

# AM I MY ALTER'S KEEPER? MULTIPLE PERSONALITY DISORDER AND RESPONSIBILITY

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## I. INTRODUCTION

Judith Armstrong's case discussion of John Woods provides the clinical example through which I will develop my remarks in this paper. Armstrong describes a criminal trial in which the defendant, John Woods, had been diagnosed as suffering from multiple personality disorder.<sup>1</sup> The case is complex and requires close reading. For my purposes, however, a brief summary will suffice. John Woods, described by Armstrong as the host personality, kills Sally and Polly, but comprises a collective, including John, Donnie, and Ron, rather than an individual. Who is guilty of the crime? Who was responsible? Whom should we punish? All, some, or none of this collective?

These curious questions arise when "multiples," those suffering multiple personality disorder ("MPD"), such as John Woods, stand trial. My own tentative answers to these questions have been developed more thoroughly elsewhere.<sup>2</sup> This Article will focus on the complexities arising out of recent work on MPD and responsibility by Judith Armstrong and Elyn Saks.<sup>3</sup> There are four such complexities. The first is the problem of additional pathology which I discuss in relation to the case of John Woods. The second is the legal proscription against punishing the innocent as applied to "innocent bystander" alters, an issue central to Saks' argument. The third is the relationship of MPD to the traditional insanity defense by which it is so poorly served, another theme in Saks' writing. Finally, I briefly remark on the several ways in which knowledge, foresight, and the

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<sup>1</sup> Judith Armstrong, *The Case of Mr. Woods*, 10 S. CAL. INTERDISC. L.J. 205, 207-16 (2001).

<sup>2</sup> JENNIFER RADDEN, *DIVIDED MINDS AND SUCCESSIVE SELVES: ETHICAL ISSUES IN DISORDERS OF IDENTITY AND PERSONALITY* (1996); Jennifer Radden, *Personal Identity: History and Concepts*, 8 CURRENT OPINION IN PSYCHIATRY 343 (1995).

<sup>3</sup> Armstrong, *supra* note 1; ELYN R. SAKS WITH STEPHEN H. BEHNKE, *JEKYLL ON TRIAL: MULTIPLE PERSONALITY DISORDER AND CRIMINAL LAW* (1997); Elyn R. Saks, *Multiple Personality Disorder and Criminal Responsibility*, 10 S. CAL. INTERDISC. L.J. 185 (2001).

power of prevention might help to determine responsibility in defendants with MPD.

## II. THE PROBLEM OF ADDITIONAL PATHOLOGY

The case of John Woods is intriguing, but there is a feature of the case that makes it difficult to interpret when seeking answers to the legal and philosophical questions of responsibility raised by MPD. Beyond the symptoms of his MPD, John Woods' case exhibits evidence of additional mental disorder. Unrelated to his dissociative symptoms, this man suffered psychotic delusions so bizarre as to suggest, Armstrong notes, that the collective suffers not only from MPD but from a classic *Folie à Deux* or "shared delusional disorder."<sup>4</sup> In this disorder, a delusion develops in a second person as the result of that person's close relationship with another person suffering that particular delusion.<sup>5</sup> In Woods' case, Armstrong points out, because John and Donnie admire and believe in Ron, they share his implausible and delusional beliefs about his victim Sally. Therefore, while it may look to the world as though Sally has died, to them, she has only become lost on her way home.<sup>6</sup>

The problem of additional pathology masks the central questions about multiples and the criminal law: Who is guilty of the crime? Who was responsible? Who should be punished? The apparent "host" alter John was cognizant of and apparently acted voluntarily in committing the crime. His delusions, however, left his grasp on reality so fragile that it is doubtful that he could be said to have known the nature of his deed. Even using standard definitions of criminal insanity, with their emphasis on the defects of belief, perception, and imagination associated with cognitive functioning, John would probably have failed the "sanity" test. If the composite John Woods could not be considered criminally responsible for what he did by such criteria, then we do not have the opportunity to ask one of the distinctive questions about this disorder: What about the criminal responsibility of the innocent and powerless "bystander" alters Donnie and Ron?

The additional pathology masks the central issue. If the presence of other symptoms or diagnoses, such as the delusions in this case, provide grounds for excuse, then the question of whether the dissociative symptoms of MPD are alone sufficient to excuse does not arise.

