

CRIMINAL LAW AND MULTIPLE PERSONALITY DISORDER: THE VEXING PROBLEMS OF PERSONHOOD AND RESPONSIBILITY

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I. INTRODUCTION

Multiple Personality Disorder (“MPD”), now also known as Dissociative Identity Disorder, presents vexing problems for courts as they attempt to assess criminal responsibility. This challenge to the legal system arises because traditional tests for criminal responsibility do not address the unique—and sometimes bizarre—phenomenology of MPD. While the criminal justice system looks to a variety of tests for assessing responsibility, such as whether individuals could understand or appreciate the consequences of their actions, or whether they were able to conform their actions to the requirements of the law, the unique symptomatology of MPD lies outside these traditional measures.

MPD is characterized by a dividedness of mind. Dividedness of mind, by itself, is not a traditional basis for a finding of criminal nonresponsibility. Yet, in certain instances, individuals who struggle with MPD and who commit criminal acts appear to be excellent candidates for an insanity or involuntariness defense.

This Article has four goals. First, it reviews the positions courts have taken on the question of MPD and criminal responsibility. Second, it explores arguments behind one commentator’s theory of why many individuals with MPD should not be held responsible for their crimes, and examines the theory of personhood upon which this commentator’s argument is based. Third, it analyzes theories of personhood and personal identity that challenge this commentator’s position of general nonresponsibility. Finally, it discusses the relationship between MPD and criminal responsibility.

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II. COURT ANALYSES OF MPD AND CRIMINAL RESPONSIBILITY

According to the *Diagnostic and Statistical Manual, Fourth Edition*, (*DSM-IV*), MPD is characterized by the presence of: two or more distinct identities or personality states, at least two of which recurrently take control of the person's behavior; an inability to recall important personal information that is too extensive to be explained by ordinary forgetfulness; and the lack of any direct connection between the disturbance and the physiological effects of a substance (e.g., blackouts) or a general medical condition (e.g., complex partial seizures).¹

While experts disagree about the number of people who meet these criteria—some mental health experts doubt that MPD exists at all—courts have considered MPD as the basis for both insanity and involuntariness defenses. Courts have used three analyses to assess the criminal responsibility of an individual with MPD. These three analyses are represented by the *Grimsley*², *Denny-Shaffer*³, and *Rodrigues*⁴ cases.

In the *Grimsley* case, Robin Grimsley received a report of a lump in her breast. This psychological trauma, according to Grimsley, caused her alternate personality, Jennifer, to emerge. Grimsley described Jennifer as impulsive, angry, fearful, and anxious, and as having a drinking problem. On one occasion, Grimsley drove after drinking, and subsequently was charged with driving under the influence of alcohol. In her defense, Grimsley said that when Jennifer, her alternate personality, is in control, Robin, her primary personality, is not aware of what is going on and cannot control Jennifer's actions. Grimsley had previously been diagnosed with MPD.

The court held Grimsley responsible. The court reasoned:

[t]here was only one person driving the car and only one person accused of drunken driving. It is immaterial whether she was in one state of consciousness or another, so long as in the personality then controlling her behavior, she was conscious and her actions were a product of her own volition. The evidence failed to indicate that Jennifer was unconscious or otherwise acting involuntarily.⁵

According to the *Grimsley* court, an individual's criminal responsibility rests on the mental state of the alter in control at the time of the crime. The court concluded that because the alter personality—Jennifer—was not

¹ AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (American Psychiatric Press, 4th ed., 1994).

² State v. Grimsley, 444 N.E.2d 1071, 1076 (Ohio App. 1982).

³ United States v. Denny-Shaffer, 2 F.3d 999 (10th Cir. 1993).

⁴ State v. Rodrigues, 679 P.2d 615 (Haw. 1984), cert. denied, 469 U.S. 1078 (1984).

⁵ *Grimsley*, 444 N.E.2d at 1075–76.

insane at the time of the drunken driving, Grimsley as a whole should be held criminally accountable.

The first test for criminal responsibility, set forth by the *Grimsley* case, focuses on the alter personality in control at the time of the crime. According to *Grimsley*, a court should assess that alter's mental state in order to determine whether the individual should be held responsible. The alter personality in control at the time of the crime is the touchstone for accountability.

In the *Denny-Shaffer* case, Denny-Shaffer disguised herself as a medical student, entered a hospital nursery, took a newborn baby, and transported the baby to another state. Upon arriving at her destination, the home of an ex-boyfriend, she called her ex-boyfriend and told him that she had given birth to his baby and wanted him to come home from work. She had taken blood and a placenta from the hospital in order to convince him that she really did give birth to the baby there. When told to leave his home, she took the baby to her family, several hundred miles away. After several weeks with her family, she decided to return to her state of origin. The police, who had been alerted that she was traveling with a child not her own, apprehended her while she was in transit. Despite her attempts to conceal the child from the police, the baby was found and returned to its parents. Denny-Shaffer was charged with kidnapping and transporting the infant across state lines. Her defense was that her host personality, "Gidget," was unconscious and not aware of the kidnapping for all or part of those weeks. At trial Denny-Shaffer was found guilty.

