DISSOCIATION AND CRIMINAL RESPONSIBILITY: A DEVELOPMENTAL PERSPECTIVE

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Dissociation is "a disruption in the usually integrated functions of consciousness, memory, identity, or perception of the environment."[1] The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV) describes five dissociative disorders: 1) Dissociative Amnesia, 2) Dissociative Fugue, 3) Dissociative Identity Disorder, 4) Depersonalization Disorder, and 5) Dissociative Disorder Not Otherwise Specified.[2] Each of these psychiatric disorders describes the complex non-integration of a psychological function or functions. For example, Dissociative Identity Disorder (previously called "Multiple Personality Disorder" or "MPD") is a psychiatric disorder in which there is a failure of integration of basic notions of identity. Epidemiological studies have estimated that approximately 5–10% of the general population have a high degree of dissociation.[3] Studies of psychiatric inpatients have found that 5–24% have a dissociative disorder and 0.4–12 % have Dissociative Identity Disorder.[4]

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[1] AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 477 (4th ed. 1994).

[2] *Id.*

[3] Roger T. Mulder, Annette L. Beautrais, Peter R. Joyce, & David M. Fergusson, *Relationship Between Dissociation, Childhood Sexual Abuse, Childhood Physical Abuse and Mental Illness in a General Population Sample*, 155 AM. J. PSYCHIATRY 806, 808 (1998); Colin A. Ros, Shaun Joshi, & Raymond Currie, *Dissociative Experiences in the General Population*, 147 AM. J. PSYCHIATRY 1547, 1552 (1990).

[4] *See* Jiri Modestin, Gerhard Ebner, Marianne Junghan, & Thomas Erni, *Dissociative Experiences and Dissociative Disorders in Acute Psychiatric Inpatients*, 37 COMPREHENSIVE PSYCHIATRY 355, 358 (1996). *See also* Tracy T. Latz, Stephen I. Kramer, & Doreen L. Hughes, *Multiple Personality Disorder Among Female Inpatients in a State Hospital*, 152 AM. J. PSYCHIATRY 1343, 1347 (1995) (approximately twelve percent of female inpatients in a state hospital setting had multiple personality disorder); Colin A. Ross, Geri Anderson, William P. Fleisher, & G. Ron Norton, *The Frequency of Multiple Personality Disorder Among Psychiatric Inpatients*, 148 AM. J. PSYCHIATRY 1717, 1719 (1991); Arthur Rifkin, Dione Ghisalbert, Sonia Dimatou, Charles Jin, Mohammed Sethi, *Dissociative Identity Disorder in Psychiatric Inpatients*, 155 AM J. PSYCHIATRY 844, 845 (1998) (one percent of inpatients were found to have Dissociative Identity Disorder); Glenn N. Saxe, Bessel A. van der Kolk, Robert Berkowitz, Gary Chinman, Kathryn Hall, Gabriele Lieberg, & Jane Schwartz, *Dissociative Disorders in Psychiatric Inpatients*, 150 AM. J. PSYCHIATRY 1037, 1041 (1993) (fifteen percent of the psychiatric inpatients met the criteria for a dissociative disorder and at least four percent met the criteria for multiple personality disorder); Hamdi Tutkun, Vedat Sar, L. Ilhan Yargic, Tuba Ozpulat, Medaim Yanik, & Emre Kiziltan, *Frequency of Dissociative Disorders Among Psychiatric Inpatients in a Turkish University Clinic*, 155 AM. J. PSYCHIATRY 800, 803 (1998) (the conservative estimate of the frequency

Most studies identify a high prevalence of child abuse, particularly childhood sexual abuse, in the histories of individuals with a dissociative disorder.[5] Theories about the nature of dissociation, accordingly, concern a developmental etiology.[6]

Occasionally, individuals commit crimes in dissociative states. Individuals may report amnesia for the crime or report that the crime was committed by an "alter personality" state. The court system is just beginning to grapple with these phenomena. What is a dissociative state? How does the answer to this question bear on the question of criminal responsibility? This article attempts to clarify this medical-legal quagmire and reviews the phenomenon of dissociation from a developmental perspective. It is proposed that a well-grounded perspective of criminal responsibility must arise from such a developmentally informed understanding.

