

**Duy Thuyen TRINH, Thi Cam Ha DINH, Thi Ngoc Kim  
TRAN**

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## Secção

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## Dissociative Identity Disorder and the Law: A Comparative Analysis of Criminal Responsibility in England and Vietnam

### Transtorno Dissociativo de Identidade e a Lei: Uma Análise Comparativa da Responsabilidade Criminal na Inglaterra e no Vietnam

Duy Thuyen TRINH<sup>1</sup>

Thi Cam Ha DINH<sup>2</sup>

Thi Ngoc Kim TRAN<sup>3</sup>

**ABSTRACT:** Dissociative Identity Disorder presents unique challenges to criminal justice systems, particularly in cases where fragmented identity impairs cognitive awareness or volitional control. This article explores how two contrasting legal systems one common law, one civil law approaches the issue of criminal responsibility in defendants diagnosed with DID. Employing a mixed-method strategy that combines doctrinal and comparative legal analysis with an empirical survey of 372 individuals using the Dissociative Experiences Scale (DES-II), the study highlights the limitations of binary models of capacity and the under-recognition of partial mental impairment. It argues for a functional, capacity-based framework that assesses the cognitive and volitional state of the operative identity at the time of the offence. The article recommends legal reforms to incorporate intermediate responsibility categories, enhance forensic standards, and permit adversarial testing of psychiatric evidence. These findings contribute to the evolving discourse on mental health and criminal culpability, offering comparative insights for more proportionate and scientifically informed adjudication.

**KEYWORDS:** Dissociative Identity Disorder; Criminal Responsibility; Diminished Responsibility; Functional Assessment; Forensic Psychiatry; Comparative Criminal Law.

**RESUMO:** O Transtorno Dissociativo de Identidade apresenta desafios únicos aos sistemas de justiça criminal, particularmente em casos em que a identidade fragmentada prejudica a consciência cognitiva ou o controle volitivo. Este artigo explora como dois sistemas jurídicos contrastantes, um de direito consuetudinário e outro de direito civil, abordam a questão da responsabilidade criminal em réus diagnosticados com TID. Empregando uma estratégia de método misto que combina análise doutrinária e jurídica comparativa com uma pesquisa empírica de 372 indivíduos usando a Escala de Experiências Dissociativas (DES-II), o estudo destaca as limitações dos modelos binários de capacidade e o sub-reconhecimento do comprometimento mental parcial. Defende uma estrutura funcional e baseada na capacidade que avalie o estado cognitivo e volitivo da identidade operacional no momento do delito. O artigo recomenda reformas legais para incorporar categorias intermediárias de responsabilidade, aprimorar os padrões forenses e permitir testes contraditórios de evidências psiquiátricas. Essas descobertas contribuem para a evolução do discurso sobre saúde mental

<sup>1</sup> Ph.D., College of Economics Law and Government - University of Economics Ho Chi Minh City, Vietnam; Email: [thuyentd@ueh.edu.vn](mailto:thuyentd@ueh.edu.vn); Orcid: <https://orcid.org/0009-0008-1093-1382>.

<sup>2</sup> Ph.D., Faculty of Law and Political Sciences; Industrial University of Ho Chi Minh City, Vietnam; Email: [dinhthcamha@iuh.edu.vn](mailto:dinhthcamha@iuh.edu.vn); Orcid: <https://orcid.org/0009-0003-2084-4083>.

<sup>3</sup> Ph.D., Faculty of Law DaLat University, Vietnam; Email: [kimtttn@dlu.edu.vn](mailto:kimtttn@dlu.edu.vn); Orcid: <http://orcid.org/0009-0009-7957-8799>.

e culpabilidade criminal, oferecendo insights comparativos para uma adjudicação mais proporcional e cientificamente informada.

**PALAVRAS-CHAVE:** Transtorno Dissociativo de Identidade; Responsabilidade Criminal; Responsabilidade Diminuída; Avaliação Funcional; Psiquiatria Forense; Direito Penal Comparado.

## 1. Introduction

Dissociative Identity Disorder (DID), formerly known as multiple personality disorder, is a complex trauma-related psychiatric condition involving identity fragmentation and recurrent memory disruption. While DID is recognised in psychiatric literature, its legal treatment especially in criminal law remains deeply contested.<sup>4</sup> DID challenges the foundational premise of criminal law: that legal persons are unified, rational agents capable of forming and acting upon intent (*mens rea*). In cases where a criminal act is committed by one identity state (“*alter*”) while another remains unaware, conventional doctrines of culpability and accountability may be destabilized.<sup>5</sup> Legal systems around the world have responded variably to this challenge. In *common law* jurisdictions, such as the United States and the United Kingdom, courts have generally adopted a functionalist framework, focusing on the cognitive and volitional capacities of the operative identity at the time of the offense.<sup>6</sup> The insanity defence under the M’Naghten Rules in English Law allows for exculpation where “the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing.”<sup>7</sup> However, DID raises difficult questions under this test: which identity’s reasoning is legally relevant? What happens when the dominant identity denies awareness or control over the alter who committed the act?

In Vietnam, a civil law jurisdiction, the Penal Code 2015 (as amended in 2017) adopts a codified approach to mental disorders. Article 21 of the Penal Code (hereinafter PC) provides that a person shall be exempt from criminal responsibility if, due to a mental disorder, they are “incapable of perceiving or controlling their acts.”<sup>8</sup> Article 51 further

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<sup>4</sup> AMERICAN PSYCHIATRIC ASSOCIATION. *Diagnostic and Statistical Manual of Mental Disorders*, 5<sup>th</sup> ed., 2013. PUTNAM, F. W. The Physiological Investigation of Multiple Personality Disorder: A Review. *Psychiatric Clinics of North America*, 1984, n.º 7. PUTNAM, F. W. The Clinical Phenomenology of Multiple Personality Disorder: Review of 100 Recent Cases. *Journal of Clinical Psychiatry*, 1986/, n.º 47.

<sup>5</sup> SAKS, E. R. AND S. H. BEHNKE *Jekyll on trial: Multiple personality disorder and criminal law*. Edition: NYU Press, 1997. SINNOTT-ARMSTRONG, W. AND S. BEHNKE. Criminal law and multiple personality disorder: The vexing problems of personhood and responsibility. *Southern California Interdisciplinary Law Journal*, 2001.

<sup>6</sup> EASDALE, M. Assigning Criminal Responsibility to Defendants with Dissociative Identity Disorder. *Capital University Law Review*, 2022, 50(4), pp. 765–799. BRAND, B. AND R. J. LOEWENSTEIN. Dissociative disorders: An overview of assessment, phenomenology, and treatment. *Psychiatric Times*. 2010.

<sup>7</sup> WALKER, N. Crime and Insanity in England: The Historical Perspective. *The American Journal of Legal History*, 1968, 14(1), pp. 82-85.

<sup>8</sup> NATIONAL ASSEMBLY. Criminal Code, 2015.

allows for mitigation where such capacities are merely limited. However, these provisions are applied within a binary model: full capacity leads to liability; total incapacity leads to exemption. There is no recognition of “diminished responsibility,” nor is there a clear framework for assessing state-dependent disorders such as DID. Moreover, the forensic psychiatric infrastructure in Vietnam lacks standardized tools, such as the SCID-D or DES-II, and forensic experts often receive minimal training in dissociative pathology<sup>9</sup>.