It is not merely that when courts consider these mixed diagnosis cases, the central questions are occluded and therefore not asked. Insanity defense cases require jurors to make certain moral and emotional judgments. In the

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<sup>4</sup> Armstrong, *supra* note 1, at 219.

<sup>5</sup> AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 305 (4th ed. 1994) [hereinafter DSM-IV].

<sup>6</sup> Armstrong, *supra* note 1, at 214.

presence of additional pathology that is severe enough to exculpate in its own right, the jurors' intuitive moral attitudes, which usually accept more severe and common mental disorders as excusing conditions, are likely to enter into and determine the outcome.

Additional pathology has functioned this way in legal cases involving MPD, including the well-known case of Billie Milligan.<sup>7</sup> As well as suffering from MPD, Milligan suffered from depression and a number of other conditions that robbed him of ordinary capabilities related to reality testing and basic functioning.<sup>8</sup> The court determined nonresponsibility on the basis of a kind of moral sympathy for the defendant's severe incapacitation. The confusion between Milligan's other incapacitating symptoms and the problems stemming from his dissociative disorder (MPD) is apparent from the following passage where the court found: "The respondent is a mentally ill person in that his condition represents a substantial disorder of thought, mood, perception, orientation and memory that grossly impairs his judgment, behavior and capacity to recognize reality. . . . [The] respondent's mental illness is a condition diagnosed as multiple personality."<sup>9</sup> Since Milligan's "condition" was mental illness *tout court*, it remains unclear from this passage how much the defects listed were attributable to his MPD and how much to, for instance, his depression.

This problem of additional pathology invites reflection on the nature of our inquiry. In trying to sort out the complex legal and moral questions which are distinctive to MPD, should we rely on the muddied real cases which have found their way into the courts or therapist's offices? Or should we construct hypothetical "textbook" cases? Certainly we cannot afford to lose sight of the particulars which make real cases difficult to interpret. Perhaps while we determine our legal and moral course in these puzzling cases, more philosophical theorizing is needed. Perhaps rather than John Woods, we need a hypothetical Joe Multiple—or Dr Jekyll—whose *only* pathology is his multiplicity?

A related question now arises: Is additional pathology the exception or the rule? Are there any real world cases of this kind of unadulterated MPD? Or is the "textbook" Joe Multiple found only in textbooks? If MPD rarely or never occurs without other significant pathology, then perhaps the unique set of questions we want to ask about MPD and criminal responsibility are interesting theoretically, but of no practical or legal significance. Perhaps questions like those asked above (e.g., who is guilty

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<sup>7</sup> William Stanley Milligan was accused of raping and robbing two women in 1977. He was the first person in the United States to be found not guilty of major crimes, by reason of insanity, because he possessed multiple personalities. DANIEL KEYES, *THE MINDS OF BILLY MILLIGAN* (1981) (relating the life of William Stanley Milligan).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 364.

of the crime—all, some, or none of the collective comprising John, Donnie, and Ron?) begin and end in the armchair and the textbook.

We seem to require empirical facts at this juncture. Only when we have ascertained the actual frequency of cases of MPD without additional pathology will we know the real world significance of our theoretical speculations. Is the class of “pure” multiples a null class? Certainly clinical descriptions of this disorder type make much of the frequency with which additional pathology, especially depression, occurs. Some of this added pathology might actually stem from the primary disorder.<sup>10</sup> This phenomenon is not difficult to explain. Multiples may not suffer the more obvious incapacities associated with severe disorders such as schizophrenia. But in a society as wedded to the unified self and to methodological individualism as ours, particularly given the uncertain promise of a cure for the disorder, the discovery that one was multiple might well be expected to induce depression.

Unfortunately, the task of ascertaining the frequency of cases of MPD with additional pathology might not be easy. The epidemiological facts of the matter are quite elusive. One hypothesis posits that all or most multiples have some other disorder as well, if only as a secondary condition. There is, however, an alternative hypothesis equally supported by empirical observation: there may be many well-functioning multiples in the world who never reach clinical and diagnostic settings because they are managing their multiplicity without difficulty. If this second hypothesis is correct, there may be actual cases corresponding to our hypothetical “textbook” Joe Multiple, multiples without additional pathology.

