

SYMPOSIUM ON MULTIPLE PERSONALITY DISORDER AND CRIMINAL RESPONSIBILITY

INTRODUCTION

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When my dear friend and colleague, Stephen Behnke, invited me to participate in a panel discussing multiple personality disorder (“MPD”) and criminal responsibility, I was very excited. This would be an opportunity for a group of scholars from different disciplines to think about a complex, intriguing, and provocative problem—one that has interested me for some time. The result is this volume of essays on MPD and criminal responsibility, which our *Southern California Interdisciplinary Law Journal* has graciously agreed to publish.

It seems especially appropriate for an interdisciplinary journal to be interested in the relationship between MPD and criminal responsibility. This problem cannot be understood without collaboration from such diverse fields as law, psychiatry, psychology, and philosophy. And so it is gratifying to have a highly interdisciplinary set of scholars contribute to this volume: four law-trained professionals, three psychiatrists, six psychologists, and three philosophers (three of our contributors have multiple degrees).

The essays in this volume are far reaching. The first is my own article on MPD and criminal responsibility, based on a book I wrote with Stephen Behnke, *Jekyll on Trial: Multiple Personality Disorder and Criminal Law*.¹ In the article, following the arguments in *Jekyll on Trial*, I review different ways of thinking about alter personalities, and then explore what each of these ways would mean for the question of criminal responsibility. I conclude that in many instances, individuals with MPD should be criminally nonresponsible, unless all of their alters acquiesced in the crime. By acquiescence I mean that the alter was complicit or had the capacity to stop the crime but did not. In the article I address several practical problems

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¹ ELYN SAKS WITH STEPHEN BEHNKE, *JEKYLL ON TRIAL: MULTIPLE PERSONALITY DISORDER AND CRIMINAL LAW* (1997).

that *Jekyll on Trial* did not, such as model insanity instructions and the actual administration of the proposed rule.

In the second article, Dr. Judith Armstrong presents the case of Mr. Woods, a detailed and richly textured description of a multiple murderer with MPD. Armstrong sees three levels at which to understand alter personalities, levels which correspond well to my own thinking about the issue of alters. Armstrong's case serves as a focal point for the rest of the volume. Mr. Woods is a complex case, with mixed pathology, that demonstrates how complicated the questions facing a forensic examiner often are. Armstrong is sensitive to the limits of professional expertise in this context, and carefully teases out how experts can be most helpful in such cases.

Dr. Marlene Steinberg, the psychiatrist who designed the Structured Clinical Interview for DSM-IV Dissociative Disorders—Revised (SCID-D-R),² is perhaps most responsible for the ability of examiners to diagnose MPD reliably and validly. The SCID-D-R is the “gold standard” for diagnosis, and has achieved high reliability and discriminant validity in studies conducted around the world. Steinberg, Hall, Lareau, and Cicchetti briefly describe the psychometric bona fides of the SCID-D-R, and then report very interesting research that shows that subjects malingering MPD on the SCID-D-R can be reliably detected. This important finding should help both to identify those who do not deserve special treatment under the law, as well as to fortify the case of those who do. Steinberg and Hall set forth guidelines to diagnose dissociative disorder and to rule out malingering. Finally, they present a detailed case in which a civil plaintiff was assessed to determine whether MPD or malingering was the most appropriate finding. Their case illustration has important implications for assessing criminal defendants.

Psychiatrist Glenn Saxe directly addresses the clinical details of MPD. Dr. Saxe looks to Putnam's “Discrete Behavior States” model of MPD. In Putnam's model, features of MPD are related to both the development of discrete behavioral states caused by childhood trauma and the consequent failure to integrate autobiographical memory or a sense-of-self across these states. According to this theory, individuals with MPD fail to integrate a unitary sense-of-self across the states they experience. Thus, MPD is more a failure to come together rather than a coming apart.

Saxe then draws several implications for MPD and criminal responsibility. Under the Discrete Behavioral States model alters are clearly not persons. Saxe points out that even if individuals with MPD are deeply

² MARLENE STEINBERG, STRUCTURED CLINICAL INTERVIEW FOR DSM-IV DISSOCIATIVE DISORDERS—REVISED (SCID-D-R) (1994).

divided persons, it does not necessarily follow that they should be excused from criminal blame. As Saxe points out, there is a great deal of variation in executive control among individuals with MPD. Such variation in control may be found in any intense emotional state underlying a crime. Saxe questions whether a rageful state and a rageful alter are different for the purposes of criminal law. Indeed, he suggests there is nothing intrinsic to MPD that should diminish criminal responsibility. The critical inquiry is not whether individuals should be diagnosed with MPD, but the degree to which, at the time of the crime, they were able to appreciate the consequences of, or control, their behavior.