This gap between psychiatric complexity and legal formality creates the risk of both wrongful conviction and improper acquittal. Despite the growing literature on the clinical features of DID, there remains limited legal scholarship in Vietnam addressing how such conditions affect criminal responsibility, and even less comparative analysis exploring how foreign legal models particularly English law might inform reform. At the same time, English law has not provided a definitive resolution to these dilemmas; decisions remain fact-sensitive, and scholarly debate continues over whether DID should negate or merely reduce culpability.<sup>10</sup>

This article therefore seeks to bridge this academic and doctrinal gap. It argues that a comparative analysis of the legal treatment of DID in English and Vietnamese criminal law offers a unique opportunity to re-examine how legal systems conceptualize mental incapacity. Specifically, it proposes that the functionalist and capacity-based approach seen in English jurisprudence can inform Vietnamese legal reform, not by importing foreign doctrines wholesale, but by adapting their core principles to local statutory and institutional contexts.

In doing so, the article contributes to both comparative criminal law scholarship and the growing field of forensic psychiatry in transitional legal systems. More broadly, it seeks to advance a model of criminal responsibility that is fair, context-sensitive, and responsive to the evolving understanding of mental health and human agency.

## **2. Methodology**

This study adopts a mixed-method approach that integrates doctrinal, comparative, and empirical analysis to examine how criminal responsibility should be assessed in cases involving DID, with a particular focus on English and Vietnamese legal systems.

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<sup>9</sup> MYCHAILYSZYN, M. P., B. L. B., A. R. WEBERMANN, V. ŞAR, et al. Differentiating Dissociative from Non-Dissociative Disorders: A Meta-Analysis of the Structured Clinical Interview for DSM Dissociative Disorders (SCID-D). *Journal of Trauma and Dissociation*, 2020, n.º 22. DELL, P. F. AND J. A. O'NEIL. Dissociation and the Dissociative Disorders: DSM-V and Beyond. Routledge. *Psychiatry Interpersonal & Biological Processes*, 2010, 73(3), pp. 288-294.

<sup>10</sup> FOOTE, B., Y. SMOLIN, M. KAPLAN, M. E. LEGATT, et al. Prevalence of dissociative disorders in psychiatric outpatients. *Am J Psychiatry*, 2006, 163(4), pp. 623-629. JOHNSTON, E. L., K. D. RUNYAN, F. J. SILVA AND F. MALDONADO FUENTES. Diminished Criminal Responsibility: A Multinational Comparative Review. *International Journal of Law and Psychiatry*, 2023, n.º 91.

Doctrinal legal research forms the core of the analytical framework, drawing on statutes, case law, and leading academic commentaries to examine the rules and principles governing criminal responsibility in both jurisdictions. In the English context, the analysis considers the operation of the *M'Naghten Rules*, the partial defence of diminished responsibility under the Coroners and Justice Act 2009, and judicial treatment of mental incapacity in relevant cases, particularly those involving cognitive or volitional impairment. In the Vietnamese context, it evaluates the provisions of the 2015 Penal Code (as amended 2017), including Articles 21 and 51, and their practical application in criminal proceedings involving mental disorders. The comparative dimension is structured to highlight doctrinal divergence and institutional asymmetry between the two jurisdictions across three substantive dimensions: (1) the conceptual framework for criminal responsibility; (2) the legal recognition of partial mental impairment; and (3) the procedural handling of forensic psychiatric evidence. This framework enables the identification of potential areas for legal reform in Vietnam, guided by functional insights from English law rather than wholesale transplantation.

The empirical component is based on an original survey conducted in Vietnam using the Dissociative Experiences Scale II (DES-II). The sample comprised 372 respondents from four occupational categories public-sector employees, private-sector employees, university students, and self-employed individuals selected to reflect variation in socio-economic background and occupational stressors. Inclusion criteria required participants to be aged 18 or above, residing in Vietnam, and without a self-reported history of psychiatric diagnosis; incomplete questionnaires or responses showing internal inconsistencies were excluded. Data collection took place between [Feb, 2025] and [April, 2025] using self-administered questionnaires distributed in both paper-based and secure online formats, ensuring anonymity and voluntary participation. DES-II scoring followed standard methodology, calculating mean item scores and identifying respondents with scores  $\geq 30$  as exhibiting clinically significant dissociative tendencies. Descriptive statistics were used to compare mean scores and prevalence rates across occupational groups; no inferential statistical testing was undertaken given the exploratory aim.

Limitations of the empirical study include the reliance on self-report measures without clinical verification, the non-clinical nature of the sample, potential recall bias, and the use of convenience sampling, which may affect generalisability. Ethical considerations were addressed through informed consent, assurance of confidentiality, and anonymisation of all responses. The integration of doctrinal, comparative, and empirical methods thus serves a dual purpose: it enables a rigorous legal analysis of the normative and procedural frameworks in England and Vietnam, and it grounds the



proposed reforms in empirical evidence that captures dissociative phenomena in the Vietnamese context. This triangulated approach ensures that the article contributes both to scholarly debate in comparative criminal law and to policy discussions on aligning legal responsibility with psychiatric realities.

### 3. Theoretical Background

#### 3.1. Definition and Characteristics of DID

The earliest description of DID dates back to 1646, credited to Paracelsus.<sup>11</sup> The *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5) defines DID as the presence of two or more distinct identity states or personality configurations, typically accompanied by discontinuity in sense of self, behaviour, affect, and memory.<sup>12</sup> Individuals with DID may experience dissociative amnesia, depersonalisation, and internal dialogues among alters, some of which may be mutually unaware.<sup>13</sup> These disruptions often arise as post-traumatic adaptations and may include culturally mediated expressions, such as spirit possession phenomena.<sup>14</sup> The clinical complexity of DID challenges conventional legal doctrines that presume stable agency and unified intent.<sup>15</sup> The presence of amnesia or alter-driven conduct raises forensic difficulties in attributing culpability, particularly in jurisdictions lacking legal recognition of partial impairment or state-dependent responsibility.<sup>16</sup>

Individuals with DID may or may not be aware of the presence of other identities, and these identities themselves can either recognize one another or remain entirely oblivious. Interactions between these identities may manifest through speech appearing as if the body is speaking to itself or through internal dialogue within the individual's mind. When an identity, including the host, is unaware of the existence or actions of other identities, memory gaps may arise. This phenomenon is known as dissociative amnesia.

While DID gained significant attention in the 19th century, its prominence waned in the early 20th century amid diagnostic controversies and a growing emphasis on schizophrenia. From a clinical perspective, DID is understood as a developmental disorder rooted in trauma, frequently associated with intense childhood abuse or neglect.

<sup>11</sup> PUTNAM, F. W. Dissociative phenomena. *American Psychiatric Press Review of Psychiatry*, 1991, n.º 10, pp. 145-160.

<sup>12</sup> AMERICAN PSYCHIATRIC ASSOCIATION. *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed., 2013.

<sup>13</sup> M.D., R. P. K. Clinical Presentations of Multiple Personality Disorder. *Psychiatric Clinics of North America*, 1991, 14(3).

<sup>14</sup> ROSS, C. A., S. HEBER AND G. ANDERSON. The dissociative disorders interview schedule. *American Journal of Psychiatry*, 1991, vol. 147, n.º 12.

<sup>15</sup> DELL, P. F. AND J. A. O'NEIL. Dissociation and the Dissociative Disorders: DSM-V and Beyond. Routledge. *Psychiatry Interpersonal & Biological Processes*, 2010, vol. 73, n.º 3, pp. 288-294.

<sup>16</sup> KLUFT, R. P. Dissociative Disorders. In *Handbook of Aggressive and Destructive Behavior in Psychiatric Patients*. 1994.