These concerns about the empirical facts surrounding MPD and additional pathology are important regardless of the position one adopts on MPD and responsibility. Nonetheless, the problem of additional pathology will be more important for those who adopt the view that MPD should excuse criminal defendants, and less important for those dubious of acknowledging MPD as a legal excuse. My own position is that there are different answers to questions about the responsibility of separate alters within a multiple depending on the contexts and purposes involved. In therapeutic and certain everyday contexts, distinguishing the “innocent”

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<sup>10</sup> See generally FRANK W. PUTNAM, DIAGNOSIS AND TREATMENT OF MULTIPLE PERSONALITY DISORDER 58–65 (1989) [hereinafter PUTNAM, DIAGNOSIS AND TREATMENT] (discussing presenting symptoms in MPD patients including depression); FRANK W. PUTNAM, *The Psychophysiology of Memory in Trauma*, in DISSOCIATIVE DISORDERS (1990); Richard P. Kluft, *Aspects of the Treatment of Multiple Personality Disorder*, 14 PSYCHIATRIC ANNALS 51, 53 (1984) [hereinafter Kluft, *Aspects of Treatment*]. “Depression; anxiety, panic attacks, agoraphobia, and hysteroid dysphoria may coexist with MPD . . .” *Id.* See also Richard P. Kluft, *Personality Unification in Multiple Personality Disorder: A Follow-Up Study*, in TREATMENT OF MULTIPLE PERSONALITY DISORDER 29 (Bennett G. Braun ed., 1986) (discussing integration of personalities in MPD patients); Richard P. Kluft, *Introduction*, in INCEST-RELATED SYNDROMES OF ADULT PSYCHOPATHOLOGY 1 (Richard P. Kluft ed., 1990) (discussing incest and the clinical phenomenology that follows).

alters, such as Donnie and Ron, from the “guilty” alters, such as John, that comprise the whole public person might be important. Nonetheless, I believe that the dispositive purposes of the law require us to determine guilt or innocence of the whole person. The methodological individualism which is central to our legal system, together with the practicalities of the legal context, require that one person and only one person be subject to criminal procedures.

Saks proposed the standard that multiples should not be held responsible for crimes unless all of their alters “knew about and acquiesced in” the crime.<sup>11</sup> In contrast, I conclude, with certain strong qualifications, that a guilty finding may be appropriate when a multiple includes some alters or selves who did not know about or acquiesce in the commission of a crime. This difference of opinion stems from a difference over certain underlying assumptions, most notably those arising when “innocent bystander” alters are viewed in the light of the legal proscription against punishing the innocent.

### III. “INNOCENT BYSTANDER” ALTERS AND PUNISHING THE INNOCENT

Central to this discussion is the charge that a finding of criminal responsibility would be tantamount to punishing the innocent, or running afoul of the fundamental moral tenet of our criminal law system that says that it is morally worse for an innocent person, or “personlike entity,” to be wrongly punished than for any number of guilty people to go unpunished. Saks develops this argument in her book.<sup>12</sup>

To conclude that multiples are nonresponsible, Saks relies heavily on the argument about the wrongfulness of punishing the innocent. In deciding that it would be unjust to find guilty the alters who were ignorant of or powerless in relation to the crime, Saks raises the counterposition that the law frequently burdens innocent people in order to punish a guilty party, then she rebuts this position.<sup>13</sup> Her rebuttal reviews the distinction between being *burdened* by a punishment and being punished. The nonperpetrator alters may be burdened by a punishment, she argues, but they would also be punished by the punishment of a perpetrator alter. Thus, a finding of guilt is impermissible.

In the case of MPD, it would be impossible to preserve the distinction between *being punished* and *being burdened* by a punishment. Indeed, the very nature of the psychopathology undermines maintaining a distinction

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<sup>11</sup> See SAKS WITH BEHNKE, *supra* note 3, at 108–20 (discussing circumstances in which a multiple should be held responsible for his actions).

<sup>12</sup> See *id.* at 68–105.

<sup>13</sup> See *id.* at 73.

between the party who is guilty and innocent, yet affiliated, parties. . . . Stigma attaches to the whole.<sup>14</sup>

I disagree with these distinctions. I first disagree with Saks concerning the suffering of the families of those who are incarcerated and otherwise subject to criminal punishments. For the sake of simplicity, I focus on the case of the child of an incarcerated parent. The law permits innocent people, such as the children of parents who are incarcerated, to suffer the burdens of punishment. Saks insists that in such a case they are not actually being punished, though they may be “suffering the burdens of punishment.”