Denny-Shaffer appealed her conviction. The appeals court held that the trial court had been incorrect "in restricting the focus of the court and jury narrowly to the alter or alters cognizant of the offense, and ignoring proof that the dominant or host personality was not aware of the wrongful conduct."⁶ The court concluded that there was sufficient evidence at trial to support critical inferences that would have helped Denny-Shaffer's insanity defense. These inferences were the following:

that Denny-Shaffer suffers from a severe mental defect or disease [MPD]; that at the time of the abduction, her dominant or host personality was not in control so as to cause commission of the offense, and was not aware that an alter personality or personalities were the cognizant parties controlling the physical actions; that as a result of the defendant's severe mental disease or defect, the host or dominant personality was unable to appreciate the nature and quality or wrongfulness of the conduct which the alter or alters controlled; and that defendant had proven these facts by clear and convincing evidence.⁷

⁶ *Denny-Shaffer*, 2 F.3d at 1014.

⁷ *Id.* at 1016 (brackets in original).

The court remanded the case to the trial court to determine whether the host personality should be held criminally accountable.

The second test for criminal responsibility, set forth by the *Denny-Shaffer* case, focuses on the host personality. According to *Denny-Shaffer*, a court should assess the host's mental state at the time of the crime in order to determine whether the individual should be held responsible. The host personality—rather than the alter in control—is the touchstone for accountability.

The third and final test for criminal responsibility in cases of MPD arises from the *Rodrigues* case, in which the court reasoned that “[s]ince each personality may or may not be criminally responsible for its acts, each one must be examined under the American Law Institute (ALI)-Model Penal Code (MPC) competency test.”⁸ While the court did not explain what to do when some alters are innocent and others complicit in the crime, the import of the *Rodrigues* holding is clear: courts must assess the mental state of each and every personality in order to determine whether a defendant should be held criminally responsible.

The *Grimsley*, *Denny-Shaffer*, and *Rodrigues* decisions provide the three tests for assessing the criminal responsibility of an individual with MPD. No one test dominates American legal analyses, although the *Grimsley* and *Denny-Shaffer* analyses have held sway over courts and commentators alike.

III. A THEORY OF GENERAL NONRESPONSIBILITY

Elyn Saks has proposed a theory of general nonresponsibility of individuals with MPD.⁹ On Saks' theory, many persons with MPD will not be held criminally responsible. According to Saks, persons with MPD are nonresponsible unless all of their alters have acquiesced to the crime. Acquiescence occurs when an alter either was complicit in the crime, or could have prevented the crime but did not. Saks supports her position by arguing that alters can be understood in one of three ways, each of which leads to her final conclusion that in many instances, individuals with MPD should not be held criminally responsible.

According to Saks, the first way of understanding alter personalities is as separate persons. Saks believes that this way of viewing alters is consistent with certain philosophical views of personhood and personal identity. Saks looks to empirical research to bolster the argument that alters are persons in their own right. If, as Saks points out, alter personalities are

⁸ *Rodrigues*, 679 P.2d at 618.

⁹ ELYN R. SAKS, WITH STEPHEN H. BEHNKE, *JEKYLL ON TRIAL: MULTIPLE PERSONALITY DISORDER AND CRIMINAL LAW* (1997).

persons, then the presence of any alter personality innocent of wrongdoing is sufficient to vitiate responsibility. This way of assessing criminal responsibility has a strong foundation in our system of jurisprudence, which holds that ten guilty people should go free rather than one innocent person be jailed.

The second way of understanding alter personalities is as personlike centers of consciousness. This second way does not hold that alters are persons, but that they are sufficiently like persons so that the law should exonerate an individual with MPD if an alter was not complicit in wrongdoing. The argument for general nonresponsibility based on the second way of considering alters closely tracks Saks' argument based on her theory of alters as separate persons; personlike centers of consciousness, like persons, are entitled to legal recognition and protection by criminal law.

The final way of understanding alter personalities is that they represent fragments of a deeply divided person. On this third view, alter personalities are thought of as split-off or never-integrated aspects of a person that crystallize into seemingly separate personalities. Because of such "crystallization," the individual often makes decisions in which significant aspects of her person are left out. As a consequence, a criminal act may not represent the person as a whole. Saks points out that there is precedent in law for deeming deeply divided individuals not responsible for their crimes. For example, sleepwalking and post-hypnotic suggestion have been said to render an individual criminally nonresponsible. While each of these three views of alter personalities can be used to argue for Saks' theory of general nonresponsibility, her argument for the personhood of alters is perhaps most challenging.

According to Saks, the ontological status of alter personalities hinges on two questions: that of personhood, and that of identification as a person.¹⁰ To answer the first question, Saks looks to Daniel Dennett, who sets out six criteria for personhood. According to Dennett, a person is rational, the subject of intentional predicates, a moral object, a moral subject or agent, a user of language, and an entity possessing a special kind of consciousness, such as self-consciousness. To illustrate the application of Dennett's criteria, animals, which may well be moral subjects, could not be considered moral agents. Hence, animals are not persons.