This conceptualization draws heavily from Pierre Janet's dissociation theory, which posits that traumatic experiences can fragment consciousness as a defense mechanism, leading to the formation of compartmentalized identities with distinct memories and functions.<sup>17</sup> Individuals diagnosed with Dissociative Identity Disorder often demonstrate symptoms such as memory discontinuities commonly referred to as dissociative amnesia marked by an inability to retrieve autobiographical details beyond what typical forgetfulness would account for. They may also experience internalized dialogues between differentiated self-states and exhibit sudden fluctuations in mood or conduct. These clinical features can lead to substantial disruptions in everyday functioning, affecting areas such as social interaction, professional responsibilities, and emotional regulation. Additionally, the emergence of recovered memories, frequently described by individuals with DID, remains a contentious topic within the field of clinical psychology and continues to be explored in empirical research<sup>18</sup>

The diagnostic process for DID requires the exclusion of neurological conditions and substance-related disorders. Formal assessment typically involves structured clinical tools designed to capture the complexity of dissociative symptoms. The Structured Clinical Interview for DSM Dissociative Disorders (SCID-D-R) is widely regarded as the most reliable instrument for differentiating dissociative from non-dissociative presentations.<sup>19</sup> Additional tools such as the Dissociative Disorders Interview Schedule (DDIS)<sup>20</sup> and the Dissociative Experiences Scale (DES) are frequently employed to evaluate symptom patterns and severity. Emerging instruments like the Trauma and Dissociation Symptoms Interview (TADS-I) have also been introduced to enhance diagnostic precision.<sup>21</sup>

According to the (DSM-5), DID is characterized by disruptions in identity and memory that are not attributable to cultural or religious practices or other medical conditions.<sup>22</sup> Research indicates that early-life trauma particularly sexual and physical abuse is reported in up to 90% of DID cases.<sup>23</sup> Epidemiological data suggest that women

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<sup>17</sup> HART, O. V. D. AND R. HORST. The dissociation theory of Pierre Janet. *Journal of Traumatic Stress*, 1989, n.º 2.

<sup>18</sup> LOFTUS, E. F. AND D. DAVIS. Recovered Memories. *Annual Review of Clinical Psychology in the Schools*, 2006, n.º 2, pp. 469-489.

<sup>19</sup> MYCHAILYSZYN, M. P., B. L. B. , A. R. WEBERMANN, V. ŞAR, et al. Differentiating Dissociative from Non-Dissociative Disorders: A Meta-Analysis of the Structured Clinical Interview for DSM Dissociative Disorders (SCID-D). *Journal of Trauma and Dissociation*, 2020, n.º 22.

<sup>20</sup> ROSS, C. A., S. HEBER AND G. ANDERSON. The dissociative disorders interview schedule *American Journal of Psychiatry*, 1991, vol. 147, n.º 12.

<sup>21</sup> PIETKIEWICZ, I. *Revisiting False-Positive and Imitated Dissociative Identity Disorder. Frontiers in Psychology*, 2021.

<sup>22</sup> AMERICAN PSYCHIATRIC ASSOCIATION. *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed. 2013.

<sup>23</sup> ROSS, C. A., G. R. NORTON AND K. WOZNEY. Multiple Personality Disorder: An Analysis of 236 Cases. *Canadian Journal of Psychiatry*, 1989, n.º 34.

are significantly more likely than men to receive a DID diagnosis. Although considered rare, prevalence estimates range from 1% to 1.5% in the general population across North America and Western Europe.<sup>24</sup>

### 3.2. Cognitive and Volitional Functioning in DID

Earlier psychiatric theories suggested complete memory loss between identity states; however, contemporary research reveals a more nuanced picture. Many DID patients experience partial awareness, or co-consciousness, across alters<sup>25</sup>. Neuroimaging shows that while distinct neural networks are activated in different identity states, overlapping activity occurs in regions linked to emotional regulation and self-referential processing<sup>26</sup>. Huntjens et al. (2006) found substantial inter-identity memory transfer, indicating that implicit knowledge can persist despite subjective amnesia<sup>27</sup>. Dorahy and Middleton similarly observed co-consciousness manifesting as passive observation or active internal dialogue. Neuropsychological profiles by Brand et al. show preserved executive functioning, attention, and rational decision-making within alters, supporting the capacity to form intent and understand the consequences of behaviour critical factors in legal culpability.

### 3.3. Differentiation from Other Disorders

Distinguishing DID from other psychiatric conditions is vital in forensic contexts. Schizophrenia involves global impairment of reality testing through hallucinations and delusions,<sup>28</sup> acute psychosis produces sudden and pervasive disorganisation of thought and behaviour,<sup>29</sup> and severe intellectual disability leads to substantial deficits in

<sup>24</sup> ROSS, C. A., G. R. NORTON AND K. WOZNEY. Multiple Personality Disorder: An Analysis of 236 Cases. *Canadian Journal of Psychiatry*, 1989, n.º 34.

<sup>25</sup> DELL, P. F. A New Model of Dissociative Identity Disorder. *Psychiatric Clinics of North America*, 2006, vol. 29, n.º 1, pp. 1-26.

<sup>26</sup> REINDERS, A. A. T. S., A. T. M. WILLEMSSEN, J. A. D. BOER, H. P. J. VOS, et al. Opposite brain emotion-regulation patterns in identity states of dissociative identity disorder: a PET study and neurobiological model. *Psychiatry Research: Neuroimaging*, 2014, vol. 223, n.º 3.

<sup>27</sup> HUNTJENS, R. J. C., M. L. PETERS, L. WOERTMAN, O. V. D. HART, et al. Memory transfer for emotionally valenced words in dissociative identity disorder. *Behaviour Research and Therapy*, 2006, vol. 45, n.º 5, pp. 775-789.

<sup>28</sup> SARTORIUS, N., A. JABLENSKY, A. KORTEN, G. ERNBERG, et al. Early manifestations and first-contact incidence of schizophrenia in different cultures: A preliminary report on the initial evaluation phase of the WHO Collaborative Study on Determinants of Outcome of Severe Mental Disorders. *Psychological Medicine*, 2009, vol. 16, n.º 4, pp. 909-928.

<sup>29</sup> AMERICAN PSYCHIATRIC ASSOCIATION. Diagnostic and Statistical Manual of Mental Disorders, 5th ed., 2013. TANDON, R., NASRALLAH, H. A., & KESHAVAN, M. S. Schizophrenia, "Just the Facts" 5. Treatment and prevention Past, Present, and Future. *Schizophrenia Research*, 2010, vol. 112, n.ºs 1-3.

intellectual and adaptive functioning.<sup>30</sup> By contrast, DID patients typically retain logical reasoning, rational planning, and realistic appraisal of external circumstances within discrete identity states<sup>31</sup>. Functional imaging supports this distinction: Reinders et al. (2006) documented organised, identity-specific brain activation patterns in DID, differing from the diffuse dysfunction found in psychotic disorders<sup>32</sup>. Internal fragmentation should not be conflated with observable disorganisation; as Dell (2006) notes, DID patients may maintain social functioning and comprehend moral and legal norms when assessed within specific states.

