed to realise that he had not

[9] Even in the context of medical research, a series of studies undertaken by Lidz and his colleagues (2006) demonstrates that the doctrine of informed consent rests on untenable empirical assumptions. They argue that since most individuals are subject to "therapeutic misconceptions" which lead to "context-bound, not context-free, decisions" (p. 545), we cannot and should not "rely simply on the accuracy of information disclosed to protect subjects from risky or inappropriate clinical trials" (p. 545).

created "the conditions in which free association proves to be practicable, interpretable and beneficial" (Donnet, op. cit, p 129).

Undertaking a rare empirical study, Saks and Golshan (2013) found that there was extremely wide variation among analysts with respect to the proper scope of informed consent and that many did not obtain even a modicum of informed consent. They concluded that, generally speaking, informed consent is inadequately treated by the psychoanalytic community. Psychoanalysts would thus appear to be out of step with the model which informs most modern biomedical ethical treatment and research codes, and which requires potential subjects to « be adequately informed of the aims, methods, anticipated benefits, and potential hazards » (*op. cit*., p. 14) of any medical intervention. Saks and Golshan are well aware of the myriad ways full disclosure of risks and benefits according to the contemporary medical ethical model « may violate the norms of analytic neutrality, abstinence, and anonymity, considered by some to be crucial to the treatment » (pp. 40-41). Yet in the name of patient autonomy, Saks and Golshan contend « the reasonable patient would want more information than currently gets disclosed, including the risk of intense transference feelings, malignant regression (particularly to psychosis), and self-destructive acting out » (p. 1124).

It is difficult to gauge the meaningfulness and scope of such a startling recommendation of disclosure. Saks and Golshan do not address in what way an

intellectual awareness of such risks is of more than cognitive value to prospective analysands. One reviewer of the book (Tillinghast 2015, p. 368) believes that « [e]ngaging a patient in substantive discussions about the risks and benefits of treatment, and possible alternatives, can substantially strengthen the therapeutic alliance, by making the patient feel respected and valued as a collaborator with a healthy side. » Yet Tillinghast seems to be sidestepping the psychoanalytic question as to whether ego-to-ego exchanges of this sort should be favored over a position of carefully listening for the patient's unconscious doubts as they come up over time.

It is true that numerous individual case studies, both historical and current, are available of the categories of negative patient reactions (the risk of intense transference feelings, malignant regression, particularly to psychosis, and self-destructive acting out, (p. 1124) mentioned by Saks and Golshan (for example: Aulagnier (1979), Gabbard (1977), Freud (1923), Pontalis, 2014, Rosenblum (2005), Sandall et al (2000), Winnicott (1954, 1967)). Moreover, we also know that counter-transference complications must also be counted as potential negative side-effects of psychoanalytic treatment. As Freud pointed out since one cannot destroy someone in effigy (1912, p. 108), we are constrained to working with "highly explosive forces" (1915, p. 170). Understanding intense transference and counter-transference reactions is supposed to be an essential aspect of psychoanalytic training but the capacity to predict them is limited. Ultimately, however, the argument against disclosing documented negative reactions to

psychoanalysis has to be based on the fact that any analysis is a totally unique experience, emerging from the intersubjective dynamic emerging in the intimate relationship of two personalities each with a partially unknown unconscious component.

For this reason, it is proposed here that the best way to assess « risk » will come from the analysand's capacity to scrutinize what comes to light in the *experience* of the psychoanalytic setting itself. From the psychoanalytic viewpoint, *what the patient needs to be informed about is already a part, an unconscious or split off part, of herself,* perhaps emerging in the initial meeting as a dread of catastrophe. Making a distinction between manifest and latent content not made by Saks and Golshan, Ogden (1992) observes that the sense of danger mobilized in *both* patient and analyst is the «prospect of a fresh encounter with one's inner world and the internal world of another person » (p. 227) (see also Crick 2014). Developing an awareness of the conflict within oneself about beginning a psychoanalytic treatment is also a pathway towards informed consent, and an integral heart of the *intrasubjective and intersubjective exploration which frames the decision to begin analysis*. Being able to perceive and address this conflict is part and parcel of the "analytic process of transformative investigation" as Donnet so nicely puts it (op. cit., p 129).