Philosopher Jennifer Radden, author of *Divided Minds and Successive Selves*,³ first points out the complexity of the insanity issue presented by Armstrong's case, and perhaps many similar cases—that of additional pathology. She then explores the issue of whether innocent alters are indeed punished when they are imprisoned with their guilty brethren, as I argue they are. Radden suggests that imprisoned alters, because there is no punitive intent directed against them, are burdened by the punishment, but not punished, much as innocent children are burdened when their parents are imprisoned.

Radden suggests that MPD has always been present—what we are seeing is an increase in diagnosis, not an increase in incidence. Radden concludes that MPD's omission from classic philosophical and legal accounts of nonresponsibility has more to do with our deep intuitions about responsibility, rather than any recent appearance on the scene. Finally, she explores whether “bystander” alters may nevertheless have some power of self-control, making their responsibility less problematic. Perhaps, Radden suggests, these alters could get help or switch at the point of danger. Until we can resolve the empirical questions about degrees of control, “our efforts to assess degrees of responsibility in these cases must remain provisional and incomplete.”⁴

Psychiatrist Stephen Marmer offers an interesting and provocative critique of my account, as well his own account of when MPD should diminish or obviate responsibility. Marmer discusses psychiatry's contribution to the philosophical questions surrounding personhood of alters and criminal responsibility, the implausibility of purely psychological theories of personal identity, and the similarities between strong emotional states and alter states in terms of criminal responsibility. Marmer also

³ JENNIFER RADDEN, *DIVIDED MINDS AND SUCCESSIVE SELVES: ETHICAL ISSUES IN DISORDERS OF IDENTITY AND PERSONALITY* (1996).

⁴ Jennifer Radden, *Am I My Alter's Keeper? Multiple Personality Disorder and Responsibility*, 10 S. CAL. INTERDISC. L.J. 253, 265 (2001).

describes clinical facts of dissociation that he has seen in his practice, some of which conflict with my assumptions about the phenomenology of MPD.

Perhaps Marmer's most telling critique of my first two theories turns on his example of the individual with MPD who creates an innocent alter after the fact. If it is wrong to punish an innocent alter, must we therefore absolve this individual of responsibility and punishment? Marmer believes the critical issue is not separate personhood, but the issue of "command and control," that is, the relative knowledge and strength within the system of alters at the time the crime was committed. Marmer sets forth several criteria for assessing responsibility, most of which I agree with. Finally, Marmer persuasively draws out what he views as unfortunate implications for other areas of law if alters are considered persons, or personlike, by the criminal law.

Philosopher Walter Sinnott-Armstrong and lawyer/psychologist Stephen Behnke contribute here an important piece exploring the ontological status of alter personalities. Sinnott-Armstrong and Behnke challenge my suggestion that alter personalities may be best conceived of as different persons, and then go on to challenge my account of criminal responsibility. They entertain different theories of sufficient and necessary conditions of personal identity, and conclude that alters are indeed best understood as the same person. Their account is interesting and compelling, and precisely the sustained philosophical analysis of alters that is needed.

Robert Schopp, professor of law as well as a philosopher and psychologist, has written a deep and far-ranging description of the accountability of individuals with MPD. He views their nonresponsibility as a matter of impaired consciousness. This requires adopting what he calls the "molar" view of MPD: the person with MPD as a single agent with impaired consciousness. Schopp points out that courts and commentators alike take the contrary "molecular" view, which focuses on alters as separate agents. Schopp raises three problems with the molecular view, namely, that it: leads to absurd results when we ask "Who has the multiple personality disorder?"; generates cases that are problematic in their disposition but do not pose particularly interesting philosophical questions; and points to the incorrect conclusion that an individual with MPD would be nonresponsible if a *good* alter committed the crime. According to Schopp, the molar view avoids these problematic results.

Schopp does a beautiful job of describing the nature of the impairment of a person suffering from "impaired consciousness." He also locates his view of accountability within a description of agency in the public jurisdiction of a liberal society. Given a liberal society and its commitments, absolving those with impaired consciousness makes sense.

Schopp peppers his account with wonderful thought experiments that stretch our imagination and understanding.

At the end of the volume I respond to each article.

This symposium addresses the relationship of MPD and criminal responsibility from a variety of disciplines. The volume brings together law professors, psychologists, psychiatrists, and philosophers to shed light on this fascinating disorder and its relevance to criminal law. Common themes include: the phenomenology of MPD, the ontological status of alter personalities, the nature of criminal responsibility in apparently similar psychological states, the relative authority of different professions to make judgments about these questions, and the implications of our conclusions for other areas of discourse. It is hoped that this symposium will shed light on this important issue and spur further debate and research.