While the evidence clearly establishes that DID does not inherently obliterate cognitive awareness or volitional control, a more comprehensive understanding necessitates situating DID within the broader spectrum of psychiatric conditions affecting criminal responsibility. To fully appreciate the unique forensic implications of DID, it is essential to differentiate it from disorders characterized by global cognitive and behavioral impairments. Accurately distinguishing DID from other psychiatric disorders with pervasive cognitive deficits is crucial in forensic contexts. While DID involves fragmentation of consciousness and episodic memory disruptions, it does not result in the global impairments observed in conditions such as schizophrenia, acute psychosis, or severe intellectual disability. Schizophrenia is marked by hallucinations, delusions, disorganized thought processes, and impaired reality testing, often leading patients to lose the ability to distinguish between internal distortions and external reality.<sup>33</sup> Acute psychotic episodes similarly present with sudden, pervasive disorganization of thought and behaviour, disrupting the individual's understanding of lawful conduct.<sup>34</sup> Severe intellectual disability involves substantial deficits in intellectual functioning and adaptive

<sup>30</sup> SCHALOCK, Robert L., BORTHWICK-DUFFY, Sharon A., BRADLEY, Valerie J., BUNTINX, Wil H. E., COULTER, David L., CRAIG, Ellis M., GOMEZ, Sharon C., LACHAPPELLE, Yves, LUCKASSON, Ruth, REEVE, Alya, SHOGREN, Karrie A., SNELL, Martha E., SPREAT, Scott, TASSE, Marc J., THOMPSON, James R., VERDUGO-ALONSO, Miguel A., WEHMEYER, Michael L. e YEAGER, Mark H. *Intellectual Disability: Definition, Classification, and Systems of Supports*. 11th ed. Washington, DC: American Association on Intellectual and Developmental Disabilities, 2010. ISBN 978-1935304030.

<sup>31</sup> DELL, P. F. AND J. A. O'NEIL. Dissociation and the Dissociative Disorders: DSM-V and Beyond. Routledge. *Psychiatry Interpersonal & Biological Processes*, 2010, 73(3), 288-294. ZOU, J. Y. AND L. SCHIEBINGER AI can be sexist and racist it's time to make it fair 2018, 559(7714), 324–326.

<sup>32</sup> REINDERS, A. A. T. S., NIJENHUIS, E. R. S., QUAK, J., KORF, J., HAAKSMA, J., & PAANS, A. M. J. Psychobiological Characteristics of Dissociative Identity Disorder: A Symptom Provocation Study. *Acta Psychiatrica Scandinavica*, 2006, vol. 114, n.º 3, pp. 233–242.

<sup>33</sup> SARTORIUS, N., A. JABLENSKY, A. KORTEN, G. ERNBERG, et al. Early manifestations and first-contact incidence of schizophrenia in different cultures: A preliminary report on the initial evaluation phase of the WHO Collaborative Study on Determinants of Outcome of Severe Mental Disorders. *Psychological Medicine*, 2009, vol. 16, n.º 4, pp. 909-928. TANDON, R., NASRALLAH, H. A., & KESHAVAN, M. S. Schizophrenia, "Just the Facts" 5. Treatment and prevention Past, present, and future. Schizophrenia Research, 2010, 112(1-3).

<sup>34</sup> AMERICAN PSYCHIATRIC ASSOCIATION. *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed., 2013.

behaviour, impairing basic comprehension of social norms and legal standards.<sup>35</sup>

Neurocognitive impairments associated with certain psychiatric or organic conditions may result in pervasive deficits in reasoning, judgment, and comprehension, thereby rendering individuals incapable of understanding the nature, moral wrongfulness, or potential consequences of their behavior across various contexts. In contrast, individuals diagnosed with Dissociative Identity Disorder typically retain core executive functions, including the capacity for logical decision-making, goal-directed behavior, and accurate interpretation of environmental stimuli albeit within the boundaries of specific identity states. While dissociative phenomena may lead to episodic memory discontinuities or state-dependent amnesia, forensic evaluations have consistently demonstrated that many DID patients exhibit varying degrees of co-consciousness, allowing for partial or complete awareness of actions performed by alternate identities.<sup>36</sup>

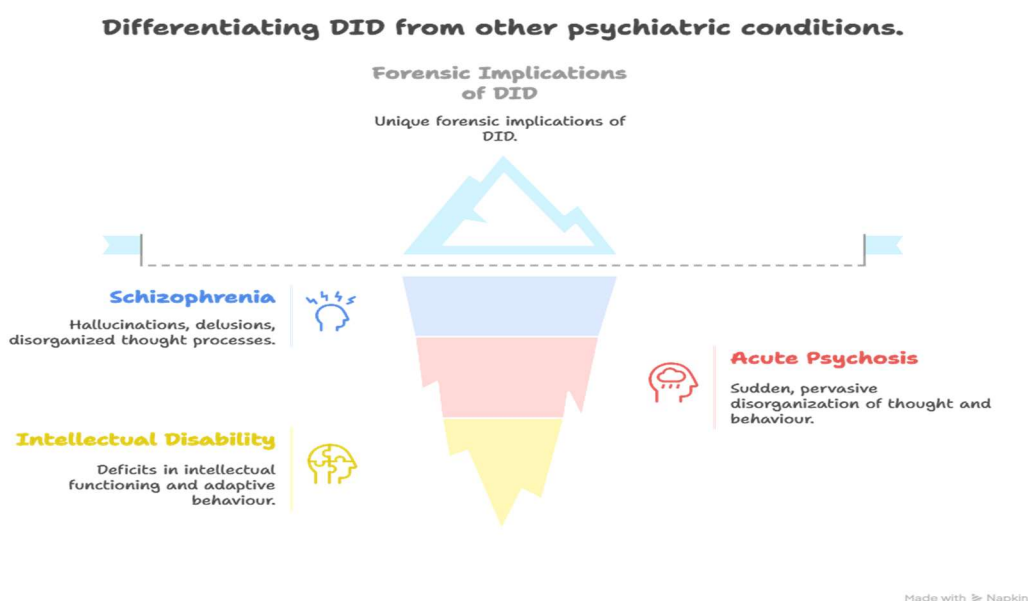


Figure1: Differentiation of DID from other Disorders

To ensure diagnostic precision in forensic contexts, evaluators must employ empirically supported instruments, notably the Structured Clinical Interview for DSM

<sup>35</sup> SCHALOCK, Robert L., BORTHWICK-DUFFY, Sharon A., BRADLEY, Valerie J., BUNTINX, Wil H. E., COULTER, David L., CRAIG, Ellis M., GOMEZ, Sharon C., LACHAPELLE, Yves, LUCKASSON, Ruth, REEVE, Alya, SHOGREN, Karrie A., SNELL, Martha E., SPREAT, Scott, TASSE, Marc J., THOMPSON, James R., VERDUGO-ALONSO, Miguel A., WEHMEYER, Michael L. e YEAGER, Mark H. *Intellectual Disability: Definition, Classification, and Systems of Supports*. 11th ed. Washington, DC: American Association on Intellectual and Developmental Disabilities, 2010.

<sup>36</sup> HUNTJENS, R. J. C., M. L. PETERS, L. WOERTMAN, O. V. D. HART, et al. Memory transfer for emotionally valenced words in dissociative identity disorder. *Behaviour Research and Therapy*, 2006, vol. 45, n.º 5, pp. 775-789.

Dissociative Disorders (SCID-D), which systematically examines core dissociative symptoms including identity disruption, memory discontinuities, depersonalization, derealization, and confusion regarding self-concept.<sup>37</sup> Supplementary neuropsychological assessments often reveal that individuals with Dissociative Identity Disorder (DID) retain comparatively intact executive functions, distinguishing them from populations affected by schizophrenia or profound cognitive impairments.<sup>38</sup> Findings from functional neuroimaging further substantiate these distinctions: DID patients exhibit coherent and differentiated neural activation patterns, in contrast to the widespread neural dysregulation commonly associated with psychotic disorders.<sup>39</sup>

Importantly, the internal fragmentation intrinsic to DID should not be conflated with the overt behavioral disorganization characteristic of psychosis. Clinical observations indicate that individuals with DID are frequently capable of maintaining interpersonal relationships, executing goal-oriented actions, and comprehending normative legal and ethical standards particularly when evaluated within the context of a specific identity state. Accordingly, forensic determinations must avoid reductive assumptions equating dissociation with legal incapacity. Instead, evaluators are obligated to conduct individualized analyses to ascertain whether the identity state operative at the time of the alleged offense possessed adequate cognitive and volitional faculties to meet the requisite *mens rea*.