To make matters more complicated, contemporary psychoanalytic thinking about informed consent would want to take into account the patient's unconscious

perception of the analyst herself, and whether or not the dyad can make some sense of this. Perhaps Freud did not stress enough the extent to which unconscious conflict also poses a barrier to the perception of the external reality of others, in this case the analyst, or that resistance can be generated by the unique bi-personal field which develops in a particular practitioner's office. The capacity to perceive and mentalise unconscious conflict and/or deception on the part of significant others is also part of access to relational truth. Beyond the resistance of « discourse itself », Lacan (1982) zeroed in on the resistance which can emanate from the analyst's ego. We know that aspects of the patient's communications can be indirect commentary on unconscious perceptions of his or her analyst. Van Lysabeth-Ledent (2016) gives an example of what she calls the dream's metabolisation of a real impact on a patient of a session in which the analyst was "psychically absent" due to illness, an "event" which had been « perceived » but not consciously acknowledged by the patient.

It would seem inherent in a psychoanalytic ethic to help the patient develop her own risk assessment abilities rather than having the analyst enumerate them in a pre-emptive paternalistic list. How could an analyst opine, for instance, that « there is an X% chance that you will regress, or become psychotic » when no specific probability can likely ever be affirmed with respect to this unique dyad? Not only does the « holding » capacity of the « field » vary considerably from couple to couple, but also from session to session, if not from moment to moment, and in ways that cannot always be anticipated. Explaining risks and benefits to

patients, which is so helpful in making decisions in other medical and para-medical fields, can easily fall - in the psychoanalytic situation - into the spiral of intersubjective permutations mentioned by Freud (1905) in the joke about one Jew responding to an inquiry by the another as to his destination. When the second replies that he is going to Cracow, his questioner accuses him of trying to deceive by telling the truth. « Is it the truth » inquires Freud, « if we describe things as they are without troubling to consider how our hearer will understand what we say? » (p. 115).

The point is not to minimize, but to complexify the ethical challenge experts like Saks and Golshan put before us. Even before the patient calls an analyst for a consultation, he or she may be misled about a fundamental premise of psychoanalytic treatment if analysts start to follow the pathway a number of mental health orders have taken in inviting their members to indicate « areas of expertise » in their dealings with the public. The list is long: one can indicate on one's website, or be qualified as such on the registrar of the professional order, expertise in the handling of particular diagnoses, such as anxiety and obsessive-compulsive disorders, problems of sexual impotence (male and female), sexual orientation issues, insomnia, attention disorders, capacity for violence, and many other mental and emotional troubles. Despite the fact that the public may seek the security of consulting an acknowledged expert in a specific category of complaint, this kind of professional presentation contravenes long-standing technical and ethical psychoanalytic reservations on three levels: 1) in departing from a position

of benevolent neutrality to accede to the patient's wish for the imaginary authority decried by Lacan; 2) by implicitly giving a particular aim to treatment of freeing the patient from a manifest symptom, before knowing what role it plays in his or her unconscious economy, and 3) implying that symptoms share commonalities across individuals which an analyst can know and treat based on *a prior* knowledge. It is quite simply a form of false advertising. Wilson (2016) expresses it clearly: "the psychoanalyst is always interested in the particular, the singular, the first-person point of view. We are *anti*-generalists" (p. 1191, original emphasis).

Interestingly, Freud seems to have drawn attention to the rigors of analytic treatment more often than to its risks. Exemplary is this quote from *On beginning the treatment* (1913): "I consider it altogether more honourable, and also more expedient to draw [the prospective patient's] attention – without trying to frighten him off, but at the very beginning –to the difficulties and sacrifices which analytic treatment involves" (p 129).