Differences between the case of the children of parents punished by the state and the case of the sufferings of the nonperpetrator alters mean that the distinction between suffering the burdens of punishment and actually being punished collapses in the case of multiples. With this distinction collapsed, Saks must admit that suffering the burdens of punishment reduces to suffering punishment. The crucial difference that Saks maintains between the two sorts of suffering, that endured by the family of the criminal and that endured by the other alters housed in the same body as the alter who perpetrates a crime, requires close scrutiny.

We must remember the possible positions that may be adopted in this situation. The first position, Saks’ position, is that the family is not punished, the nonperpetrator alter is punished. The second position is that criminal law sometimes punishes the innocent in the case of the sufferings of the family and presumably does so in the case of the nonperpetrator alter. The third position is that neither the family nor the nonperpetrator alter are punished, although each are burdened by the punishment. This is the view, given certain qualifications, that I have adopted. The fourth position is that the family is punished while the nonperpetrator is merely burdened by the punishment.

Why does Saks believe that the child is not punished, but merely burdened, while the nonperpetrator alter is? First, she points out that “[s]tigma attaches to the whole,”<sup>15</sup> meaning that, for outside observers, it is more difficult to separate the alters than it is to separate the physically discrete child from his incarcerated parent. Thus, the stigma experienced by the alter will be greater than the stigma experienced by the family member of the incarcerated person. Second, Saks argues that when nonperpetrator alters are incarcerated, they are more likely to be seen by society as being punished and to feel themselves punished.<sup>16</sup>

Saks’ assertions may be accurate. We are dealing, however, with an empirical claim, or a set of empirical claims when we compare the relative

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<sup>14</sup> *Id.* at 73–74.

<sup>15</sup> *Id.* at 74.

<sup>16</sup> *Id.* at 75.

sufferings of the “innocent” alters and the innocent family members. While difficult to quantify and operationalize, these empirical comparisons between the nonperpetrator alter and the child of an incarcerated parent require more than a priori speculation to support them. Particularly when we deal with the children of incarcerated adults, there is reason to hypothesize or speculate a different conclusion from Saks’ conclusion.

We know about the psychology of children, perhaps more than we do about that of alters, and we recognize the devastation and sense of punishment likely in these cases. Typically, there is a strong identification between child and parent, the child has an “immature” or incomplete sense of individuation from the parent, and the child tenaciously believes in the parent’s invincibility and goodness. Each of these traits is likely to prevent the child of an incarcerated parent from achieving appropriate psychic distancing, from disengagement from that parent, and from recognizing that his or her own worth is not compromised by the parent’s status. Compared to the often hostile and strongly individuated relations among different alters of a multiple, the child’s attachment to parental figures would enhance, rather than diminish, the likelihood of an increased “sense” of punishment. Speculating on the basis of some understanding of child psychology, empirical study might be expected to show that the child, not the “innocent bystander” alter, is the greater sufferer.

If the question of who suffers more, the child of incarcerated parents or the “innocent bystander” alters, is an empirical question, then it is not clear which of these four positions would be the best to adopt. We should wait for these empirical comparisons to guide our thinking, or, if social science methodology cannot meet the challenge presented by such complex comparisons, we should reserve our opinion on the question.

I have adopted the third of the positions outlined above, that neither the nonperpetrator alter nor the child is punished although both may suffer the burdens of punishment, based on an assumption that Saks rejects.<sup>17</sup> To justify the infliction of burden on the child of punished parents, the law appeals to the traditional deontological doctrine of double effect, insisting that the intent of the action or policy be distinguished from its actual harmful side effects.<sup>18</sup> Because the burden suffered by the child is not part of the punitive intent of punishing the parent, the criminal law can avoid the charge of punishing the innocent, insisting that punishment is defined in terms of intent. Thus, the child suffers the burden of punishment, but is not punished. Upon empirical speculation, the child’s suffering is probably greater than the nonperpetrator alter’s suffering. It follows that the same can be said of the nonperpetrating alter: he suffers the burden of

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<sup>17</sup> RADDEN, *supra* note 2, at 1.

