

Dissociation as a modifying variable of imputability in criminal cases

Abstract

In the field of Legal and Forensic Psychology, the assessment of psychological impairment is crucial in criminal cases. This article explores how dissociation, a psychological defense mechanism, affects the degree of criminal imputability. Dissociative disorders, often a consequence of severe trauma or high-stress situations, can coexist with various disorders, complicating the assessment of imputability. Dissociation affects cognitive (perception, attention, memory, thinking, language) and volitional (self-control, determination, motivation, resistance to external pressure) abilities, which are essential for determining criminal responsibility. In the judicial system, it must be assessed whether dissociation prevented the defendant from understanding the illegality of his actions or from controlling his actions by analyzing the impairment of these cognitive and volitional capacities, respectively. Dissociation may hinder the understanding and control of the defendant's actions, influencing the assessment of his imputability. In the Spanish legal framework, Articles 20 and 21 of the Criminal Code provide for exonerating and mitigating circumstances in cases of psychological impairment, so defense attorneys will try to argue that dissociation exempts from criminal liability, while prosecutors seek to prove the opposite and request penalties commensurate with the criminal liability demonstrated. Given the complexity of dissociation and its impact on imputability, it is vital that psychiatric and psychological evaluations be rigorous to aid the decision-making process and to try to ensure that decisions are as fair and balanced as possible. In conclusion, rigorous psychological evaluation and careful legal review are required to adequately address these cases, recognizing the complexity of the human mind in general and dissociation in particular.

Keywords: forensic psychologist, criminal court cases, dissociation, imputability, cognitive and volitional capacities

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Introduction

Within the framework of legal and forensic psychology, the assessment of psychological impairment is a powerful tool to help in the difficult decision-making process that judges and magistrates must carry out, but it becomes more pressing when it comes to cases within the criminal jurisdiction. In this sense, we must ask ourselves if in a crowded court, the accused declares not to remember anything about the crime. Can any psychological disorder in general and dissociation in particular really excuse criminal conduct? For this we are going to make a small tour of all those related aspects so that this question can be answered or at least shed some light on the matter. We cannot start in any other way than framing the concept of dissociation in all its conception since dissociation is understood as a psychological defense mechanism¹ that raises several questions about the criminal liability of those who claim to have acted under this state. In this sense, we know that the concept of dissociation was introduced in the late nineteenth century by Pierre Janet as an event related to some mental disorder but, since that time, the definition of dissociation and,

therefore, of dissociative disorders has had a significant evolution, considering also the appearance of this in non-clinical population that would range from adaptive dissociative experiences to the different dissociative disorders.^{2,3}

Looking at the main diagnostic manuals and their assessment criteria, the Diagnostic and Statistical Manual of Mental Disorders 5th edition¹ describes dissociation as an “*interruption and/or discontinuity in the normal integration of consciousness, memory, self- and subjective identity, emotion, perception, bodily identity, motor control and behavior*” while the International Classification of Diseases in its 10th revision⁴ defines it as “*partial or complete loss of normal integration between certain memories of the past, awareness of self-identity, certain immediate sensations, and control of body movements*” and in its 11th revision⁵ as the “*involuntary interruption or discontinuity in the normal integration of one or more of the following: identity, sensations, perceptions, affects, affects, thoughts, memories, control over body movements or behavior*”. Below is detailed the different dissociative disorders based on the diagnostic criteria of the aforementioned manuals (Table 1).

Table 1 Dissociative disorders according to diagnostic criteria of the main diagnostic manuals

DSM-5	ICD-10	ICD-11
Dissociative identity disorder [300.14 (F44.81)].	Organic [F06.5].	Dissociative disorder with neurological symptoms [6B60]:
Dissociative amnesia [300.12 (F44.0)].	Dissociative amnesia [F44.0].	- Visual disturbance [6B60.0].
Depersonalization/erealization disorder [300.6 (F48.1)].	Dissociative fugue [F44.1].	- Hearing impairment [6B60.1].
Other specified dissociative disorder [300.15 (F44.89)].	Dissociative stupor [F44.2].	- Dizziness or lightheadedness [6B60.2].
Dissociative disorder not specified [300.15 (F44.9)].	Trance and possession disorder [F44.3].	- Altered sensitivity [6B60.3].

Table 1 Continued...