It is enlightening in this context to double back to José Bleger's classic 1967 article, "Psycho-Analysis of the Psycho-Analytic Frame", referred to above, in which he claimed that in every analysis, even one with an ideally kept frame, the frame itself must become an object of analysis. The very steadiness of the frame makes it the perfect depository for the "primitive undifferentiation of the first stages of the organization of personality" (p. 518). Bleger's work is pertinent as a

counter-point to well-meaning interventions based upon reassuring the patient about his right to be informed or upon sustaining a therapeutic alliance by engaging in intellectual discussion of his or her fears of treatment, or by providing information about alternative treatments, or explanations about what psychoanalysis entails, or how much expertise one has with this or that particular expression of psychic suffering. All these interventions can induce subtle intersubjective muddles as the patient feels invited to ask for clarification. Yet on all of these fronts, the analyst has the opportunity to enter into co-reflection with the patient about the phantom world, as Bleger terms it, which has been brought to the consultation as an expectation of the analyst and the frame, his or her invisible ego-syntonic expectation that reality conform to certain infantile wishes for protection and non-differentation. There is no doubt that recognizing the risk of colluding with this archaic part without prematurely disrupting the patient's narcissistic integrity requires adroit technique and subtle counter-transference double-mindedness. In these areas, less experienced analysts perhaps struggle the most for what is required of the analyst is keeping in mind multiple levels of reality, in particular respect for where the patient is at in his or her personal evolution without sacrificing the fulcrum which will permit addressing later, at a more opportune moment, these fragile zones of mental functioning. Bleger outlines the required considerable skill in technique, timing, and tact:

> The analyst needs to accept the setting brought by the patient . . . because within it will be found in summary form the primitive unresolved

> symbiosis. However, we need to state at the same time that accepting the patient's . . . setting does not mean giving up the therapist's own, as a function of which it is possible to *analyse the process and the setting itself when this has been transformed into process* (p. 239, added emphasis).

This is a very tall order, to say the least. How in the world is the analyst supposed to manage this delicate and paradoxical management during the evaluation stage and beginning of treatment? *How to transform into process the question of consent?*

Does the existence of the unconscious prevent informed consent?

We mentioned earlier that many analysts feel that one must be reserved about the possibility of informed consent in our work. It is the notion of the rational, autonomous subject which both patient suffering and the existence of the unconscious turn upside down. In an essay in these pages a few years ago, Dailey (2013), a legal and psychoanalytic scholar, contended that « informed consent to psychoanalysis may simply not be possible in any meaningful sense. Consent appears to be the navel of psychoanalytic treatment, the moment from which all psychoanalytic treatment springs, but which itself remains opaque to analytic understanding and insight » (p. 1129).

Not many analysts, however, would follow Dailey to her conclusion that a « founding departure from neutrality » (p. 1130) is called for. Unable to decide for her or himself, the patient should rely on the analyst's guidance in contemplating and assessing the risks and benefits of psychoanalytic treatment. Dailey is aware of the aporia she has reached: "The informed consent process thus becomes a decidedly unanalytic moment that sets the analytic treatment in motion even as it threatens the integrity of the treatment that follows" (p. 1131). And we "confront a . . . contradiction: that analytic treatment comes into being through a fundamentally unanalytic moment of supportive guidance" (p. 1132).

Nevertheless, Dailey's essay joins the concerns of other analysts in inviting us to take a fresh look at an old controversy: does the existence of an unconscious make informed consent impossible in any walk of life? Posited in this way immediately moves the argument beyond the relatively limited area of patient consent to the much larger issue of free choice for any human being since the Freudian conception of unconscious life is a universal one. Speculation about the contribution of the Freudian *oeuvre* to the conundrum of free choice is not new. Freud (1931), himself, indirectly broached this question in his *Expert opinion in the Halsmann case* where he was asked to comment on an alleged parricide. It is noteworthy that Freud was doubtful about referring to an unconscious complex in assessing responsibility: "Precisely because it is always present, the Oedipus complex is not suited to provide a decision on the question of guilt*"* (1931, p. 252).