Saks believes that some alter personalities meet all six of Dennett's criteria. To further her argument that alters within a single body may be separate and distinct persons, she points to other features of alter personalities that she sees as consistent with their ontological status as

¹⁰ *Id.* at 41–51.

persons. According to Saks, alter personalities differ from one another characterologically, have distinct senses of self, view their fellow alter personalities to be separate people, see the world from a first-person perspective, have their own unique life-histories and memories, and show distinct and separate physiological responses. As persuasive as these arguments in favor of personhood may be, Saks is mindful that the feature many consider most central to personhood—the possession of a body—is something alter personalities lack.

To examine the role that a body plays in thinking about personhood, Saks turns to the philosophers John Locke, Bernard Williams, William Carter, and Derek Parfit. Saks examines the writings of these philosophers, such as Locke's famous question of what would happen were a prince and a cobbler to exchange psychological characteristics, and responds to arguments in favor of a bodily criterion for personality identity. Saks concludes that a psychological criterion for personal identity is at least plausible, and perhaps more persuasive, than a bodily criterion. She concludes that alter personalities may be—perhaps should be—considered separate and distinct persons in the eyes of the criminal law.

Given the premise that alter personalities may be persons, Saks concludes that many individuals with MPD should not be held responsible for their crimes. Indeed, because certain alters probably will not be complicit in a criminal act, it would be unfair to hold them accountable for criminal wrongdoing. Thus, unless *all* alters are criminally involved, or at least aware of and do nothing to prevent a crime, the individual should not be found guilty by a criminal court.

IV. PERSONHOOD AND RESPONSIBILITY IN MPD: A RESPONSE TO SAKS

Saks theory of the personhood of alter personalities, upon which in part she bases her argument for criminal nonresponsibility, raises challenging and provocative questions. What persuasive arguments could be made for the multiple-persons view?

One common strategy to argue for the multiplicity of persons is to apply a paradigm like Daniel Dennett's criteria of personhood.¹¹ Dennett claims that a person is rational, the subject of intentional predicates, a moral object, a moral subject or agent, a language user, and the possessor of a special kind of consciousness (or self-consciousness). Each alter has these characteristics in at least some cases of MPD. In the *Grimsley* case,

¹¹ Daniel Dennett, *Conditions of Personhood*, in *THE IDENTITIES OF PERSONS* 177–78 (Amélie Oksenberg Rorty ed., 1976), cited in Elyn Saks, *Multiple Personality Disorder and Criminal Responsibility*, 10 S. CAL. INTERDISC. L.J. 185, 190 (2001).

for example, both Robin and Jennifer use language, are self-conscious, make rational choices and form rational beliefs (which is an intentional predicate), have rights (including not to be hurt), and have duties as moral agents (including not to lie). One might therefore conclude that each alter is a separate person.

This argument fails because all of these observations can be explained by someone who denies that Robin and Jennifer are *separate* persons. Imagine a normal person without MPD named Norm. That part of Norm that consists of Norm's life on a certain day, or when he is in a certain mood, can be called NormPart. NormPart uses language and is self-conscious and rational, insofar as Norm uses language and is self-conscious and rational on that particular day, or when he is in that particular mood. NormPart also has a right not to be hurt and a duty not to lie insofar as Norm has those rights and duties on that particular day (or when he is in that particular mood). All of these characteristics of persons can be ascribed to NormPart, because they can be ascribed to Norm during the time when that part of Norm exists.

Now compare Norm with alters in a case of MPD. If alters are parts of a person, instead of separate persons, then they can meet all of Dennett's criteria of persons simply because the persons of whom they are parts have those properties during times when those alters are in control of the person. Even if different alters exist at the same time, they perform different individual acts, and each act can be ascribed to a particular alter only because *the person of whom that alter is a part* does that act. In this way, those theorists who claim that different alters are parts of the same person can explain why we ascribe Dennett's criteria when we do. Thus, Dennett's criteria do not favor one view of individuation over the other.

Technically, the problem with this argument is that it confuses different contrast classes. Dennett's criteria are intended to distinguish a person from a non-person, such as an object, plant, or lower animal. Dennett never intended his criteria to be used to distinguish one person from another to individuate persons. Moreover, Dennett's criteria are ill-suited for individuation. Suppose all we know is that Mark Twain is a rational, self-conscious language user and a moral object and subject; and so is Samuel Clemens. This tells us that Mark is a person and that Sam is a person, but it does not tell us whether Mark and Sam are the same person. "Mark" might be a nom-de-plum for "Sam," in which case Mark is the same person as Sam. This person might go by the name "Mark" in some contexts at some times, such as when writing, but by the name "Sam" in other contexts at other times, such as when dining. Similarly, if "Robin" and "Jennifer" are simply different names for different parts of a single person's life, then each can fully meet Dennett's criteria but still be the same person. Thus, even if

Dennett's tests show that each alter is or is part of a person, as opposed to a plant, they cannot show that these alters are different persons, as opposed to parts of the same person.

To argue for or against personal identity, a different kind of criterion is necessary. In particular, one needs a necessary condition of personal identity in order to argue that two alters are or are parts of different persons. A *necessary* condition of personal identity is simply some relation between X and Y such that, whenever X and Y do not stand in that relation, X *is not* the same person as Y. In contrast, a *sufficient* condition of personal identity is a relation between X and Y such that, whenever X and Y stand in that relation, X *is* the same person as Y.