I. THE DISCRETE BEHAVIORAL STATE MODEL OF DISSOCIATION

Frank Putnam developed a Discrete Behavioral State model of dissociation at the National Institute of Mental Health[7] based on the work of Peter Wolff at Children's Hospital in Boston.[8] This model is probably the predominant developmental theory of dissociation and is applicable to many other categories of psychopathology. Details of this theory and its empirical foundation are beyond the scope of this article, but have been extensively reviewed elsewhere.[9] The following is a brief review of these ideas in order to build a theory of criminal responsibility and dissociation.

Putnam describes the core phenomenon of pathological dissociation "as arising from a traumatic disruption in the early developmental acquisition of control and integration of basic behavioral states . . . ."[10] Behavioral states are described as an essential component of consciousness and, although difficult to define, involve "a specific and unique configuration of

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of new cases of dissociative disorders among psychiatric inpatients is 10.2 percent with fifty-four percent having dissociative identity disorder).

[5] Saxe, *supra* note 3, at 1039; Tutkun, *supra* note 3, at 802–03.

[6] *See* FRANK W. PUTNAM, DISSOCIATION IN CHILDREN AND ADOLESCENTS: A DEVELOPMENTAL PERSPECTIVE 211–14 (1997); Richard P. Kluft, *The Natural History of Multiple Personality Disorder*, *in* CHILDHOOD ANTECEDENTS OF MULTIPLE PERSONALITY 197–238 (Richard P. Kluft ed., 1985).

[7] *See* Frank W. Putnam, *Dissociative Disorders in Children and Adolescents: A Developmental Perspective*, 14 PSYCHIATRIC CLINICS OF N. AM. 519, 519–31 (1991). *See also* PUTNAM, *supra* note 6, at 152.

[8] PETER H. WOLF, THE DEVELOPMENT OF BEHAVIORAL STATES AND THE EXPRESSION OF EMOTIONS IN EARLY INFANCY: NEW PROPOSALS FOR INVESTIGATION 19–98 (1987).

[9] *See* Putnam, *supra* note 7, at 524–25; PUTNAM, *supra* note 6, at 152.

[10] PUTNAM, *supra* note 6, at 152.

a set of psychological, physiological, and behavioral variables."[11] Behavioral states are ubiquitous and referred to by many terms including "states of consciousness," "emotional states," and "mental states."[12] This construct refers to unique and discrete patterns of thinking, feeling, and acting that regularly fluctuate in all individuals. Normal individuals regularly experience a wide variety of complex emotions with characteristic psychological, physiological, and behavioral markers. Individuals with dissociative disorders experience behavioral states that are distinguished by a number of variables including their: 1) intensity, 2) lack of modulation, and 3) lack of generalization of information and sense of self. In the case of Dissociative Identity Disorder, behavioral states are organized around differences in a sense of self which, for a variety of reasons, cannot be maintained between states.

The regulation of behavioral states is an essential developmental task. Peter Wolff's elegant research and theories suggest that infants are born with unique, distinct, and regularly fluctuating behavioral states which are defined by such variables as respiratory rate, extremity motor tone, activity level, vocalization, and facial expression.[13] He describes five basic behavioral states that can be defined by the unique configuration of the aforementioned variables. These five behavioral states are: State I (regular, quiet, synchronous, or non-REM sleep), State II (irregular REM sleep), State III (alert inactivity), State IV (waking activity) and State V (crying).[14] Infants regularly fluctuate through these five behavioral states which are the basic building blocks of emotion and consciousness.[15] Transitions between states (called "switches") are regular, predictable, and in response to stimuli in the infant's external or internal environment.[16] As infants grow, states become more complex, and have more cognitive overlay. States become more elaborate and new states develop in order to respond to the increasing environmental demands placed on the developing child.[17] As Putnam says,

> The creation of new discrete states, together with the evolution and elaboration of existing states, contributes to the increasingly complex behavioral repertoire of the growing child. The development of new pathways between existing states, and the incorporation of new and existing states into branching behavioral loops, contributes to the growing richness and flexibility of the child's overall behavior.[18]

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[11] *Id.*
[12] *Id.*
[13] *Id.* at 154.
[14] *Id.* at 154–55.
[15] *Id.* at 151, 154–55.
[16] *Id.* at 157–58.
[17] *Id.* at 159–60.
[18] *Id.* at 160.