<sup>18</sup> *See id.* at 141.

punishment but is not punished by the incarceration of the body he shares. The doctrine of double effect is a feature of the deontological moral framework underlying criminal law. If we do not share that framework and if we adopt an alternative consequentialist framework, such as utilitarianism or the feminist ethics of care, then the distinction between an act's intended effect and its actual effect collapses. Therefore, the first step in establishing our moral, if not our legal, position on these questions must be to determine within which moral framework we situate our moral reasoning.

Because there are entrenched legal principles concerning the wrongfulness of punishing the innocent, the issues raised here are critical for any analysis of MPD and criminal responsibility. While I have not offered a full rebuttal of Saks' position on punishing the innocent alter, the doubts introduced here are cause for concern regarding her analysis.

#### IV. MPD AND THE ORIENTATION OF THE TRADITIONAL INSANITY PLEA

A second point upon which I differ from Saks concerns her claims about the orientation of the traditional insanity defense, an orientation which, we agree, ill serves the multiple in the courtroom. The traditional insanity plea concerns cognitive and volitional deficiencies. At the time of the crime, there is something that the criminally insane could not do or could not do as well as sane defendants, such as thinking, perceiving, knowing, understanding, and/or reasoning. Similarly, the criminally insane suffer incapacities of volition or will; at the time of the crime, voluntary control, and the usual link between decision and action, was somehow diminished. These are time-worn, moral truths embedded in our legal traditions and traceable to the Aristotelian dictum that ignorance and compulsion each serve as excusing conditions.<sup>19</sup>

These aspects of our moral and legal heritage are central to traditional definitions of criminal insanity and are singularly unfit for multiples. They were developed with conditions such as schizophrenia and other major psychotic disorders in mind, not MPD. On this point Saks and I agree. She notes: "Multiples, unlike many other people with mental illnesses, are both cognitively and volitionally intact at any given time."<sup>20</sup> There is something wrong and even dysfunctional about the non-unitary person, but this dysfunction is only evident when we view the composite multiple as a

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<sup>19</sup> See JENNIFER RADDEN, MADNESS AND REASON 121-36 (1985); RADDEN, *supra* note 2, at 140-42; Jennifer Radden, *Diseases As Excuses: Durham and the Insanity Plea*, 42 PHIL. STUD. 349, 349 (1982).

<sup>20</sup> SAKS WITH BEHNKE, *supra* note 3, at 121.

whole. Assuming the absence of other pathology, any given alter or self at any given time, viewed individually, functions normally.

In noting that the framework developed in the long legal tradition of defining criminal insanity that emphasizes cognition and/or volition was developed for more common mental illnesses, such as schizophrenia, Saks fails to attribute any deeper significance to this fact. With new disorder categories like MPD have come new challenges that the law must address. Much of her subsequent analysis provides a way to change the law accordingly. A deeper significance inserts itself here however. A number of interlinked questions, some moral, some epidemiological, are introduced by Saks' assumptions. The first of these questions is whether criminal insanity has been defined traditionally in terms of ignorance and compulsion merely because the disorder types most commonly finding their way into the courts and shaping the definitions of criminal insanity have been disorders like schizophrenia. In determining that only certain disorders require the protection of the insanity defense, courts may have been commenting on the moral convictions involved, and not merely the epidemiology of disorders. Perhaps only disorders as severe and incapacitating as schizophrenia fit our fundamental notion of what ought to be an exculpating factor.

The standard insanity defense maps onto convictions which apply not only to other areas of criminal law, but also to nonlegal contexts where responsibility is an issue. We typically allow ignorance and compulsion to excuse conduct in everyday moral contexts, forgiving a transgression which was entirely unknowing and making allowance for action resultant from internal or external compulsion. The generality of these Aristotelian excusing conditions illustrated by such everyday responses works against Saks' interpretation. The insanity defense protects disorders like schizophrenia not because of epidemiological trends but because of features of our moral makeup.

Moreover, another difficulty concerns the epidemiological "facts." Saks assumes that there is a recent increase in the number of cases of MPD. Dissociative conditions like MPD are not reflected in the way the courts have interpreted and defined criminal insanity because their historically small numbers have left MPDs out of legal reckoning on these matters. Saks' discussion implies that the situation has changed, and our law must reflect that change.