We propose a sufficient condition of personal identity to show that different alters in cases of MPD are or are parts of the same person. This strategy will not settle the philosophical issues surrounding personal identity or MPD. Indeed, part of our point is that one need not settle these issues to defend criminal punishment in cases of MPD against objections based on personal identity.

Many criteria of personal identity have been proposed. We will discuss criteria that focus on the body, brain, memory, personality, projects, awareness, and control. These criteria could be conjoined and disjoined. One particular combination of criteria will be crucial to our argument.

In real life, we usually determine whether the person next to us is the same person as the one we married by looking at the shape of her body or at least her face. Of course, the shape of a person's body and face can change over the years or suddenly as a result of some injury. Large parts of the body can be amputated or transplanted. The possibility of such changes in one's body show that complete bodily identity is not necessary for personal identity, but identity between bodies as wholes, which does not require identity of all body parts, might still be necessary. Complete bodily identity and even a continuous chain of stages linking the body of the person we married to the person next to us still seems sufficient for personal identity in the real world.

Science fiction raises doubts. Since John Locke,¹² the bodily criterion of personal identity has been rejected by most philosophers on the basis of examples in which minds exchange bodies. Suppose a Prince and a Cobbler go to sleep in the same castle. In the morning, the Prince's mind is in the Cobbler's body, and the Cobbler's mind is in the Prince's body. Locke and his followers claim that the person who was the Prince is now identical with the Prince's mind in the Cobbler's body, not the Cobbler's mind in the Prince's body. This example intended to demonstrate that a person's

¹² JOHN LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING 457 (1959).

identity depends on the mind rather than the body. Saks uses Locke's example in this way.

Such examples seem more realistic when one considers the possibility of a brain transplant. In Shoemaker's example,¹³ while performing two brain transplants at once, a surgeon inadvertently puts Brown's brain in Robinson's body, thereby producing a combination called Brownson, which has all of Brown's memories and personality traits. The surgeon also puts Robinson's brain in Brown's body, but that combination dies. Shoemaker and his followers claim that Brown is the same person as Brownson. Again, this example is intended to demonstrate that personal identity follows the mind rather than the body.

It is crucial, however, that Brownson has Brown's brain, even though Brownson no longer has Brown's body. As Bernard Gert argues,¹⁴ if Robinson were hypnotized in such a way that Robinson's body assumed all of Brown's memories, personality traits, and other mental features, then nobody would say that the result was identical to Brown, especially if Brown still existed with all of the same memories, personality traits, and other mental features. Thus, brain identity still seems necessary for personal identity.

It also seems sufficient. This point is clearest when brain transfer follows hypnosis:

[P]rior to brain transfer between Brown and Robinson, Brown had been hypnotized and told that he was Robinson. He then makes memory claims to be Robinson and assumes the personality and character of Robinson. Thus, prior to the brain transfer, Brown has the psychological features of Robinson. If, while in this state, Brown's brain is put in Robinson's body, we would have a person who would have Robinson's body, Brown's brain, and Robinson's psychological features. Yet I should want to say that this person is really Brown.¹⁵

This person would not be Brown if any mental features were necessary for personal identity, since the body with Brown's brain has none of Brown's mental features. Thus, if the resulting person really is Brown, then mental features are not necessary, and brain identity is sufficient for personal identity.

Why is it sufficient? The answer appears to be that the brain is the part of the body associated with psychological features. (It would be more precise to refer to only part of the brain, but we will speak of the brain as a whole for simplicity.) If the heart were the seat of the mind, then heart

¹³ SYDNEY SHOEMAKER, *SELF-KNOWLEDGE AND SELF-IDENTITY* 23 (1963).

¹⁴ Bernard Gert, *Personal Identity and the Body*, X *DIALOGUE* 458, 472 (1971). For a more recent defense of a bodily criterion, see ERIC OLSON, *THE HUMAN ANIMAL; PERSONAL IDENTITY WITHOUT PSYCHOLOGY* (1997).

¹⁵ Gert, *supra* note 14, at 472.

identity might determine personal identity. What determines personal identity is the identity of whatever organ, or set of organs, or part of an organ, is associated with mental properties. Since this organ in humans is the brain, we will talk simply about brain identity.

Admittedly, if the brain is frozen until it ceases to function, then there is no person at all, so there cannot be the same person. Nonetheless, if the same brain is functioning, then it is the same person, even if the brain is not functioning in the same way. Since our brains function very differently when we are asleep or drunk or hypnotized or suffering from Alzheimer's, yet we are still the same persons, personal identity cannot require the same brain function, even if it does require some brain function.

What about Locke's case? Now that we realize that it matters how the cobbler's body came by the prince's mind, we need to ask what happened overnight. If the cobbler was hypnotized, and so was the prince, then we would not say that the prince is now the cobbler with the prince's mind. If an evil surgeon switched the brains of the prince and the cobbler, then we would say that the cobbler with the prince's mind was the prince, but that would not affect the brain criterion. The only case that would affect the brain criterion would be where the mind switched bodies without the brain and the personal identity followed the mind. But according to many views of mind, including all varieties of physicalism, this is impossible. Locke's example is possible only if one thinks, as Locke did, that the mind is a separate entity, independent of the body and brain. Since such views of the mind are questionable, so is Locke's argument against the brain criterion.