Failure to distinguish between diagnostic categories and functional capacities may result in grave miscarriages of justice either by absolving individuals who are legally accountable or by penalizing those who lack the requisite mental competence. Therefore, the mere presence of DID does not, in itself, preclude criminal responsibility. Robust diagnostic differentiation, coupled with thorough assessments of functional capacity, remains essential to safeguarding the integrity of forensic adjudication. As illustrated in Figure 2, diagnostic ambiguity poses substantial risks of misclassification, with potentially unjust legal consequences.

#### 4. Conceptual Foundations of Criminal Responsibility and DID

Criminal responsibility presupposes the existence of a legally coherent subject

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<sup>37</sup> STEINBERG, M. *Structured Clinical Interview for Dsm-IV Dissociative Disorders*. 1994. STEINBERG, M. *Structured Clinical Interview for DSM-IV Dissociative Disorders (SCID-D)*. 2023. ISBN 978-1-61537-342-0.

<sup>38</sup> BRAND, B. AND R. J. LOEWENSTEIN. Dissociative disorders: An overview of assessment, phenomenology, and treatment. In *Psychiatric Times*. 2010.

<sup>39</sup> REINDERS, A. A. T. S., NIJENHUIS, E. R. S., QUAK, J., KORF, J., HAAKSMA, J., & PAANS, A. M. J. Psychobiological Characteristics of Dissociative Identity Disorder: A Symptom Provocation Study. *Acta Psychiatrica Scandinavica*, 2006, vol. 114, n.º 3, pp. 233–242.



who possesses the cognitive and volitional capacity to engage in purposeful behaviour. Within both common law and civil law systems, this typically requires that the defendant, at the material time of the offence, had the mental ability to understand the nature and wrongfulness of their conduct and to conform that conduct to the requirements of law.<sup>40</sup> When this mental state is lacking due to a mental illness, most legal systems provide for exemption or mitigation. However, DID introduces conceptual tension into these frameworks by destabilizing the notion of a unified subject, raising foundational concerns about personhood, agency, and intent.

DID is not merely a disorder of mood or thought, but a disruption in the integrative functions of identity, memory, and consciousness. It typically arises as a defensive response to severe, chronic childhood trauma, especially sexual or physical abuse<sup>41</sup>. Unlike schizophrenia, which involves psychotic symptoms, DID patients may function normally in society while alternating between identity states, each with distinct memories, behaviors, and even physiological markers.<sup>42</sup> These identity states may possess differing degrees of awareness and control, and some may be unaware of the acts committed by others. While one state may commit an offence with intent and planning, another may later regain control with no recollection of the conduct. This fragmentation challenges the assumption that criminal behaviour is the product of a continuous, culpable mind. It is this very disruption in psychological unity that raises questions about whether legal responsibility can fairly attach to the individual as a whole.

One line of jurisprudence and scholarship approaches this problem through a functionalist lens. According to this view, criminal responsibility should be assessed not by examining metaphysical questions about personhood or psychological unity, but rather by asking whether the identity in control at the time of the offence had sufficient cognitive and volitional capacity to satisfy the legal standard of *mens rea*.<sup>43</sup> If the operative alter understood the wrongfulness of the act and was capable of controlling their behaviour, then the individual should be held responsible, regardless of whether the dominant personality was conscious of the conduct. This functionalist model aligns closely with English legal tradition, which emphasizes the mental state of the defendant at the material moment, encapsulated in the maxim *actus non facit reum nisi mens sit rea*.

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<sup>40</sup> FLETCHER, G. P. *Basic Concepts of Criminal Law*. Oxford University Press, 1998. ROBINSON, P. H. *Structure and Function in Criminal Law*. Oxford University Press, 1997.

<sup>41</sup> PUTNAM, F. W. Dissociative phenomena. *American Psychiatric Press Review of Psychiatry*, 1991, n.º 10, pp. 145-160.

<sup>42</sup> AATS REINDERS, ERS NIJENHUIS, AMJ PAANS, J KORF, et al. One brain, two selves. *Neuroimage*, 2003, vol. 12, n.º 4, pp. 2119-2125.

<sup>43</sup> SINNOTT-ARMSTRONG, W. AND S. BEHNKE. Criminal law and multiple personality disorder: The vexing problems of personhood and responsibility. *Southern California Interdisciplinary Law Journal*, 2001.

In contrast, some scholars advocate for a pluralist or metaphysical approach, which treats each alter as a potentially autonomous moral agent.<sup>44</sup> Under this framework, responsibility may not be attributed to the individual as a whole unless the host or all alters were complicit or aware. This view has been criticized for undermining legal coherence and for introducing practically unworkable evidentiary burdens.<sup>45</sup> Nevertheless, it highlights an important philosophical question: should legal identity be tied to bodily continuity or psychological integrity?

The distinction between DID and other psychiatric conditions further complicates this analysis. Unlike schizophrenia or psychotic disorders, which involve global disruptions in reality testing, individuals with DID often retain intact executive functioning within identity states.<sup>46</sup> Although amnesia and identity switching may occur, DID does not inherently negate rationality. Recent neuroimaging literature suggests that alternate identity states exhibit distinguishable yet partially overlapping neural activation patterns, but also share overlapping areas associated with awareness and emotional regulation.<sup>47</sup> This co-consciousness challenges the assumption that the individual was completely unaware or incapable at the time of the offence.

Furthermore, empirical research indicates that DID patients frequently exhibit memory transfer across identity states, undermining the notion that knowledge or intent is strictly compartmentalized.<sup>48</sup> While subjective amnesia may be reported, implicit awareness often persists. This evidence supports the argument that DID does not necessarily eliminate criminal responsibility, but rather necessitates a more nuanced and case-specific inquiry.

Thus, the central conceptual dilemma in DID-related cases lies in determining which identity's mental state is legally relevant and whether that state meets the threshold for culpability. Legal systems must balance respect for psychiatric complexity

<sup>44</sup> SAKS, E. R. AND S. H. BEHNKE. *Jekyll on trial: Multiple personality disorder and criminal law*. NYU Press, 1997.

<sup>45</sup> FOOTE, B., Y. SMOLIN, M. KAPLAN, M. E. LEGATT, et al. Prevalence of dissociative disorders in psychiatric outpatients. *Am J Psychiatry*, 2006, vol. 163, n.º 4, pp. 623-629.

<sup>46</sup> BRAND, B. AND R. J. LOEWENSTEIN. Dissociative disorders: An overview of assessment, phenomenology, and treatment. In *Psychiatric Times*. 2010. HUNTJENS, R. J. C., M. L. PETERS, L. WOERTMAN, O. V. D. HART, et al. Memory transfer for emotionally valenced words in dissociative identity disorder. *Behaviour Research and Therapy*, 2006, vol. 45, n.º 5, pp. 775-789.

<sup>47</sup> REINDERS, A. A. T. S., NIJENHUIS, E. R. S., QUAK, J., KORF, J., HAAKSMA, J., & PAANS, A. M. J. Psychobiological Characteristics of Dissociative Identity Disorder: A Symptom Provocation Study. *Acta Psychiatrica Scandinavica*, 2006, vol. 114, n.º 3, pp. 233-242.