The whole vista of free will is too enormous to tackle in this paper,[10] though it needs to be addressed however briefly in any serious thinking about the topic of consent. The reader will have already noted threads in another line of reasoning being sketched here in favour of a way out of the apparent contradiction, one that is familiar to many psychoanalytic practitioners as the founding faith in the value of their work. To begin with, there are Freud's contributions to facing this conundrum. The obligation to complete candour on the part of both patient and analyst was a point that Freud made many times, but he (1916) also warned against suggestion, such as "enticing" the patient to speak of a specific content. On more than one occasion, he addressed the puzzling ownership of unconscious thoughts, each time rejecting a split in moral responsibility (1900, 1916, 1925i). For example:

> Unless the content of the dream . . . is inspired by alien spirits, it is a part of my own being. . . if, in defence, I say that what is unknown, unconscious and repressed in me is not my 'ego', then I shall not be basing my position upon psycho-analysis (1925i, p. 133).

Freud seems to distance himself from a conclusion of abject lack of autonomy:

> The physician will leave it to the jurist to construct for social purposes a

[10] The author hopes to offer some thoughts on this question in a future text.

> responsibility that is artificially limited to the metapsychological ego. It is notorious that the greatest difficulties are encountered by the attempts to derive from such a construction practical consequences which are not in contradiction to human feelings (1925i, p. 134).

Yet what he had written more than a decade earlier when commenting on the part played by the patient's "unobjectionable" positive transference in treatment, revealed a more complex view of the role of suggestion:

> To this extent we readily admit that the results of psycho-analysis rest upon suggestion; by suggestion, however, we must understand . . . the influencing of a person by means of the transference phenomena which are possible in his case. We take care of the patient's final independence by employing suggestion *in order to get him to accomplish a piece of psychical work* which has as its necessary result a permanent improvement in his psychical situation (1912, p. 106, added emphasis).

Let us recall that possession of an unconscious mind is completely democratic; it infiltrates the psychic experience of every human being and is not confined to conditions of abject suffering. For every person, autonomy in the intra-psychic sense is surely the broadening of the ego's capacity to integrate within its purview the unknown and unrepresented domains already at play within the psyche in the larger sense. It is this goal of inner freedom, however incremental, fragile, or

temporary which has traditionally been the focus of psychoanalytic work (e.g., Bibring 1943, Friedman 1965, Rangell 1969b, Smith 1978). *It is this increased modicum of inner freedom emerging from knowledge-of-self acquired in the analytical situation which is most likely to increase the patient's ability to detect and decide at any point in the treatment, the risk and the benefit to self of the psychological strain of the moment.* Does the accomplishment of this "piece of psychical work" have to pass by the analyst's suggestion?

Dailey (2017) no longer answers yes to this question. Having absorbed broad swathes of psychoanalytic literature in the meantime, she has produced a full-length book on the contribution psychoanalysis can make to the law. The apparent conflict between free will in the legal sense and the reality of unconscious life is "simply wrong" (p. 74). "[P]sychoanalysis recognizes and fosters a capacity for human agency of its own, more constrained but nevertheless central to its portrait of the psyche" (p. 74). Part of Dailey's analysis is marred by her tendency to make rather sweeping statements about the opinion of "psychoanalysis" as though it were a unitary point of view, and this despite the fact that on many occasions she demonstrates her sensitivity to important and separate theoretical strands in contemporary thinking. However, her overall position that it is "through some measure of self-reflection that the individual intervenes in the mind's causal trajectory and becomes an agent of his or her own life" (p. 87) is one that Freud and present-day analysts of many theoretical stripes share as an underlying goal of their analytic activity.