This criterion is easy to apply to cases of MPD. Different alters in a case of MPD inhabit the same body completely. That body has a single brain. It is not even split, as in split-brain patients. Some evidence suggests that different alters use different parts of the brain or that the brain displays different patterns of activity when different alters are in control. There are also some differences, however, between the patterns of activity when a single person is in different moods or stages of life, or when asleep or drunk. These normal differences might not be as extreme as in cases of MPD, but they still show that, even if the brain functions differently when different alters are in control, this fact alone cannot undermine the conclusion that these alters must be parts of the same person, as long as brain identity is sufficient for personal identity.

Many philosophers reject the brain criterion on the basis of examples like Locke's, and focus instead on alternative criteria, such as memory. A memory criterion has some basis in everyday life. Even if you cannot recognize your old friend, Joe, because he was burned beyond recognition, you might still be able to identify him by recalling certain memories. Admittedly, I might be able to recall that Joe jumped off a diving board

with you on September 17 twenty years ago, even if I am not Joe. What I cannot do, unless I am Joe, is remember *having* the experience of jumping off the diving board with you that time. Similarly, only you can remember having the experience of jumping off the board with Joe. We will call such memories of having experiences “experiential memories.”

Experiential memories can fade just like other memories. I might not be able to remember jumping off the board. A person can suffer complete amnesia and lose all previous experiential memories. This would not show that he was not the same person as he was before the amnesia. He would still have the same parents, children, social security number, and so on, even if his character or personality changed. Consequently, experiential memories are not necessary for personal identity, and no lack of experiential memory can be used to argue *against* personal identity.

This point is important because the experiential memories of people with MPD are radically disconnected. If a connected chain of experiential memories were necessary for personal identity, then alters in a case of MPD would be different people, as would people with amnesia, dissociative fugue, and blackouts during intoxication or after hypnosis. Since this conclusion is implausible, disconnection among experiential memories cannot be used to show lack of personal identity in cases of MPD or anywhere else.

Experiential memories still might provide a sufficient condition of personal identity. Suppose that on Wednesday, Ron remembers having his experience of eating breakfast on Monday, although he does not remember any experience on Tuesday. On Thursday he also remembers having the same experience on Monday, although he does not remember having any experience on Tuesday or Wednesday. Despite the disconnections among his memories, the fact that his experiential memories on Wednesday and Thursday are memories of having the same experience on Monday is enough to show that the person who had that experiential memory on Wednesday is the same as the person who had the experiential memory on Thursday. More generally, when X and Y have memories of having at least one common experience, then their memories are said to converge. A single pair of convergent experiential memories is sufficient for personal identity.

This criterion can be extended if identity is transitive, so that, if X is identical with Y, and Y is identical with Z, then X is identical with Z. Suppose that each day Ron remembers the preceding day but nothing before. On Friday, Ron remembers eating breakfast on Thursday, but not on Wednesday, on Thursday, Ron remembers eating breakfast on Wednesday, but not on Tuesday, and so on. Ron’s experiential memory chain shows that Ron on Friday is the same person as Ron on Thursday, Ron on Thursday is the same person as Ron on Wednesday, and so on. By transitivity, it follows

that Ron on Friday is the same person as Ron on Wednesday, and so on. These identities hold even if no experiential memory is shared on Friday and Tuesday. More generally, we can say that two experiential memory chains converge when each chain contains one of a pair of convergent experiential memories. Such convergence between experiential memory chains is sufficient for personal identity, even between times when there are no current convergent memories.

It is not important whether my experiential memory is distorted in some ways, but it is not enough to have a similar experiential memory of eating toast for breakfast on Monday at 8:00 a.m., since different people can eat the same thing at the same time and later remember having a similar experience of eating toast for breakfast on Monday at 8:00 a.m. On this theory, different people cannot remember, or have memory chains that converge on a memory of, having exactly the same experience of eating breakfast on Monday. Thus, this test of personal identity rests on some test of experience identity.

This reliance creates problems when we distinguish numerical identity from exact phenomenological similarity. Two experiences are exactly similar phenomenologically when they do not differ in any detail that is observable or introspectable by the person having the experiences. Such experiences still might not be numerically identical. Possibly through hypnosis, Ron can have an experience of eating breakfast on Monday that is exactly like Don's in all detectable respects. Each sees the same people, dishes, and decorations from the same angles, so each of their heads would seem to have been in the same place at the same time looking in the same direction. Each also experiences the same flavors, smells, sounds, and feelings in exactly the same order. Later Ron and Don can have experiential memories that are exactly similar phenomenologically, and they can reliably describe them to me. Nonetheless, if Ron and Don are now standing next to each other with different brains and personalities, then they cannot be the same person. Thus, exact phenomenological similarity is not enough for personal identity. What would be sufficient is that the remembered experiences be numerically identical, which seems to require that the same person had them. In this case, we need to know whether Ron and Don were the same person while they were having the experience before we can know whether they remember having the same experience numerically and before we can use memories to determine personal identity at a later time.