<sup>48</sup> DORAHY, M., B. BL, K. C. SAR V, S. P, et al. Dissociative identity disorder: An empirical overview. *The Australian and New Zealand Journal of Psychiatry*, 2014. DORAHY, M. J., R. J. C. HUNTJENS, R. J. MARSH, B. JOHNSON, et al. *The Sense of Self Over Time: Assessing Diachronicity in Dissociative Identity Disorder, Psychosis and Healthy Comparison Groups*. Frontiers in Psychology, 2021. DORAHY, M., B. BL, K. C. SAR V, S. P, et al. Dissociative identity disorder: An empirical overview. *The Australian and New Zealand Journal of Psychiatry*, 2014.



with the need to uphold coherent standards of accountability. While the presence of DID may warrant greater scrutiny in forensic evaluation, it should not be presumed to automatically excuse or negate responsibility. Instead, as this article will explore in later sections, the law must develop principled methods to assess the functional capacity of the operative identity at the time of the offence whether through doctrinal refinement, evidentiary standards, or institutional reforms.

## **5. The English Approach to Criminal Responsibility in DID Cases**

English criminal law evaluates mental incapacity through a doctrinal framework that distinguishes between complete exculpation and partial mitigation. The principal mechanism for total defence is the insanity doctrine, governed by the M’Naghten Rules (1843)<sup>49</sup>, which require that the defendant, at the time of the offence, was suffering from a “defect of reason” arising from a “disease of the mind,” such that they either did not know the nature and quality of their act or, if they did, did not know it was wrong.<sup>50</sup>

This standard, though longstanding, has faced criticism for its narrow interpretation of cognitive impairment and its failure to account for volitional control. Scholars have argued that the M’Naghten Rules inadequately reflect modern psychiatric knowledge and fail to accommodate nuanced disorders such as DID. DID challenges the binary assumption of cognitive awareness and introduces the problem of identity-specific intent: if the criminal act was committed by an alternate identity (alter) while the dominant personality was unaware, which mental state should the court consider?

The absence of definitive appellate authority directly addressing DID in England has left the lower courts to grapple with dissociative defences by analogy. In *R v Burgess* [1991] 2 QB 92, although the court dealt with sleepwalking, it held that internal conditions causing automatism should be treated as insanity.<sup>51</sup> This case reaffirmed that if the cause of unconscious behaviour is internal (i.e., a mental disorder rather than an external shock), it falls within the ambit of M’Naghten. Extrapolating from *Burgess*, if DID is recognised as a disease of the mind as the Diagnostic and Statistical Manual suggests then an alter’s conduct could trigger the insanity defence, but only if the requisite lack of awareness or moral knowledge can be proven.

The more adaptable tool, however, is the doctrine of diminished responsibility,

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<sup>49</sup> M’NAGHTEN’S Case (1843) 10 Cl & Fin 200; 8 ER 718 In., 1843.

<sup>50</sup> WALKER, N. Crime and Insanity in England: The Historical Perspective. *The American Journal of Legal History*, 1968, vol. 14, n.º 1, pp. 82-85. DAVID ORMEROD CBE, Q. (HON) AND K. LAIRD Smith, *Hogan, and Ormerod’s Criminal Law (16th edn)*. Oxford University Press, 2021. ISBN 9780198849704.

<sup>51</sup> APPEAL, C. O. *R v Burgess* [1991] 2 QB 92. In., 1991, vol. 2025.

codified in section 52 of the Coroners and Justice Act 2009. It provides a partial defence to murder if the defendant was suffering from an “abnormality of mental functioning” that arose from a recognised medical condition, substantially impairing their ability to (a) understand the nature of their conduct, (b) form a rational judgment, or (c) exercise self-control. This doctrine, shaped by *R v Byrne* [1960] 2 QB 396, broadens the focus to volitional and evaluative dysfunction, providing a middle ground between full criminal liability and total exculpation.<sup>52</sup>

In *Byrne*, the Court of Appeal acknowledged that the law should consider “the degree of control exercised by the accused over their actions” rather than relying on cognitive capacity alone. This doctrinal openness enables English courts to recognise cases where DID impairs the defendant’s control without extinguishing their awareness. While there is no reported case directly applying diminished responsibility to DID in England, the statutory language and case law trajectory suggest that such a defence could be available particularly if expert psychiatric testimony establishes that the defendant’s volitional faculties were compromised by dissociative switching or memory fragmentation.<sup>53</sup>

In practice, English courts approach psychiatric defences with scepticism and caution. DID remains controversial within forensic psychiatry due to concerns about simulation and suggestibility.<sup>54</sup> Nevertheless, where the diagnosis is supported by structured clinical interviews (e.g., SCID-D) and corroborated by longitudinal records, courts have admitted DID-related evidence. The credibility of the dissociative defence hinges on the clarity of the expert’s explanation, the internal consistency of reported symptoms, and the extent to which the disorder disrupts legal agency.<sup>55</sup>

English academic commentary also reflects this cautious balance. Some scholars advocate a strictly functionalist approach focusing on the capacities of the operative alter at the time of the offence while others urge courts to consider the broader psychological disintegration and trauma histories characteristic of DID.<sup>56</sup> Despite this divide, there is general consensus that DID should not automatically negate

<sup>52</sup> APPEAL, C. O. *R v Byrne* [1960] 2 QB 396. In., 1960, vol. 2025.

<sup>53</sup> PADFIELD, N. AND J. BILD. *Text and Materials on the Criminal Justice Process (5th Edition)*. 2016. ISBN 9781138918344. EASTMAN, N. AND C. CAMPBELL. Neuroscience and legal determination of criminal responsibility. *Nature Reviews Neuroscience*, 2006, n.º 7, pp. 311-318.

<sup>54</sup> BRAND, B. AND R. J. LOEWENSTEIN. Dissociative disorders: An overview of assessment, phenomenology, and treatment. In *Psychiatric Times*. 2010.

<sup>55</sup> JOHNSTON, E. L., K. D. RUNYAN, F. J. SILVA AND F. MALDONADO FUENTES. Diminished Criminal Responsibility: A Multinational Comparative Review. *International Journal of Law and Psychiatry*, 2023, n.º 91.

<sup>56</sup> FOOTE, B., Y. SMOLIN, M. KAPLAN, M. E. LEGATT, et al. Prevalence of dissociative disorders in psychiatric outpatients. *Am J Psychiatry*, 2006, vol. 163, n.º 4, pp. 623-629. SAKS, E. R. AND S. H. BEHNKE. *Jekyll on trial: Multiple personality disorder and criminal law*. NYU Press, 1997.

responsibility, but rather warrant close forensic and doctrinal scrutiny.

Importantly, English criminal law does not operate on the assumption that all individuals with mental disorders are automatically exempt from liability. Rather, the system is structured to allow for a graded assessment of culpability, depending on the degree to which the disorder affects the defendant's cognitive and volitional capacities. A person suffering from a recognised mental illness may still be convicted of a criminal offence if they are found to have understood the nature of their act and exercised control over it.

Three distinct legal mechanisms govern this assessment. First, the insanity defence under the M'Naghten Rules provides full exculpation but is available only when the defendant lacked the capacity to know the nature or wrongfulness of their act due to a "disease of the mind." Second, the doctrine of diminished responsibility, codified in section 52 of the Coroners and Justice Act 2009, offers partial mitigation in homicide cases where the defendant's mental functioning was substantially impaired. Third, even where neither defence applies, mental illness may still be relevant at the sentencing stage or through hospital or treatment orders issued under the Mental Health Act 1983.<sup>57</sup>

These mechanisms demonstrate that English law does not equate mental illness with irresponsibility *per se*, but rather evaluates criminal responsibility based on a functional model. This approach allows for principled differentiation between complete exoneration, partial mitigation, and full liability with clinical management. For complex conditions such as DID, this nuanced framework offers greater doctrinal and procedural flexibility than the binary logic that currently defines Vietnamese law.