A critical developmental task is to attain control over the switches between behavioral states so that a more desired state is maintained for longer periods of time and across different contexts.[19] The parenting of infants is largely devoted to this type of state modulation. Crying states (State V), for example, represent periods of distress for the infant. Parents respond with distracting or soothing stimulation in order to lead to a transition to an alert inactive state (State III). Over time, this type of regulation is increasingly assumed by the child in order to modulate his or her own affect. Another critical developmental task is to generalize information learned in one state to others. Young children have great difficulty transferring information learned in one state to other states.[20] This capacity to generalize knowledge across contexts and emotional states is important for the development of a sense of self. The sense of self is, to some degree, state dependent. That is to say, the way in which individuals feel about themselves is related to their current mood. Disruptions in the generalization of information and sense of self across states and contexts may be the critical developmental problem in those with Dissociative Identity Disorder. As Putnam describes,

> In normal individuals, mood state has a lesser but still noticeable impact on how an individual perceives and represents himself or herself. . . . However, in a normal individual, specific state-dependent senses of self are sufficiently integrated with one another that the individual maintains a sense of continuity of self across state and context. This is one of the critical differences between the contextual "selves" of normal individuals and the dissociated "selves" of MPD patients.[21]

Traumatic events in childhood, particularly chronic child abuse, may have a great impact on the regulation of behavioral states. There are many ways in which childhood trauma creates state regulation difficulties. The primary way that this occurs is probably a result of the intense emotions that are a well-known component of the trauma response. Trauma creates states of intense fear, shame, helplessness, and anger. These states may be followed by "[i]nternally focussed, reality-altering states of deep fantasy" as children attempt to reconstitute themselves in the aftermath of trauma.[22] The creation of these intense post-traumatic states can wreck havoc on many areas of child development. The chronic experience of widely diverging emotional states during periods in which the child is learning to integrate knowledge and sense of self significantly affects these capacities. The chronic experience of these emotions, particularly when they are

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[19] WOLF, *supra* note 8, at 19–20.
[20] Gopnik & V. Slaughter, *Young Children's Understanding of Changes in Their Mental States*, 62 CHILD DEV. 98 (1991).
[21] *See* PUTNAM, *supra* note 6 at 164.
[22] *Id.* at 169.

provoked by caregivers, influences basic capacities of affect regulation and attachment.

Trauma-related behavioral states and the consequent difficulties with affect regulation, attachments, and sense of self are found in a number of categories of psychopathology, particularly the severe personality disorders. The distinctive feature about pathological dissociation is the relative deficit of transfer of memory and sense of self between states. Dissociative Identity Disorder in particular involves the consolidation of senses of identity around discrete behavioral states: "alter personalities seen in MPD reflect the creation of a set of complex, enduring, identity-based, discrete dissociative states that evolve during childhood and adolescence. . . . They are hypothesized to begin as trauma-induced states of consciousness. Over time, they become increasingly differentiated . . . ."[23]

II. THE DISCRETE BEHAVIORAL STATE MODEL AND CRIMINAL RESPONSIBILITY

According to the Discrete Behavioral State Model, the alter personalities of Dissociative Identity Disorder are representations of a developmental problem involving the failure of integration of a sense of self and personal information across discrete emotional states. The identities of the alters are not much more than address labels for specific, intense emotions and state-dependent autobiographical memory. This idea about the nature of an alter personality state is critical for building a theory about criminal responsibility. The way that alter personalities (or any dissociative states) are regarded psychologically determines how acts committed in this state should be regarded legally. The following critically reviews a prominent theory of criminal responsibility proposed by Elyn Saks (in this volume and elsewhere) and then builds a theory of criminal responsibility based on the Discrete Behavioral States model of dissociation.

Saks has outlined ideas about criminal responsibility in individuals with Dissociative Identity Disorder and proposes that there is something intrinsic to the psychopathology of Dissociative Identity Disorder which precludes responsibility for criminal acts in almost all cases.[24] As will be discussed below, these ideas represent a number of misunderstandings about the developmental nature of this disorder.

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[23] *Id.* at 175.

[24] *See generally*, ELYN R. SAKS & S.H. BEHNKE, JEKYLL ON TRIAL: MULTIPLE PERSONALITY DISORDER AND CRIMINAL LAW (1997).