This problem of circularity has led many philosophers to abandon memory as a criterion of personal identity. It still suffices for personal identity that a chain of experiential memories converges on the same experience numerically. This phenomenon, however, cannot provide a

general criterion of personal identity because it cannot be applied without making assumptions about personal identity at the time of the remembered experience.

Luckily, these assumptions seem plausible in cases of MPD. Suppose Mel is born in 1990, goes to day care for the first time in 1994, and subsequently develops MPD. If each of Mel's alters has an experiential memory of something that happened to him during the first day of day care, or of any other experience before developing MPD, there should be no doubt that these experiential memories are memories of the same experience numerically. There was clearly only one person at the time of the remembered experiences. Since numerical identity of persons and experiences is not in doubt at that earlier time, the later memories seem sufficient for personal identity at the later time, when personal identity is at issue.

Moreover, even if such memories are rejected as a criterion of personal identity, they can still be used as evidence. Only in science fiction do different people have exactly similar phenomenologically experiential memories. Consequently, the fact that Mel's alters share some exactly similar phenomenologically experiential memories in 1994 is at least very strong evidence that these alters are parts of the same person.

Admittedly, Mel is fictional. To apply the memory test in real cases is harder. In the *Grimsley* case, for example, it is not obvious whether Robin and Jennifer remember having any common experience. Fortunately, no common experiential memory is necessary. It would be sufficient if their chains of experiential memories converge to include some memory of having the same experience. Unfortunately, this convergence is difficult to prove. We cannot rely on current reports, even if sincere, since the shared experiential memory in the chain need not be accessible at the current time. Thus, personal identity will be difficult to prove from memories on the record.

Nonetheless, it is likely that Robin's chain of experiential memories and Jennifer's chain of experiential memories converge on at least one shared memory of the same experience. Each remembers being told about the lump in her breast. In addition, each is probably linked to many experiential memories, possibly experiences in childhood before the onset of MPD, when there was definitely only one person. Most likely, each alter can remember going to school or to a friend's house, or having been scared when her parents fought or angry when a sibling hurt her, or something else. Although, it is possible that no such convergence ever existed, this seems unlikely.

Moreover, even if none of their current memories are links in convergent chains, it is even more likely that that Robin and Jennifer would have such memories after receiving therapy. If they would then be the same person, and if each is the same person then as they are now, then they must be the same person now. It seems very unlikely that they are not the same person according to the memory criterion, even if their identity is difficult to prove.

Similar analysis applies to every actual case of MPD. It is possible that, when MPD arises, a new person appears with no memories of the past and no actual or potential convergence with the other person who shares the same body. There is little or no evidence for this phenomenon in actual cases and the opposite seems much more plausible, at least in the cases above.

If no converging chain exists, then we cannot use this sufficient condition of personal identity to argue that the alters are the same person. This result would not imply that the alters are different people, because convergent memory chains are not necessary for personal identity, as we argued above. In any case, there is reason to believe that such convergent memory chains exist in many cases of MPD, which provides reason to believe that these alters are parts of the same person.

Doubts remain about whether either brain identity or a convergent experiential memory chain is sufficient for personal identity. One might still wonder whether a convergent memory chain is sufficient when the memories in the chain occur in or are associated with separate bodies. One also might wonder whether complete brain identity or even whole body identity is sufficient when memories are not linked, as in Locke's prince and cobbler example.

Neither criterion alone need be defended by opponents of the multiple persons view of MPD. Even if neither brain nor memory alone suffices, it is clearly sufficient for personal identity. For example, a person named "Liz" and a person named "Beth" may share complete bodily identity, including complete brain identity, in conjunction with a multiple convergent experiential memory chain, and no one else, now or ever, will have exactly phenomenologically similar experiential memories. When all of these factors come together, there is no reason to doubt that Liz and Beth are the same person.

These factors come together in cases of MPD. In the *Grimsley* case, Robin and Jennifer share the same body, including the same brain. It is very likely that their experiential memory chains converge at many points. No one else has any experiential memories that are phenomenologically exactly similar to theirs. This situation appears sufficient to establish their

personal identity. At the very least, it is strong evidence that Robin and Jennifer are parts of the same person. The same argument could be made in all other real cases of MPD, refuting any multiple persons view of MPD.

Defenders of a multiple persons view respond that something more is necessary to establish personal identity. If so, the conjunctive criterion is not sufficient. If the added necessary condition were not met in cases of MPD, then alters in cases of MPD would not be parts of the same person.

One condition that is often upheld as necessary is continuity or similarity of personality or character. In this context, one's personality is the set of values or dispositions that constitutes or explains why one acts, feels, and thinks in the general ways that one does. According to this view, X is the same person as Y only when X's personality is sufficiently similar to that of Y. This theory inspires much common conversation, such as the comment to one's degenerate spouse, "You are not the person I married," meaning that the spouse's personality has changed dramatically.