DSM-5	ICD-10	ICD-11
	Dissociative motility disorders [F44.4].	- Non-epileptic seizures [6B60.4].
	Dissociative seizures [F44.5].	- Speech disturbance [6B60.5].
	Anesthesias and dissociative sensory losses [F44.6].	- Weakness or paresis [6B60.6].
	Mixed dissociative (conversion) disorders [F44.7].	- Gait disturbance [6B60.7].
	Ganser syndrome [F44.80].	- Movement disturbance [6B60.8]: chorea [6B60.80], myoclonus [6B60.81], tremor [6B60.82], dystonia [6B60.83], facial spasm [6B60.84], parkinsonism [6B60.85], other specified [6B60.8Y] and unspecified [6B60.8Z].
	Multiple personality disorders [F44.81].	
	Dissociative (conversion) disorder in childhood and adolescence [F44.82].	- Cognitive impairment [6B60.9].
	Other dissociative (conversion) disorders [F44.8] specific [F44.88] and unspecified [F44.9].	- Other specified [6B60.Y].
		- Other unspecified [6B60.Z].
		Dissociative amnesia [6B61]:
		- With dissociative fugue [6B61.0].
		- No dissociative fugue [6B61.1].
		- No specification [6B61.Z].
		Trance disorder [6B62].
		Trance and possession disorder [6B63].
		Dissociative identity disorder [6B64].
		Partial dissociative identity disorder [6B65].
		Depersonalization and derealization disorder [6B66].
		Secondary dissociative syndrome [6E65] (Organic dissociative disorder)
		Other specified dissociative disorders [6B6Y].
		Other dissociative disorders not otherwise specified [6B6Z].
		Brief Reactive Dissociative Disorder [QE84] (Acute Stress Reaction)

DSM-5: Diagnostic and Statistical Manual of Mental Disorders 5th edition.¹

ICD-10: International Classification of Diseases 10th revision.⁴

ICD-11: International Classification of Diseases 11th revision.⁵

Development

Definition and explanation of dissociation

Dissociative disorders could appear as a consequence of some kind of trauma or acute¹⁻³ and would present a high comorbidity with disorders related to these consequences such as those related to stress factors, including Post Traumatic Stress Disorder (PTSD), but they would also appear associated with other types of disorders such as persistent depressive (dysthymia) or major, depressive or mixed adaptive, borderline personality, avoidant, dependent or obsessive-compulsive, somatic symptoms, sleep, eating behavior and those related to substance use.^{1,6} That is, dissociation refers to a mental process in which a person disconnects from his or her thoughts, feelings, memories or identity and may be a response to severe trauma or highly stressful situations for the individuals who develop it. Dissociative experiences during violent perpetration may

include *depersonalization* (such as seeing oneself from a distance during episodes of violence), *derealization* (such as aspects of the environment or situation appearing unreal during episodes of intimate partner violence), memories of being a victim of violent aggression, and *amnesia* of the violent episodes experienced. Dissociation during the perpetration of violent acts has been a major clinical concern for decades for a number of reasons. Research conducted with clinical samples of offenders with dissociative states at the time of perpetration reported that violent acts were classified as more dangerous because offenders do not respond to external cues, such as pain and suffering experienced by the person being assaulted, nor do they respond when inflicting injuries of a physical nature, facts that would undoubtedly lead offenders without such difficulties to immediately stop this type of violent behavior.⁷⁻¹¹ In addition, it is possible that this type of dissociative experiences represents a considerable difficulty in the success of the psychological treatment carried out with this type of

population due to the denial and minimization of their violent acts, separating their violent behavior from their sense of identity or self-image, which allows them, in the end, to justify or ignore the consequences of their actions.

Dissociation and the penal system

Analyzing the concept of dissociation within the criminal field, we must bear in mind that the courts have the hard task of considering whether dissociation affects a person's capacity to understand the nature of his or her acts or to differentiate between right and wrong. To do so, first of all, we have to make a slight approximation on what are the cognitive and volitional capacities that will be the translation of the legal term of imputability into our psychological language. Starting from this premise, we must understand that cognitive and volitional capacities are fundamental in the evaluation of imputability in the criminal field and therefore we will make a brief conceptual approximation.

Cognitive capabilities

Cognitive abilities are understood as the mental functions related to knowledge, comprehension and information processing, among which we can highlight:

Perception: interpreting and understanding the information received.

Attention: concentration and maintenance of attention on specific tasks.

Memory: storing and retrieving information.

Thinking: reasoning, decision making and problem solving.

Language: understanding and producing speech and writing.

In the criminal context, cognitive capacities are crucial to determine whether an individual can be considered imputable. For a person to be imputable, he or she must have the capacity to understand the nature of his or her acts and the legal consequences thereof, i.e., the subject must be able to:

Understand the wrongfulness of your actions: know that what you are doing is prohibited by law.

Recognize consequences: understand the possible legal consequences of your actions.

Volitional capabilities

In this case, the volitional capacities tell us about the mental functions related to the will and the ability to control one's actions and behaviors, which are determined by:

Self-control: control impulses and behaviors.

