

Constitutional Process

It has been an exciting read to absorb together the range of papers and contributions in *Self and Society* Vol28.1, on the Registration debate, and on the role of processes which enable legitimate quasi-legal challenge to practitioners' practice and interventions, etc. The link between these is purportedly 'protection of the public'. It is most encouraging to find this kind of concerted intensity of engagement with the debate.

The Independent Practitioners' Network (IPN, hereafter) and its members have been at the forefront of the stimulation of this debate. Although aspects of the IPN's debating style are as exasperating as are some of the replies to them (!), they have undoubtedly stimulated debate. I have heard Michael Pokorny - no less - say that the GMC 'college' model of individual registration has provenly failed, and that we should try the federal organisational model (UKCP). This is of course partly taking a leaf out of Mowbray's book (Mowbray, 1995). The IPN's freedom from hierarchical models of authority has enabled it to do some kinds of thinking, which are difficult for the rest of us to do because of our hierarchies. It has always been a matter of regret to me that IPN, or something like it, did not gain a foothold within UKCP, since the anarchist-cooperative model of organisation it represents is an essential part of the dialogue on how to organise psychotherapy. It really ought to be preserved, at least as an 'endangered species'. But of course many IPN members would say their form of organisation is *essentially incompatible* with that represented by UKCP. And there's the rub!

As I read these papers, particularly Nick Totton's and David Kalisch's, both of which have relation to Postle's Gold into Lead paper on registration (Postle, 1998) - and taking account of the rank mutual incomprehension which seems to bedevil this debate - an essential connection suddenly came to me. It is one which also perhaps begins to make sense of the mutual incomprehension, - and indeed often the mutual contempt, - in this debate.

I realised that Nick Totton's paper on conflict and complaint (Totton, 2000) is a paradigm of both the best and the worst of the IPN position. He says at the beginning that 'what follows is a personal and *unauthorised* (my italics, HW) account'. But the problem is that it *could not* be authorised; there is no model of collective authorisation within IPN as it stands. Totton's model of conflict resolution is an excellent model where there is fundamental agreement upon a shared process; it corresponds to what many of us used to call the 'grievance' level of dispute. (Incidentally, from UKCP's point of view, which has decided to define 'Grievance' in the Trade Union sense, not that of 'lesser non-quasi-legal issue', the phrase 'conflict resolution dispute', which I derive from Nick Totton's paper, might well replace it.)

But at present within the IPN framework there is no provision for the exercise of power based upon constitutional authority where judgement *does* have to be

made on the basis of an 'trial model' (Totton, op cit p9). Of course, as France illustrates, a 'trial model' does not have to be 'adversarial' on the English legal or parliamentary model. But it does involve judgment, authority, and the inherently though partially *one-sided* exercise of power. This is the 'tier' of reasoning that Nick Totton's model omits. For the moment an IPN group expels someone and is supported by its two link groupings it will be exercising such a function - and if it does it will need also to develop intermediate sanctions too. Then it will be in the same ball park as the rest of us.

Now, as the industrial co-operative organisations of Mondragon in Spain and Semco in Brazil illustrate (c.f., *Maverick* by Riccardo Semmler,), there is no inherent reason why an anarcho-cooperative mode of organisation should not embody and express its power in some form of democratic authority. When it does it is the most powerful form of organisation there is. This is the nettle IPN has yet to grasp - and it is a mark of naivety about power and constitutionality. Fundamentally, it is the avoidance of the necessity of constitutionally grounded representative institutions.

In the context of the Alderdice Bill, if Mowbray (op cit) is right - and he may well be, though I think we are all learning here and can all become more effective in this respect - the jury is definitely still out, on whether bad ethical practice is better protected within a framework which is unregulated, or whether a regulated framework would do it better, or whether it makes no difference. But it has not been considered that what may also be needed for a Profession to exist as such is simply the public existence of a quasi-legal (underpinned by the law) framework of redress - in other words the legally underpinned *possibility* of redress.

For instance, in medicine, the Bristol and Shipman cases do indeed support Mowbray's case in one way, but they *also* bring into view that there is an institutional framework for redress and change within the law. I am not personally inspired with confidence by David Kalisch's reference (Kalisch, 2000, pp57-58) to the operation of market forces within the building trade, as an illustration of the merits of 'fully legal redress or else nothing'! Again, the 'maternal' aspects (c.f., Kalisch, op cit p57) of nursing, for instance, are not denied or diminished by its being a State Registered Profession, and, though imperfect, it has come a very long way since Dickens and Florence Nightingale on the basis of its Registration. At these levels of argument the IPN and its allies argue with as much frivolity, or naivety, as anything their opponents can do.

This is sad because, as I say, they are essential to the debate. But currently this bears all the marks of stubborn institutional polarisation - on *both* sides (c.f., Pokorny, 1998). Why, then, will the IPN not face the problem of power and authority in psychotherapy, so that their voice can be heard at the level of deed not just word, and not marginalised? Then those of us who speak for their value and importance within UKCP would have a better chance of being heard.

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