A criticism -- though it may not be fatal to her project -- is her adoption of what might be considered the pre-1920 Freudian view of the unconscious as a form of meaning which "make[s] perfect sense when subjected to reasoned investigation" (p. 91). Current thinking about the post-1920 Freudian model of the mind, with its unrepresented drives pressing for actualization and the technical challenges this lack of repression and of representation creates with regard to certain patients, is absent from her treatise. With respect to *this unconscious*, reasoned, self-reflective inquiry does not cut it. It appears to be frequently via non-reasoned, counter-transferential sensitivity that images or words can be found to *construct* a meaning for the forces in play. In order to reach a position of fuller assenting, the process of informed consenting must confront not only resistances to self-awareness (the early Freudian model of repression of "incompatible ideas"), but equally the force of unrequited and unintegrated drives (the post-1920 model of the Id).

One might be tempted to resort to the language of "agency," as Dailey has done above, in trying to grapple with these complexities. Yet let us face it, even when the "I" speaks, it is often in the name of another part of the mind (like Freud's rider pretending to go where the horse takes him). "[W]hat is proved is not the existence of a second consciousness in us, but the existence of psychical acts which lack consciousness" (1915, p. 170). Lawrence Kahn (2004, p. 74) is not alone in contending that Freudian determinism confronts us with an irreducible

break between agency, actor, and author in the psychoanalytic view of the mind. In the French literature, one is more likely to read about "subjective appropriation" or "subjectivation" (Cahn, 2002, Kirshner, 2012, Wilson, 2014). I prefer the term "subjective appropriation" or "subjective adoption" because they include the notion of a taking into the ego of something which comes from outside, which is other and retains otherness, such as unconscious sexual desire or unconscious masochism. Part of the drive remains resolutely non-subjective, experienced but not mastered by the ego, possibly "owned-up to" but never completely owned. The subject of an analysis (and this is true of all humans even if not recognized as such) comes to realise that he or she is not "one." The process of informed consenting and the becoming of good enough assenting should aim at a recognition of this universal paradox. "The unconscious is not that part of being to be reduced at any price, but a perpetual companion with which we must deal and include within ourselves as much as possible" (Cahn 2002, p. 190, author's translation). So perhaps we should speak of "subjective appropriating" (keeping the gerund form, as advocated above, to indicate an ongoing ever being undone process) in informed consenting and assenting.

The first interview

It is evidently inappropriate to suggest that there is one way to handle this ethical challenge. Fortunately, there is no longer a dearth of reflection on these issues. Pertinent to the question of informed consent is the vigorously renewed look the

first interview has been receiving in our professional literature over the past decade (see the series published by Ehrlich 2004, 2010, 2013). There has been a sea change shift from the traditional goal of evaluating the suitability for analysis of patients to using the consultative process to initiate them into a psychoanalytic frame of mind. There has also been increasing realization that the anxieties mobilized in both patient and analyst during assessment can diminish the analyst's capacity to enlist and sustain a psychoanalytic stance. It is now widely recognized that an "emotional storm" (Reith et al, 2018) is inevitable in psychoanalytic consultation, creating a draw towards "unhelpful enactment" (Crick 2014). All stages of a potential patient's movement from first contact through to entering into an analysis are receiving careful intersubjective scrutiny. In 2012, a collection of papers appeared brought together by the *Working Party on Initiating Psychoanalysis* of the *European Psychoanalytic Federation* (Reith et al, 2012). This has been followed by a second collection in 2018 by some of the same researchers under the title of *Beginning Analysis* (Reith et al, 2018).

This concerted thinking on initiating psychoanalysis has not led to Dailey's original 2013 pessimism about informed consent. Contemporary ethical thinking in psychoanalysis casts the issue in terms of asymmetry (Chetrit-Vatine 2014; Wilson 2014) rather than in subjection to the unconscious. The analyst's ethical responsibility arises from the presumption - based on his or her personal analysis and training – that he or she is further de-alienated with respect to psychic pain than the patient. The analyst's tutelary duty of care and caring derives from this