She applies Dennett's criterion of personhood (intentionality, rationality, language, etc.) to the alter personality states in the service of demonstrating that "innocent" alters cannot justifiably be punished for the behavior of "guilty" alters, if alters are "personlike."[25] She outlines, "Our position is that while an alter could be both sane and guilty, it is impossible to punish that alter without punishing innocent alters as well. Because it is wrong to punish innocent alters, whether they be persons or personlike, multiples should be considered nonresponsible for their criminal acts."[26] According to a Discrete Behavioral States model, an alter personality is clearly not a person. Further, the understanding of an alter personality as the personified "phenotype" of a discrete behavioral state reveals the futility of applying Dennett's criterion to an alter personality state.[27] Alter personality states, of course, fulfill Dennett's criterion. They fulfill this criterion because they are part of a person, not because they are a separate person—much as anyone would fulfill this criterion if it were applied during a specific emotional state.

Saks also outlines the notion that individuals with Dissociative Identity Disorder should not be held responsible for criminal acts even if alters are not "personlike" but are, instead, "nonpersonlike parts of one deeply divided person."[28] Superficially, this notion is consistent with a Discrete Behavioral States model. However, Saks' ideas about what it means to be a "deeply divided person" are in sharp contrast to this model.[29] She believes that the behavior of an individual with Dissociative Identity Disorder is necessarily "involuntary" as "when a multiple acts there are entire centers of consciousness that do not participate—are not even aware that 'she' is acting."[30] Thus, according to Saks, the law should hold "nonresponsible someone who has aspects of herself that are unaware of her actions and do not know why she is behaving in a particular manner . . . ."[31] In other words, those with Dissociative Identity Disorder should not be held responsible for their actions as there is no unity of decisionmaking. If an alter was not involved in the decision to commit a crime then it is unfair to hold that alter responsible for it. Further, as there is no unity of decisionmaking in those with Dissociative Identity Disorder, there is too much involuntariness in the action to be considered responsible**.** One of the few circumstances in which Saks believes an individual with Dissociative Identity Disorder may be

[25] *Id.*
[26] *Id.* at 90–91.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.* at 92.
[31] *Id.* at 93.

responsible for a criminal act is when all alters are in agreement about the decision to commit the act.

She proposes that involuntariness, and therefore nonresponsibility for criminal acts, is related to a lack of executive control in those with Dissociative Identity Disorder: "[T]here is no executive to act—just a series of split-off centers of consciousness, each performing its own acts, based on its own wishes and beliefs, divorced from the concerns and issues of the others. . . . [T]here is no overarching executive. The reason an executive is important is so that a true choice can be made based on the person's competing wishes and beliefs."[32]

Executive control is a complex neuropsychological construct. In the case of individuals with Dissociative Identity Disorder, executive control is related to many factors, but would be significantly influenced by the degree to which the individual can maintain a given state in the face of stressful stimuli and the degree to which information is transferred between states. As outlined above, such capacities are core problems of those with Dissociative Identity Disorder, yet these individuals vary in the degree to which these capacities are developed. Further, in most individuals, decisions made in states of emotion (like the decision to commit a crime) are often made without access to information that is more readily available when one is calmer. People often are unaware of all the forces that bear on their behavior.

The above discussion of Dr. Saks' theory was largely in the service of demonstrating that there is nothing intrinsic to the psychopathology of Dissociative Identity Disorder that precludes responsibility for criminal acts. Criminal responsibility, with regard to Dissociative Identity Disorder, as in all other categories of mental illness, is more closely related to the context of the crime than to the type of psychopathology.

Violent crimes are usually committed during intense emotional states. Many violent criminals have difficulties with affect regulation, attachments, and sense of self. Although the person who has committed violence may not have a dissociative disorder, their violent emotions and consequent behaviors are frequently followed by periods of intense remorse when the individual is calmer. One's cognitions about oneself, one's victim, and one's actions are often very different upon exiting that emotional state. Many violent criminals have histories of regularly entering states of rage. According to the Discrete Behavioral State model, such individuals may have developmental deficits related to such variables as affect regulation and attachments. The essential difference between such individuals and those with Dissociative Identity Disorder who regularly enter enraged states

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[32] *Id.* at 95.