This criterion will not function in law. Suppose Joe is a heroine addict who undergoes a religious conversion to fundamentalism, changing his character or personality changes almost completely. We would and should allow him to inherit what his grandfather left to him in a valid will. We would and should find him guilty for crimes that he committed before his conversion, even if we reduced or commuted his sentence. The same applies to people with manic depression or bipolar disorder, who change dramatically, unprompted by external factors. If a continuous personality were required for personal identity, and if personal identity were required for punishment, then one could escape punishment by changing one's personality after committing a crime. Criminals who plan such an escape should not be excused. Moreover, one main purpose of criminal law is deterrence. I can fear future punishment even if I know that I will have a different personality by the time I am punished. Personality can vary in degrees, but criminal law needs an on-off criterion as a necessary condition of guilt, as courts cannot declare anyone partly guilty. For all of these reasons, continuity of personality does not seem necessary for the kind of personal identity that is necessary for criminal responsibility.

The vague idea of personality could be made more precise if one's personality is constituted or determined by one's projects and how they should fit together. That idea might lead to a test like that suggested by Carol Rovane:

an individual person exists when there is a set of intentional episodes such that: (1) these intentional episodes stand in suitable rational relations so as to afford the possibility of carrying out sustained coordinated activities; (2) the set includes commitment to particular unifying projects whose execution involves the very sorts of sustained coordinated activities made

possible by (1); and (3) the commitment to carrying out these unifying projects brings in train a commitment to achieving overall rational unity within the set.¹⁶

This analysis implies that an alter is an individual person if and only if its intentional episodes meet conditions (1)–(3). It also suggests that two alters are not parts of an individual person if and only if either suitable relations do not hold between the intentional episodes of the alters or they do not share any unifying project or they are not committed to achieving rational unity between their projects.

This test does not seem sufficient to establish personal identity. My wife and I execute sustained coordinated activities that make it possible for us to execute our shared projects of raising our children and maintaining our personal relationship. We are committed to achieving overall rational unity within and between our projects. Nonetheless, my wife and I are still separate persons. Rovane countenances group persons, but my wife and I are not parts of a group person, at least in any way relevant to criminal law. Moreover, the part of Norm that exists on Monday and the part of Norm that exists on Tuesday might each meet Rovane's three conditions if Norm needs both days to complete a certain project. However, neither the part of Norm that exists on Monday nor the conjunctive part of Norm that exists through Monday and Tuesday is an individual person who is distinct from Norm. If Rovane's conditions were sufficient, they would yield so many persons that we wouldn't know which one to hold responsible.

More importantly, Rovane's three conditions are not necessary for personal identity over time. Even if no shared project or commitment unifies me at age six with me now, I am still the same person now as I was at age six. Rovane's criteria might seem to work better within a short time period, but consider the example of a man with extreme manic depression. Sometimes he is suicidal, and sometimes he thinks that he is a great artist. When he is manic, he sees no value in suicide. When he is depressed, he sees no value in his art. In neither phase is he actually committed to rational unity within this set of projects, nor is he able to sustain coordinated activities through both phases. Still, neither phase by itself is a person, and the man is the same person in both phases, because he meets the body and memory conditions. If he commits a crime while manic, then we may legitimately hold him responsible and punish him while he is depressed. Thus, unifying projects cannot be necessary for any kind of personal identity that is crucial to criminal responsibility.

Rovane might respond that such objections misinterpret commitment as a psychological state, whereas her notion of commitment is normative.¹⁷ In

¹⁶ CAROLE ROVANE, *THE BOUNDS OF AGENCY* 174 (1998).

¹⁷ We are indebted to Isaac Levi for pressing this response.

the normative sense, intentional episodes are committed to overall rational unity if and only if they are subject to criticism as irrational to the extent that they fail to achieve overall rational unity among their projects, regardless of whether they actually accept this commitment. Manic-depressive moods are not distinct persons because they need to unify projects in different moods in order to be rational, but alters in MPD might still be distinct persons if they need not unify their projects to be rational. However, this move to normative commitments cannot undermine our claim that alters in a case of MPD are parts of the same person. Alters in a case of MPD are subject to criticism for lacking rational unity. If they were not, then it would be difficult to understand why they need to be cured or may be required to undergo treatment. Perhaps unification should not always be sought, as Rovane argues. We do not always hold alters to their commitments by criticizing them for lacking unity. Nonetheless, in the above cases and others that involve crimes, it seems irrational for one alter to interfere with the projects of another alter in some situations where such interference need not be irrational for a distinct person. The alters still share the same body and brain, as well as convergent memories. Consequently, alters appear to be parts of the same person even on this normative interpretation of Rovane's view.

A lack of awareness between phases might distinguish MPD from manic depression. Alters might be different people if X is the same person as Y only when X is aware of what Y does. Awareness is relevant to criminal law insofar as X cannot control what Y does or prevent Y from committing a crime if X is not aware that Y is committing a crime. One could also address the issue of control by holding that X is the same person as Y only when X is able to control what Y does.

When we apply such tests to our cases, the alters become different persons. In the *Grimsley* case, Jennifer is not always aware of what Robin does, and vice-versa. Moreover, Jennifer cannot stop Robin from doing certain things, even when she is aware of what Robin is doing. In the *Denny-Shaffer* case, Bridget is not aware of or able to stop the other alter's crime. These different alters are different persons if either awareness or control is necessary for personal identity.