(sometimes slight) advantage. In 2016, this journal published an entire section on the "Ethical implications of the analyst as person." Although all five articles (Kite 2016; Morris 2016: Wilson 2016; Kattlove 2016; Moss 2016) are helpful reading as background to the ethics of informed consent from a psychoanalytic perspective, we find particularly illuminating the approach taken by Kite. Her conclusion is just as paradoxical as Dailey's but does less damage, we would argue, to patient autonomy. Referring to what she describes as "the fundamental ethical ambiguity of the analyst as person," Kite contends that ethics for analysts "is not a 'thing' or a code. It is quite simply taking responsibility for our largely unconscious impacts on patients, and *theirs on us*" (p. 1161). We have to "remain alive to what we don't know in ourselves. . . *the [analyst's] ethical unknown*" (p. 1168, original emphases).

Ogden's republished observations in the first Reith et al book can illustrate an approach to informed consent avoiding the pitfalls of paternalism, suggestion, and the position of established expertise. Ogden's starting point is that there is no difference between the analytic process in the first meeting and the analytic process of any other analytic meeting. Everything the analyst does in the first face-to-face session is intended as an invitation to the patient to consider the meaning of his experience and the possibility of new significance. Ogden eschews referring to the first meeting as an "evaluation period" or "assessment phase", both because this would convey the idea that the patient is to be relatively passive in this enterprise and also because in Ogden's mind the "nature of the

interaction is not simply that of one person evaluating another or even of two people evaluating one another." Instead, it is "an interaction in which two people attempt to generate analytic significance, *including an understanding of the meanings of the decision-making process that is involved in the initial meetings"* (emphasis added, p. 229).

Ogden insists on the value of sustaining, not reducing, anxiety in the analytic setting: "Since maintaining psychological strain is not only something we demand of ourselves but is also part of what we ask of the patient, it makes no sense to begin the analytic relationship with an effort at dissipating psychological strain" (p. 231). The risks and benefits of treatment which are at stake are the unconscious explanations of the patient as to why she feels that analysis is a dangerous undertaking and why it is bound to fail. "Everything the analysand says (and does not say) in the first hours can be heard in the light of an unconscious warning to the analyst concerning the reasons why neither the analyst nor the patient should enter into this doomed and dangerous relationship" (p. 236). Borrowing and displacing a term used by Ella Freeman Sharpe (1943), Ogden calls these unconscious fantasies "cautionary tales". Rather than guiding the patient through a cognitively-informed consent process of potential advantages and disadvantages, Ogden illustrates the psychoanalytic way of *enlisting the patient's observing ego to address the patient's own unique anxieties in the transference as they are revealed by his speech and behaviour in the initial session*s. In this, the analytic frame of mind of the first interview is no different

than at any other moment in the analytic process. Ogden applies the same analytic method of listening and voicing unconscious anxiety and conflict with seriously disturbed patients as he does with persons in the neurotic register who have consulted him about analytic treatment.

Ogden's perspective dovetails with the upshot of the thesis of the present article: It is in articulating what can be gleaned of the particular patient's fears about treatment, rather than referring to "possible" upheavals (to qualify them as "risks" would imply that they should not be part of the process) noted in some other cases, that the analyst facilitates the patient's capacity to make an informed decision *for himself*. We can expect that the "reasonable" patient who consults an analyst wishes to learn more about the hidden obstacles within himself. Rather than founding the therapeutic alliance on cognitively apprehended potential risks, it is more consonant with the psychoanalytic setting to use initial interviews to test the patient's ability to utilize tactful observations regarding unconscious contradictions popping up in his pursuit of aid. Ogden's argument is consistent with a position often defended by André Green to the effect that:

> Let us recall that it is customary, in French psychoanalytic circles, to interpret as close as possible to the ego, sometimes making use of ellipsis or allusion, proceeding by limited touches, stimulating the associative work, counting on the participation of the patient, the main actor of the

> analysis who has "to do his analysis" rather than being analysed passively by his analyst (p 85).