concerns the consolidation of a sense of identity around these enraged states and the diminished capacity to transfer information between states. Such a distinction does not bear on the notion of criminal responsibility. Standard notions of criminal responsibility such as those developed in Massachusetts, apply.[33] The "McHoul Test" states that an individual is not responsible for a crime if *at the time of the crime* he or she had a mental illness and did not have the capacity to appreciate the wrongfulness, or the capacity to control, his or her behavior. This test is as relevant for an individual with Dissociative Identity Disorder as it is for any individual who commits a crime in a state of high emotion. The essential question for criminal nonresponsibility is as follows: Did the individual, during this emotional state, suffer from a mental illness, appreciate the consequences of his or her behavior, and have the capacity to control his or her behavior? Regarding criminal responsibility, there does not appear to be a fundamental difference between an individual who commits a crime in an enraged "alter personality state" and an individual who commits such a crime in an enraged state associated with such psychopathology as mania or borderline personality disorder. Although individuals with Dissociative Identity Disorder certainly suffer from a mental illness, the degree to which such an individual appreciates the consequences, or is able to control his or her behavior *at the time of the crime*, are the essential variables to be assessed.

III. CRIMINAL RESPONSIBILITY AND THE CASE OF JOHN WOODS

The case of John Woods, outlined earlier in this volume, is useful to consider regarding this discussion of criminal responsibility. As described by Dr. Armstrong, John Woods murdered his girlfriend Sally and her roommate Polly, after he and Sally had a dispute. This argument concerned Sally's apparent infidelity. John noticed a "suspicious footprint in Sally's carpet" and accused her of "seeing another man." She replied that "she would sleep with whomever she wanted and that he would have to accept it because she didn't care how he felt."[34] The affects precipitated by this interchange produced a dissociative state. John experienced himself as "Ron," a protective alter personality state. Ron perceived that Sally killed John "by the things she said to him."[35] Ron expressed motivation to "loose the evilness from her and stop the words from coming out."[36] Ron believed that if Sally continued to talk she would have killed him as well as John. In

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[33] Commonwealth v. McHoul, 352 Mass. 544 (1967).

[34] Judith G. Armstrong, *The Case of Mir. Woods Psychological Contributions to the Legal Process in Defendants with Multiple Personality/Dissociative Identity Disorder*, 10 S. CAL. INTERDISC. L.J. 205, 213 (2001).

[35] *Id.*

[36] *Id.*

order to stop her from talking, he "stuffed [her] underpants into her mouth, since that is where the evil was coming from"[37] and shook her until she died.

This case can be formulated using a Discrete Behavioral States model. John Woods and his girlfriend Sally had an intense argument about her apparent affair with another man. She said things to him that produced powerful affective shifts, probably beginning with shame. Such an affect was perceived as life threatening (a sort of "mortification") and was followed by self-protective, paranoid affects personified by Ron. These affects are likely very familiar to John Woods and produce dramatic shifts in state, organized around different senses of identity.

Regarding notions of criminal responsibility, what appears most important is that, as John experienced himself as Ron, he perceived that his life was in immediate danger. It is likely that reality testing was impaired during this state, and he was both unable to appreciate the full consequences of his behavior and to control his behavior. Although it is difficult to assess criminal responsibility based on a case vignette, John Woods is probably not criminally responsible for this murder for these reasons, and not primarily because he has Dissociative Identity Disorder.

IV. SUMMARY

A Discrete Behavioral States model is useful to describe the psychopathology of individuals with Dissociative Disorders. This developmental model suggests that the features of a Dissociative Disorder are related to the development of discrete behavioral states caused by trauma in childhood and the consequent failure to integrate autobiographical memory or a sense of self between these states.

A Discrete Behavioral States model is applicable to many areas of psychopathology that involve fluctuations in affect (e.g., borderline personality disorder, post-traumatic stress disorder, bipolar disorder). Although individuals with these categories of psychopathology may not have the degree of difficulty with integration of autobiographical memory and sense of self as those with Dissociative Identity Disorder, discrete behavioral states are an essential component of normal emotional development, and thus, are related to many affect-related psychopathological conditions.

As violent crimes are usually committed during situations of high affect, and violent criminals often have affect-regulation problems, a

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[37] *Id.*

Discrete Behavioral States model can be used to understand many situations of violent crime and criminal responsibility.

There is nothing intrinsic to the psychopathology of Dissociative Disorders that diminish criminal responsibility. Decisions about criminal responsibility with regard to those with Dissociative Disorders are made based on estimations of the mental state of the individual at the time of the crime. These decisions are specifically based on the degree to which the individual could appreciate the consequences of his or her behavior or control his or her behavior at the time of the crime.