We must ask whether the situation has actually changed. The diagnosis of MPD has increased, indeed so drastically that some speak of the diagnostic increases as reflecting an epidemic of MPD. Diagnosis and epidemiology, however, must be kept distinguished. We may be observing an epidemic of MPD, but perhaps it is merely an epidemic of the diagnosis

of MPD. Thus the epidemiological “facts” again elude us, because these “facts” are open to different readings, theories, and widely divergent and entirely incompatible interpretations.

One view to be set aside is the now popular position that MPD merely represents a social construction.<sup>21</sup> Representative of this position is Nicholas Spanos, who asserts that people who enact multiples exhibit a socially constructed, “context bounded, goal-directed, social behavior geared to the expectations of significant others . . . .”<sup>22</sup> According to such a social constructionist analysis, there are no accurate diagnoses of MPD because MPD does not represent a real phenomenon—at least not in the sense of a disease entity within the individual sufferer. It is not the social constructionist position on which I wish to focus here but on the contrasting Realist position that asserts that MPD is a disease entity occurring within the individual sufferer. I wish to contrast interpretations of the Realist position that accept that MPD sometimes occurs as a disease entity within the individual sufferer and is sometimes accurately diagnosed.

One such interpretation is that there were always many multiples wrongly diagnosed as melancholiacs in premodern eras, as hysterics during the nineteenth century, and as schizophrenics through the first part of the twentieth century, according to the diagnostic fashion of the times.<sup>23</sup> We might identify this position as “stable epidemiology/variable diagnostic practice.”

By adopting this position, we might place more weight on the earlier point concerning the moral import of the limitation in the insanity defense. We might emphasize that the limitations drawn by legal definitions of criminal insanity reflect fundamental moral convictions about which conditions should serve to exculpate. If multiples and their fractured selves have always been with us, regardless of diagnostic labels, then we might suppose that the limits in the insanity defense that exclude standard cases of

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<sup>21</sup> See, e.g., IAN HACKING, *REWRITING THE SOUL: MULTIPLE PERSONALITY AND THE SCIENCES OF MEMORY* 142–58 (1995). MPD “has been specifically Western, peculiar to the industrialized world . . . .” *Id.* at 142. NICHOLAS P. SPANOS, *MULTIPLE IDENTITIES & FALSE MEMORIES: A SOCIOCOGNITIVE PERSPECTIVE* 3 (1996). “[V]iewing MPD as a naturally occurring mental disorder is fundamentally flawed. . . . [A] sociocognitive alternative to the disease model . . . suggests that MPD is a sociohistorical product.” *Id.* See also ELAINE SHOWALTER, *HYSTORIES: HYSTERICAL EPIDEMICS AND MODERN CULTURE* 159–70 (1997) (agreeing that MPD is a movement and arguing that it is an iatrogenic disorder created in therapy); Ian Hacking, *The Invention of Split Personalities*, in *HUMAN NATURE AND NATURAL KNOWLEDGE: ESSAYS PRESENTED TO MARJORIE GRENE ON THE OCCASION OF HER SEVENTY-FIFTH BIRTHDAY* 63, 66 (Alan Donagan, Anthony N. Perovich, & Michael V. Wedin eds., 1986). “Multiple personality is a culturally acquired form of madness.” *Id.*; Nicholas P. Spanos, *Multiple Identity Enactments and Multiple Personality Disorder: A Sociocognitive Perspective*, 116 *PSYCHOL. BULL.*, 143, 143 (1994) [hereinafter Spanos, *Multiple Identity Enactments*]. “MPD . . . is socially constructed.” *Id.*

<sup>22</sup> Spanos, *Multiple Identity Enactments*, *supra* note 21, at 143.