Determination: make decisions and act accordingly.

Motivation: initiating and maintaining goal-directed behaviors.

Resistance to external pressure: resisting external influences and maintaining control over personal decisions.

In the same way as cognitive capacities, volitional capacities are extremely important in the criminal field for the court's assessment of imputability because it must be considered whether a person is capable of controlling his actions and behaviors by analyzing whether he is able to do so:

- i. Exercising control over their actions and not acting on impulse.
- ii. Deliberate conscious decision making.

Relevance in criminal cases

After the brief approach and the framing within the legal framework we can appreciate that, in criminal cases, dissociation can affect both cognitive and volitional capacities since a person in a dissociative state may have difficulties both to remember events (affecting memory) and to make rational decisions (affecting impulse control). Therefore, we synthesize the assessment of imputability taking into account both the possible impairment of cognitive or volitional capacities according to the following terms:

Cognitive: analyzing whether the subject understood the nature and illegality of his actions at the time of the crime.

Volitional: assessing whether the person had the capacity to control his or her actions and act in accordance with that understanding. Therefore, it is common for defense attorneys, in situations of this caliber, to argue that due to a dissociative state, the defendant did not have sufficient cognitive or volitional capacity to be considered responsible for his acts or, at least, that these would be altered and, therefore, his responsibility should be reduced through mitigating and exonerating factors, as we will develop in the following section. On the other hand, the main task of the prosecutors would be to present evidence to prove that the defendant was not affected at the time of the commission of the crime. What is clear is that both cognitive and volitional capacities are particularly relevant in assessing the criminal responsibility of the accused and, therefore, dissociation, by affecting these capacities, poses significant challenges for the judicial system when attempting to determine imputability, and it is vitally important that psychiatric and psychological evaluations be rigorous and accurate to ensure that judicial decision-making is carried out in a fair and balanced manner for all parties.

Legal perspectives

In our perspective we must also keep in mind that there are different legal approaches to imputability and dissociation in different jurisdictions since, in some countries, dissociation may be considered as a form of mental illness that exempts from criminal liability, while in others, a more rigorous test is required.¹² As far as the Spanish legal system is concerned, we must bear in mind articles 20 and 21 of the Penal Code,¹³ which indicate all those cases in which criminal liability or imputability would be modified, understood, as we have seen, from the point of view of the affectation of their cognitive and volitional capacities. According to:

Article 20: Causes for exemption from criminal responsibility: This article indicates the situations in which defendants are exempt from criminal liability and the following points discuss this in relation to the presence of psychopathologies:

1st: whoever, at the time of committing the criminal offense, because of any mental anomaly or alteration, is unable to understand the unlawfulness of the act or to act in accordance with that understanding. The transitory mental disorder shall not exempt from punishment when it has been provoked by the subject with the purpose of committing the crime or had foreseen or should have foreseen its commission.

2nd: who at the time of committing the criminal offense is in a state of full intoxication by the consumption of alcoholic beverages, toxic drugs, narcotics, psychotropic substances or others that produce similar effects, provided that it has not been sought with the purpose of committing it or had not been foreseen or should have been foreseen its commission or is under the influence of a withdrawal syndrome, due to dependence on such substances, which prevents him from

understanding the unlawfulness of the act or act in accordance with that understanding.

3rd: whoever, due to alterations in perception since birth or childhood, has a seriously altered consciousness of reality.

6th: whoever acts driven by insurmountable fear.

Article 21: Circumstances that mitigate criminal liability

In the same way as the previous article, this one specifies all those circumstances in which criminal liability would be attenuated due to the presence of psychopathologies, which would be described in the following points:

1st: the causes expressed in the previous chapter, when all the necessary requirements to exempt from liability in their respective cases do not concur.

2nd: that of the guilty party acting because of his serious addiction to the substances mentioned in number 2 of the preceding article.

3rd: that of acting by causes or stimuli so powerful that they have produced rapture, obsession or another state of passion of similar entity.

As the reader will be able to observe, dissociation by its own characteristics would fit in point 1 of both articles, being the work of the forensic psychologist to specify and focus his assessment with respect to the alterations present or not in the cognitive and/or volitional capacities of the accused in order to ultimately determine the degree of criminal responsibility of the accused.¹⁴⁻¹⁸

Conclusion

In light of the above, we believe that dissociation presents a complex challenge to the judicial system because we believe that a more integrated approach is needed that combines rigorous psychological assessment with careful legal review to determine imputability in these cases, not forgetting that it is essential that society and the judicial system work together to ensure that justice is done in a way that recognizes the complexity of the human mind.

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Conflicts of interest

The authors declare that there is no conflict of interest.

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