So far, without minimizing the criticism about laxity in the approach to informed consent among analysts noted earlier by Saks and Golshan, there are cogent objections to the application, *at least literally*, of current medically derived professional models to the psychoanalytic situation. Most analysts, in fact, would agree that consent is not confined to the beginning of treatment, but - in the form of unconscious resistance and new après-coup transference motions – can be an ongoing or sporadic calling the treatment into question, which if tactfully handled re-vitalizes the treatment project. Resistance itself might be fruitfully reconsidered as a manifestation of the unconscious withdrawal of consent. Patrick O'Neill (1998), a psychodynamic therapist and researcher, made the notion of periodic renewal of consent the central theme of his book, *Negotiating Consent in Psychotherapy* (see review in Furlong 2003). It is a powerful idea, perhaps obvious in retrospect, which merits far more attention than it has received in the psychoanalytic literature so far (cf. Etchells et al, 1996). But it is simultaneously very much an old idea in so far as it is a perfect extension of psychoanalytic readiness to examine with equal scientific curiosity every twist and turn in the relationship. Nevertheless, timing is everything and the stakes can be high. In his work, Bleger also underlines analysing the setting "at the right moment" (*op.cit*., p. 237). What is especially interesting about Bleger's classic study is his ironical insight that the patient's very consent to the frame can serve to avoid a certain

reality and that the analyst's disruption of it (such as the holidays, cancellations, missed or incomplete sessions referred at the beginning of this essay) can introduce a "crack" (p. 235) which is catastrophic for the patient.

There is another inter-subjective kink to this issue which was hinted at earlier. What do we do about the fact that analysts can be imperfect in their ability to listen to the unconscious concerns of their patients and that it may be the latter who pay the price? Though Saks and Golshan deliberately exclude the risks entailed by the unavoidable "personal factor" of the analyst himself, Tillinghast (2015), in her independent review of their book cited earlier, mentions a number of ways in which this can be infelicitous. Tillinghast refers to Fairbairn's opinion (see p. 370) that « most people would rather feel like sinners in the hands of god than worry about being in the hands of a flawed, careless, or potentially harmful caretaker. » To make matters worse, and despite Freud's transmission of an analytic ideal of benevolent neutrality and his own personal claim that "an abuse of 'suggestion' has never occurred in my practice" (1937, p. 262), the phenomenon of unconscious suggestion is a well-documented and huge factor for better and for worst in many situations, analysis included (cf. research on the placebo or « meaning effect », on the role of suggestion in the formulation of survey questionnaires or marketing strategies, in recovered and implanted memories, in police interrogations, in guided imagery, etc.).

As a thought experiment, one can imagine a full disclosure mentioning all the problems potentially arising from the side of the analyst:

> Your analyst is human. Despite her credentials, she may fail you in a number of ways: out of incompetence (temporary, partial, episodic); out of a personal blind spot that was not treated in her personal analysis; out of unforeseen erotic or negative countertransference; out of carelessness, neglectfulness, or even exploitative behaviour; or because she has allowed herself to continue practicing despite being compromised by illness, personal problems in her private life, or old age. It is equally likely that another analyst might disagree with the interpretations your analyst has been giving you or dispute her overall formulation of the main axes of your personal dynamic or yet again introduce a theoretical backdrop from another psychoanalytic school which could substantially reframe the analyst's way of working with you. It is the opinion of many in the field that an objectively correct treatment is an illusion. Each analysis is a product of a unique inter-personal field formed by you and your analyst which can only aim at establishing an open-ended, life-long, engagement with and reassessment of one's life rather than at reaching symptom-free happiness.

All of these caveats are potentially true and yet it is hard to conceive how an avowal of this kind would protect the patient against the derailment of unethical, incompetent, or merely run-of-the-mill patchy analysis.