<sup>23</sup> See Myron Boor, *The Multiple Personality Epidemic: Additional Cases and Inferences Regarding Diagnosis, Etiology, Dynamics, and Treatment*, 170 *J. NERVOUS & MENTAL DISEASE* 302, 302 (1982); Milton Rosenbaum, *The Role of the Term Schizophrenia in the Decline of Diagnosis of Multiple Personality*, 37 *ARCHIVES GEN. PSYCHIATRY* 1383, 1385 (1980).

multiplicity were not accidental, but rested on a fundamental moral intuition about exculpation. The glaring disfunction of schizophrenia and like conditions should excuse; the more subtle oddities found in dissociative disorders should not. Such a position seems to be implicit in recent work by Barbara Kirwin.<sup>24</sup>

A contrary interpretation, in no way better proven by the “facts,” is that MPD is a relatively new disorder. This position might be identified as “stable diagnostic practice/variable epidemiology.” Some believe that MPD results from a rise in the kind of early child abuse believed to be the instigating cause of dissociation.<sup>25</sup> Others believe that MPD results from a range of social and cultural changes in the late twentieth century, including the well-publicized challenge to the aspect of individualism that allows only one self or person to a body—the so-called death of the subject.<sup>26</sup>

If we adopt some version of this position, then we may be inclined to believe, as Saks does, that the law needs revision to accommodate the occurrence of this new disorder in defendants.

I suggest that one natural reading of these alternative interpretations of the epidemiological history of MPD would encourage us to leave the insanity defense alone as long as we believe that the epidemic is merely diagnostic, accepting that the definition of criminal insanity rests on fundamental moral intuitions about exculpation. If we think the epidemic is truly epidemiological, then we should tinker with the insanity defense on the grounds that it has been shaped by the cases which have hitherto come before the courts. Saks adopts a position that in some ways combines these alternatives: she thinks that MPD is something rather new, epidemiologically speaking, but she also thinks we must return to our moral intuitions about exculpation to see how this new set of symptoms can be fit into the traditional insanity defense.

About these contradictory interpretations of the epidemiological “facts,” I remain agnostic. I am impressed by how uncertain these supposed “facts” resting on epidemiology are and by how central assumptions of epidemiology determine legal and philosophical conclusions about MPD and criminal responsibility. I do not disagree with Saks’ reasoning on these matters, as much as I am concerned about some of the assumptions on which that reasoning rests.

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<sup>24</sup> See generally BARBARA R. KIRWIN, *THE MAD, THE BAD, AND THE INNOCENT: THE CRIMINAL MIND ON TRIAL* (1997).

<sup>25</sup> See, e.g., JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY* 122–29 (1992) (discussing childhood trauma in patients with MPD); Judith Herman, *Recognition and Treatment of Incestuous Families*, 5 INT’L J. FAM. THERAPY 81 (1983) (discussing treatment of incest); Colin A. Ross, *Epidemiology of Multiple Personality Disorder and Dissociation*, 14 PSYCHIATRIC CLINICS N. AM. 503, 505–06 (1991) (discussing prevalence of severe child abuse in patients with MPD).

<sup>26</sup> See JAMES M. GLASS, *SHATTERED SELVES: MULTIPLE PERSONALITY IN A POSTMODERN WORLD* 4–27 (1993).

## V. MPD, RESPONSIBILITY, AND SELF-CONTROL

Considering the climate of skepticism that surrounds the diagnosis of MPD, one final issue must be raised. In thinking about responsibility and MPD, it is important to acknowledge the several points at which the bystander alter, who is in many respects an innocent victim, may nevertheless have some power or self-control.

Saks discusses one of these points, the self-control of a knowing bystander alter to intervene to prevent the crime of another, acting alter. She argues that even an alter who knew about the act and could control the acting alter may not have a duty to so intervene.<sup>27</sup> I do not entirely accept the analogy on which Saks establishes this conclusion—the analogy between ordinary persons, who do not share a body, and alters sharing a body. Nonetheless, there are two slightly less direct opportunities for self-control to note: the first is the power to seek help and thus prevent wrongdoing, and the second is the power to thwart a potentially criminal alter by “switching.”

Saks has noted that the peculiar phenomenology of multiplicity might prevent multiples from realizing that all is not well and taking responsibility by seeking help for their condition.<sup>28</sup> Those emphasizing the cultural constructionist case on disorder categories like MPD, however, have drawn our attention to the extent to which knowledge of multiplicity has entered present-day popular culture.<sup>29</sup> At some point, we will want to say that a person with blackouts, unaccountable items in her possession, a sense of coconsciousness, and other now well-known signs of disjointedness should know to call a doctor. Perhaps, at the beginning of this new century, such a moment has arrived.