Alters are sometimes reported to have a kind of coconsciousness. One alter might be aware of the other's thoughts even if nothing is said out loud. Awareness, however, is not essential to or happening at the time of the crimes in our cases. Such coconsciousness also does not enable one alter to control actions by another. Each alter lacks the kind of awareness and control that might seem necessary for criminal responsibility.

Neither awareness nor control, however, is necessary for personal identity over time. I cannot control what I did yesterday, since it is in the

past. If I do not now remember doing it, then I might not be aware of it. This does not mean that I am not the person who did it, or that I cannot be punished for doing it. The same theory applies to control over the future. Even if I am not able on Monday to control what I eat for dinner on Tuesday, and even if I am not aware of what I will eat, much less aware of eating it, that I am still the same person on both days. Thus, personal identity can hold over time without neither awareness nor control.

Alters in a case of MPD are analogous in relevant respects to different parts of a single person's consciousness at different times. If each alter is aware of and can control what it does at a certain time, but is unaware of and cannot control what the other alter does at a different time, then the alters are related much like temporal parts of a single person when one temporal part is aware of and can control what it does at a certain time, but is unaware of and cannot control what another temporal part does at a different time. Thus, if awareness and control are not necessary for personal identity over time, then awareness and control are also not necessary for personal identity between alters.

One might respond that this analogy is irrelevant, because it is important that alters can exist consciously at the same time in some cases. It is not clear, however, why this fact destroys the analogy to temporal parts of a single person. It is true that we do not hold individuals responsible for an action that they cannot control at the time, but alters who commits crimes in a case of MPD are often able to control what they do at the time. In the *Denny-Shaffer* case, the alter who took the baby could have stopped herself from taking the baby. The other alter, Bridget, who became conscious later, could not then change the past, but none of us can change what our past selves did. If lack of control over past selves removed criminal responsibility, then all criminals would go free. Thus, lack of control over a past alter also should not remove criminal responsibility.

Opponents might still object that one alter should not be held responsible for what another alter did when the former could not control the latter, any more than one person should be held responsible for what another person does when the former cannot control the latter. But this response blatantly assumes that different alters are or are like different persons. That begs the question addressed herein, which is precisely whether alters are or are like different persons. It makes sense to deny such criminal responsibility in cases of MPD if one assumes that different alters are different persons, but we need an independent test to show that they in fact are different persons. No criterion of awareness and control can show the lack of personal identity among alters, because that criterion itself remains suspect at best.

One final position is skepticism. Under the influence of powerful arguments by Hume¹⁸ and Parfit¹⁹, many contemporary philosophers believe that the concept of absolute personal identity is incoherent, so we should not ask whether X and Y are or are not the same person. We will not assess this claim. If the notion of absolute personal identity is as incoherent as skeptics claim, then it cannot be used to argue against punishing people with MPD when one alter commits a crime. Incoherence in a concept makes it useless for arguments and shows that it is not necessary for criminal responsibility.

Moreover, even if no natural bundles of states make a person, we still might need to bundle some alters or other mental states together artificially for our purposes. As skeptics admit, the law constructs artificial categories in many areas. If skeptics are correct, criminal law's concept of a person would be an additional category and one that is unavoidably artificial. Since in a case of MPD we cannot punish or even involuntarily commit one alter without the others, the bundles to be used in criminal law seem obvious. For practical reasons, we must treat all alters that share the same body as if they are parts or aspects of the same person. This treatment would be objectionable if the alters really were different people, but no objection on that basis could be raised if absolute personal identity is incoherent. Thus, skepticism about personal identity cannot stand in the way of punishing a person with MPD. It might even support it.

V. CONCLUSION

We have argued that alter personalities are parts of the same person in any way that is required for criminal responsibility. Thus, we believe there is reason to reject Saks' argument for nonresponsibility, insofar as it is based on assigning the status of personhood to alter personalities. Our rejection of the personhood of alters, however, may be relevant to other of Saks' arguments for nonresponsibility, even though these arguments do not depend on the personhood of alters.

If alter personalities are not persons, then the alternative left to the criminal law is to view alter personalities as mental states. This way of viewing alter personalities is consistent with traditional concepts of insanity and involuntariness, which look to a person's mental state at the time of the crime in order to determine whether that person should be held criminally accountable. Thus, assessing the responsibility of an individual with MPD becomes very similar to assessing the responsibility of any other defendant.

¹⁸ DAVID HUME, *A TREATISE OF HUMAN NATURE* bk. I, pt. IV, sec. VI (L.A. Selby-Bigge ed. 1973).

¹⁹ DEREK PARFIT, *REASONS AND PERSONS* (1984).

The court attempts to determine whether the individual met the relevant standard at the time the crime took place. The *Grimsley* court came to precisely this conclusion.

Saks argues that the dividedness of individuals with MPD will often serve to vitiate responsibility. Yet, if the personhood question is foreclosed, then the question is not how divided the person was, but whether, at the time of the crime, the person knew, appreciated, understood, could control, or whatever the jurisdiction calls for. This view of assessing responsibility seems consistent with philosophy, psychology, and precedent in criminal law. Given the complexity of MPD, however, our position will hardly foreclose the debate.