Similar doubts can be asserted about other aspects of modern professional standards which aim to enlighten the patient about the kind of therapy being offered, such as advertised areas of expertise referred to earlier, as well as the expectation of written contracts and the emission of explicit caveats about the "limits" of confidentiality before beginning treatment. These gestures activate the same clinical-philosophical disquiet about impact on the analyst's open-ended benevolent neutrality. The analyst is drawn into "explaining" as the "subject who really knows" risks and alternatives that he or she has presented to the patient for consideration. The analyst is sending enigmatic messages that – like the sorcerer's apprentice – he assumes he can "manage." Tillinghast ends up wondering: « It may be that the law is not an adequate tool for addressing this problem » (p. 373). The position of this article is more affirmative. It is improbable that the risks in analysis can be alleviated by the informed consent guidelines so far developed by legal scholars and professional regulatory bodies. Moreover, one could declare that some psychoanalysts have accepted too readily the legal "reasonable patient" way of looking at the matter.

Clinical vignette

Moments of doubt about the work -- if tolerated and worked though -- do not always have to be as dramatic as the crisis shared here. However, this example illustrates vividly how for the patient the person of the analyst is part and parcel of the framework and methodology of psychoanalysis. We have not enlarged

upon, in this article, this facet of consent though it is probably safe to say that patients do not generally speaking consent to psychoanalysis as a category**; rather they undertake and assent (sometimes sooner, sometimes later) to an analysis with a particular analyst.** The man in the vignette was psychologically sophisticated. He was aware of how features of his relationship to his mother continued to be replayed in his ties to women. He had, nevertheless, to a significant extent hitherto avoided facing the extent of the Medusa phantasy by choosing male analysts and by not realizing, really realizing, the degree to which he carried this figure ready-made within him.

Conclusion

Dialogue between evolving case law and legal theory and psychoanalytic practice and theory is inevitable and mutually enriching, but attempts to bind them together, or – as was more common in the past – to impose the law on top of psychoanalytic ethics, should be avoided. The law cannot prescribe "best practice" though it can integrate - or at least dialogue with - contemporary scientific (psychoanalysis is considered here as a scientific study of the unconscious) consensus. Psychoanalysis has its own tripartite professional response to ethical concerns about patient autonomy in the form of 1) the protection offered by high professional standards of clinical training, 2) the recommended lifelong immersion of analysts in the triangulating experience of inter-analytic space (Donnet 2001), and 3) continued psychoanalytic research on

the matter. Intellectual information does not reach or obviate the real clinical pitfalls. Aspirations to develop general uniform guidelines of informed consent in psychoanalysis are counter-analytic insofar as they lead patients (and analysts) to believe that there are common hurdles and expectable solutions to fundamentally unique and unpredictable intersubjective personal histories and experience. It is the psychic work the analyst guides the patient to undertake (and the analyst will have their own labour to achieve this) which increases his or her ability to a good enough assenting or dissenting. Initial, unconsciously apprehensive, consenting will be inevitably subject to ordeals of doubt and resistance which provide opportunities for growth that can widen and deepen the assenting to the process.

The attempt to reconcile the legal-regulatory and psychoanalytic points of view on informed consent is a worthy one in as much as – and this is the crux of the matter – it encourages analysts to put into words, or to illustrate by their manner of listening and responding, the paradoxical nature of their work. The discussion of risks and benefits can indeed take place, though not in the straightforward, transparent manner envisaged by legal scholars. This discussion takes the form of an exploration where it is assumed that fantasies can be real or imagined or both: where it is possible that the patient might break down or that the therapist might transgress and – at the same time – it might be an unconscious projection on the part of one or the other of the dyad. It is this paradox that we do not want to quickly reduce in order that the patient can continue to freely associate to her uncertainties and eventually make her own judgments. The treasure-hunting

ground permitted *within* the psychoanalytic framework allows the suspension of the need to decide so that all unconscious derivatives may see the light of the ego's scrutiny and play. Is there not here a necessary paradox: the patient must have the right to refuse the analytic setup at the same time as she or he accepts it? It is at least partially in this manner that patients can come to making their analyses uniquely and subjectively theirs. Psychoanalysis' answer to the "autonomous subject" is what Donnet has called its "methodic unreason" (2001, p. 82)[11].

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