Foresight brings accountability because it puts the power of prevention within reach. Perhaps one alter does not have a duty to intervene in the moment of its fellow alter’s crime. Insight into one’s multiplicity, however, should be expected to include, for alter X, awareness that actions of a fellow alter, Y, may be unacceptable at some future time. If, equipped with such knowledge, alter X fails to seek help, then alter X is not an entirely innocent bystander. Alter X will have become alter Y’s keeper.

Another question’s elusive empirical answer is critical to the question of responsibility: How much control is exercised over switching from one alter to another? Whether we want to accord full “innocent bystander”

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<sup>27</sup> SAKS WITH BEHNKE, *supra* note 3, at 111; Saks, *supra* note 3, at 197 (2001).

<sup>28</sup> SAKS WITH BEHNKE, *supra* note 3, at 12, 118–19.

<sup>29</sup> See, e.g., HACKING, *supra* note 21, at 39–54 (discussing the evolution of the “multiple movement” during the last forty years); SHOWALTER, *supra* note 21, at 159–70 (discussing fictional narratives and MPD); Hacking, *supra* note 21, at 66. “[T]he ‘split personality’ has become a permanent part of our folklore . . .” *Id.*

privileges to the other alters may rest on whether those alters could have wrested control of the shared body not by intervening but by enacting a “switch.” Even the critical empirical matter of whether intervening in the actions of an acting alter, on the one hand, and switching, on the other, reduce to the same thing, remains unresolved. Some descriptions and case materials suggest they are distinct processes.

The literature on switching remains ambiguous and incomplete.<sup>30</sup> Some writing suggests that switching is voluntary, at least for some alters. Some suggests the opposite, and indicates that such control must be acquired through therapeutic work; control of switching is sometimes proposed as the most realistic goal of therapy. Some evidence indicates that controlled switching is not believed possible by weaker alters, such as Donnie and Ron in the John Woods case, however, being able to exercise some capability and believing that you are able to do so are not always the same thing. We need to know whether perceived powerlessness over switching accords with actual incapacity. Armstrong’s research strongly suggests that the sequence of alter appearances was orchestrated or controlled by some source of agency.<sup>31</sup> Moreover, unless we adopt very dubious notions about evil, power, and the person, such as the doctrine of original sin, there seems no a priori reason to expect the “criminal” alter to have exclusive exercise of that power. If evil alters are able to switch at will, then so are their law-abiding “roommates.”

Until the process of switching is better understood, and its voluntary and involuntary aspects resolved, our efforts to assess degrees of responsibility in these cases must remain provisional and incomplete.

## VI. CONCLUSION

The ongoing challenges to multiple personality disorder diagnoses and the carnival atmosphere surrounding some of those challenges make us appreciate careful, clinical, and scholarly research such as that found in the recent work of Armstrong and Saks. Without giving in to social constructionist skepticism, however, I have tried to suggest that some dubious and unresolved Realist assumptions underlie Armstrong’s analysis and Saks’ proposed standard. In several cases these assumptions rest on

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<sup>30</sup> See, e.g., RALPH B. ALLISON & T. SCHWARTZ, MINDS IN MANY PIECES 1 (1980); PUTNAM, DIAGNOSIS AND TREATMENT, *supra* note 10, at 117–23, 158–60 (discussing switching and multiples’ control over switching with time and practice in treatment); Kluff, *Aspects of the Treatment*, *supra* note 10, at 51–52 (discussing the instability of the MPD patient). “Switching and battles for dominance can create an apparently unending series of crises.” *Id.* See also Richard P. Kluff, *Treatment of Multiple Personality Disorder: A Study of 33 Cases*, 7 PSYCHIATRIC CLINICS N. AM. 9 (1984) (studying the success of treatment of MPD patients); Colin A. Ross, G. Ron Norton, & Kay Wozney, *Multiple Personality Disorder: An Analysis of 236 Cases*, 34 CANADIAN J. PSYCHIATRY 413 (1989) (discussing the characteristics of patients diagnosed with MPD).

<sup>31</sup> See generally Armstrong, *supra* note 1.

empirical data subject to conflicting interpretations; in other cases they want for the pertinent empirical findings. Until we know more about MPD epidemiology, and about the psychology of “switching,” for example, we may not have sufficient grounds for a final word on the extent to which one alter is another’s keeper.