## **6. The Vietnamese Legal Framework and Its Challenges**

Vietnam's criminal law system, rooted in the civil law tradition, adopts a codified and relatively rigid approach to mental illness and criminal responsibility. The governing provision is Article 21 of the 2015 Penal Code (amended 2017), which exempts a defendant from criminal liability if, at the time of the act, they were "incapable of perceiving or controlling their acts" due to a mental disease or another condition that causes complete cognitive or volitional incapacity. Partial impairment, by contrast, is treated merely as a mitigating factor under Article 51(1)(d), without affecting the legal characterisation of the offence.<sup>58</sup>

This binary framework full capacity versus total incapacity leaves little room for

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<sup>57</sup> UK. Mental Health Act 1983, c. 20. In., 1983.

<sup>58</sup> NATIONAL ASSEMBLY. Penal Code. 2015.

nuanced assessments of mental states like those associated with DID. The current legal approach does not permit courts to recognise intermediate degrees of impairment or to evaluate which identity state was operative at the material time. Consequently, defendants with dissociative or partially dissociated states may be held fully liable or excluded entirely from liability, regardless of the specific cognitive and volitional disruptions present at the time of the act.

The Vietnamese legal framework also lacks doctrinal and institutional guidance on how dissociative disorders should be evaluated in criminal proceedings. There is no jurisprudence or legislative commentary on DID, and forensic psychiatric evaluations are often limited to identifying psychosis or intellectual disability. Instruments such as the Structured Clinical Interview for DSM Dissociative Disorders (SCID-D) or the DES-II are virtually unknown in Vietnamese forensic practice. Without specialised tools, psychiatric assessments tend to rely on broad diagnostic categories rather than precise evaluations of functional capacity.

To illustrate the potential gap between psychiatric phenomena and legal recognition, the article incorporates data from an empirical survey conducted using the DES-II. The DES-II is not a diagnostic tool for DID per se, but it is a validated instrument for measuring dissociative tendencies in both clinical and non-clinical populations.<sup>59</sup> In this study, 372 Vietnamese respondents across four occupational groups public-sector employees, private-sector workers, university students, and self-employed individuals were assessed. The results revealed that 56.45% of university students scored above the DES-II threshold of 30 (mean: 34.87), compared to 10% in the public sector (mean: 20.11), 22.58% in the private sector (mean: 22.74), and 37.5% among self-employed respondents (mean: 22.50). Notably, none of the participants had a documented history of psychiatric illness.

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<sup>59</sup> CARLSON, E. B. AND F. W. PUTNAM. An update on the Dissociative Experiences Scale. *Dissociative Disorders*, 1993, vol. 6, n.º 1.

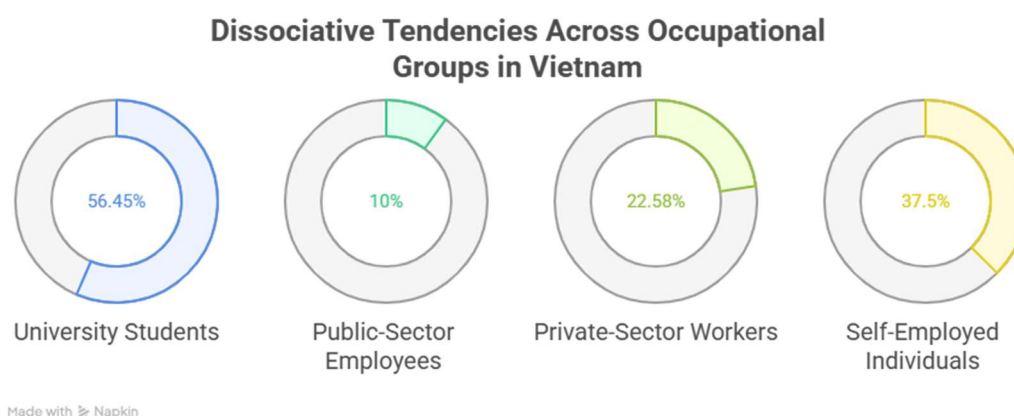


Figure 2. DES-II Scores and Prevalence of Dissociative Symptoms by Group Comparison of mean DES-II scores and percentage of respondents scoring above the clinical threshold (30) across four occupational groups in Vietnam (N = 372).

These findings do not suggest that DID is widespread or over-diagnosed. Rather, they demonstrate that dissociative symptoms such as identity confusion, memory lapses, and depersonalisation are present at meaningful levels even in non-clinical populations. The Vietnamese legal system's binary model of capacity does not account for such realities. In jurisdictions like England, a functional approach allows courts to consider the degree of impairment, rather than requiring total incapacity as a precondition for defence. In Vietnam, by contrast, the absence of intermediate legal categories and the lack of standardised forensic tools risk both over-criminalisation and under-recognition of legitimate psychiatric impairment.

The DES-II data thus serve as more than a statistical backdrop: they support the article's normative claim that Vietnamese criminal law is insufficiently responsive to the psychological complexities of DID and similar conditions. In the absence of doctrinal flexibility and procedural safeguards, the current framework lacks the normative coherence required for consistent adjudication for defendants whose mental states fall between the extremes of full capacity and legal insanity. The following section explores how insights from English criminal law can inform a more functional, humane, and scientifically grounded approach to criminal responsibility in Vietnam.

## 7. Comparative Observations and Legal Reform Proposal

Although the English and Vietnamese legal systems are rooted in fundamentally different traditions *common law* and *civil law* respectively, they both face the challenge of adjudicating criminal responsibility in cases involving complex mental disorders such as DID. The divergence in doctrinal foundations, statutory structures, and procedural design results in markedly different approaches, with significant implications for

fairness, proportionality, and the protection of defendants with mental impairments. From a conceptual and doctrinal perspective, English criminal law adopts a functional capacity model, assessing the defendant's cognitive and volitional abilities at the time of the offence. The *M'Naghten Rules* and the partial defence of diminished responsibility under section 52 of the Coroners and Justice Act 2009<sup>60</sup> provide a graded framework: complete incapacity may lead to full exculpation, while substantial impairment short of insanity can mitigate culpability in homicide cases. This allows the court to calibrate legal responsibility in line with the degree of impairment. By contrast, Vietnamese law, under Article 21 and Article 51 of the Penal Code 2015 (as amended 2017), operates within a binary model: defendants are either fully responsible or entirely exempt if they lack the capacity to perceive or control their acts. Partial impairment is relevant only as a sentencing mitigation and has no effect on the legal characterisation of the offence. In addition, the procedural asymmetry is compounded by the absence of a specialised protocol for the forensic assessment of DID. State-appointed forensic institutions typically apply a general mental disorder evaluation form without specific tests for dissociative pathology, and conclusions are framed solely in binary terms of total capacity or total incapacity. This stands in sharp contrast to England, where expert psychiatric evidence can address functional capacity in granular terms, and where courts can formally recognise substantial impairment through the doctrine of diminished responsibility.

On the recognition of partial impairment, the English doctrine of diminished responsibility provides a formal legal mechanism to address cases where mental disorder substantially affects judgment or self-control without meeting the threshold for insanity. This approach is particularly relevant for DID, where cognitive awareness may be preserved in some identity states but volitional control significantly compromised. Vietnamese law lacks an equivalent doctrine, leaving no space for nuanced adjudication of such cases. The result is a structural gap in the Penal Code, where defendants either meet the strict criteria for full exemption or are treated as fully responsible despite significant functional limitations.

Procedurally, England's adversarial system permits the presentation and cross-examination of competing expert evidence, with judges acting as neutral arbiters. This structure encourages functional, case-specific assessments and facilitates scrutiny of forensic psychiatric testimony. Vietnam's inquisitorial model centralises psychiatric evaluation in state-appointed forensic institutions, whose opinions are often treated as

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<sup>60</sup> UK. Coroners and Justice Act 2009, c. 25, s. 52. In., 2009.



conclusive. The absence of a formal mechanism for adversarial testing or independent expert evidence limits the defence's ability to challenge state findings, reducing the accuracy and perceived legitimacy of determinations in complex psychiatric cases. Furthermore, while English courts are able to adapt evolving psychiatric knowledge through judicial interpretation, Vietnamese courts are constrained by the need for explicit statutory authorisation to apply new legal concepts, delaying responsiveness to novel clinical presentations such as DID.

Taken together, these differences illustrate the strengths and weaknesses of each system. English law offers greater flexibility and capacity sensitivity but remains limited by the conceptual narrowness of the *M'Naghten Rules* and the absence of specific appellate authority on DID. Vietnamese law provides statutory clarity but at the cost of doctrinal rigidity and procedural asymmetry. The comparative analysis suggests that Vietnam could benefit from adopting three core functional insights from English law: (1) the incorporation of a diminished responsibility category to recognise substantial impairment short of full incapacity; (2) the adoption of a functional capacity test focused on the operative identity's cognitive and volitional abilities at the time of the offence; and (3) procedural reforms to allow adversarial testing and the admissibility of independent psychiatric evidence. These adaptations, while preserving the civil law tradition's codified structure, would enhance proportionality, improve forensic accuracy, and align criminal responsibility more closely with psychiatric realities.

## **8. Recommendations for Legal Reform**

The comparative analysis reveals not only divergent doctrinal structures and procedural approaches between England and Vietnam but also opportunities for mutual legal development. While Vietnam may benefit from adopting certain functional and capacity-sensitive tools found in English criminal law, English law itself is not without shortcomings. This section outlines specific legislative and procedural reforms for both systems.

### **8.1 Reform Proposals for Vietnam**

Vietnam's legal treatment of mental disorders in criminal law remains primarily diagnosis-based and binary. Drawing from English law, four key reforms are recommended:

First, the Penal Code should be amended to introduce an intermediate legal category of diminished responsibility, similar to section 52 of the Coroners and Justice



Act 2009. This would allow defendants whose mental functioning is substantially impaired but not eliminated to receive a partial defence in serious crimes. Such a reform would fill the current gap between Article 21 (complete exemption due to incapacity) and Article 51(1)(d) (general mitigation at sentencing).

Second, legal and forensic practice must adopt a functional capacity model in evaluating mental disorders. Instead of focusing solely on diagnostic labels (e.g., “psychosis” or “conversion disorder”), courts should consider whether the defendant, at the time of the offence, had sufficient capacity to understand and control their actions particularly which identity was operative in DID cases. This would require official incorporation of tools such as the SCID-D or DES-II in forensic assessments.

Third, procedural reforms should permit adversarial testing of psychiatric evidence. Currently, state forensic assessments are rarely contested, and there is no structured mechanism for defence experts to challenge conclusions. Amendments to the Code of Criminal Procedure should explicitly allow the presentation of independent expert evidence and cross-examination of forensic opinions.

Fourth, a joint ministerial circular involving the Ministry of Justice, Ministry of Health, and Supreme People’s Court should be issued to establish technical standards and procedural protocols for evaluating complex psychiatric conditions. This should include guidelines for dissociative disorders, the admissibility of foreign diagnostic tools, and the role of expert testimony in criminal proceedings.

Finally, the Ministry of Health, Ministry of Justice, and Supreme People’s Court should jointly develop and issue technical regulations establishing a standardised forensic evaluation protocol for DID and other complex psychiatric disorders. This protocol should require: (a) the use of internationally recognised diagnostic tools such as SCID-D and DES-II; (b) the assessment of both cognitive and volitional capacities in functional terms; (c) the explicit classification of impairment into total incapacity, substantial impairment, or no significant impairment; and (d) a detailed linkage between clinical findings and the legal standards under the Penal Code. Such a protocol would directly address the current gap in which evaluations are conducted using general mental disorder criteria that fail to capture the specific forensic implications of DID, ensuring that determinations of criminal responsibility are both scientifically grounded and legally coherent.

## 8.2 Reflective Reform for English Law

Building on the earlier analysis in Section 3, which identified substantive limitations in English criminal law’s treatment of dissociative disorders including the

conceptual narrowness of the M'Naghten Rules, the absence of authoritative case law on DID, and prevailing judicial scepticism this section outlines doctrinal and procedural reforms that could enhance the responsiveness and coherence of English law.

While English criminal law is comparatively more flexible and capacity-sensitive, it is not immune to critique. Several doctrinal and institutional shortcomings warrant reform:

First, the insanity defence under the M'Naghten Rules is conceptually outdated. Its reliance on a purely cognitive test focusing on whether the defendant knew the nature or wrongfulness of their act excludes cases where volitional control is compromised. This is especially problematic for disorders like DID, which often impair impulse control or create state-dependent dissociative amnesia without necessarily eroding cognitive understanding. Reforming the insanity defence to incorporate a volitional limb would better align legal doctrine with psychiatric science.

Second, there remains a lack of authoritative case law or statutory guidance on DID. While diminished responsibility offers doctrinal flexibility, the absence of clear standards for evaluating identity fragmentation and inter-identity amnesia leaves courts uncertain and inconsistent in their handling of DID cases. Legislative clarification or interpretive guidelines akin to practice directions on autism or PTSD could improve consistency and judicial confidence.

Third, despite procedural safeguards, judicial scepticism toward DID remains prevalent. Concerns about malingering and the perceived exoticism of the disorder often lead to heightened scrutiny or outright dismissal of psychiatric evidence. Unlike other conditions such as PTSD or autism, for which judicial guidance and training exist, DID has yet to receive structured attention from legal institutions. Judicial education programs, combined with enhanced psychiatric literacy among legal professionals, could mitigate bias and improve the evidentiary evaluation of dissociative disorders.

Fourth, access to psychiatric expertise in DID cases is often economically constrained. Defendants relying on legal aid may struggle to retain qualified dissociative disorder experts, leading to evidentiary imbalance. Expanding publicly funded access to specialised forensic psychiatric expertise would help ensure that legal outcomes are based on scientific merit rather than financial capacity.

These reform proposals are not intended to homogenise two distinct legal traditions. Rather, they aim to promote cross-systemic learning, grounded in shared values of fairness, proportionality, and scientific legitimacy. Functional capacity assessments, calibrated legal responses, and procedurally sound expert evaluations are not unique to any one tradition they are hallmarks of a just and responsive criminal

justice system.

### Conclusion

DID poses a significant challenge at the intersection of psychiatry and criminal law by fragmenting identity, memory, and volitional control thereby destabilising the unitary conception of the legal subject upon which traditional criminal liability is based. While English law has yet to fully resolve these complexities, it offers functional assessments of mens rea, the partial defence of diminished responsibility, and adversarial forensic procedures that promote fairness in adjudicating mentally disordered offenders. In contrast, Vietnamese law continues to apply a binary, diagnosis-centred model that risks over-criminalising individuals with severe mental impairments and overlooking the nuanced realities of disorders like DID. The absence of intermediate culpability doctrines and procedural safeguards underscores the need for reform. Drawing from English law's commitment to case-specific evaluations, Vietnam could move toward a capacity-based framework that better aligns criminal responsibility with psychiatric realities and the principles of justice.

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**Universidade Portucalense Cooperativa de Ensino Superior, CRL**

Rua Dr. António Bernardino de Almeida, 541 - 4200-072 Porto

Email: [upt@upt.pt](mailto:upt@upt.pt)