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## Reconsidering Criminal Responsibility in Cases of Dissociative Identity Disorder: Legal Standards, Psychiatric Evidence, and Reform Pathways in Vietnam

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### Abstract

Dissociative Identity Disorder, characterized by the presence of two or more distinct identity states and recurrent memory gaps, presents significant challenges to the criminal justice system, particularly in determining criminal responsibility. Within Vietnam's legal framework, the adjudication of DID-related cases remains underdeveloped, offering courts limited guidance. A comparative analysis of legal approaches in jurisdictions such as the United States, the United Kingdom, Australia, and Canada reveals divergent perspectives on criminal responsibility in DID cases, particularly regarding the authenticity of diagnoses and ethical considerations in adjudication. Vietnam faces substantial deficiencies in psychiatric evaluation procedures and judicial comprehension of Dissociative Identity Disorder. Addressing these challenges necessitates comprehensive legal and procedural reforms, including the formal recognition of Dissociative Identity Disorder in psychiatric assessments, the establishment of specialized diagnostic protocols, the adoption of tailored standards for criminal responsibility, the creation of dedicated forensic psychiatric institutions, and the systematic training of legal professionals. These reforms are essential to harmonizing Vietnam's criminal justice practices with contemporary psychiatric knowledge and fundamental principles of fairness and justice.

**Keywords:** *Dissociative Identity Disorder, Criminal Responsibility, Forensic Psychiatry, Comparative Law*

## **Introduction**

Dissociative Identity Disorder (DID) is a complex psychiatric condition characterized by the presence of two or more distinct identity states, recurrent disruptions in memory, and impairments in consciousness, behavior, and sense of self (American Psychiatric Association, 2013). The disorder challenges traditional legal concepts of criminal responsibility, which are fundamentally based on the assumption of a continuous and coherent moral agent capable of forming criminal intent and exercising behavioral control. Debates in contemporary legal and psychiatric scholarship have produced two opposing views regarding DID and criminal responsibility. One school of thought advocates that a diagnosis of DID should not automatically exempt a defendant from liability, emphasizing that criminal responsibility hinges on an individual's cognitive and volitional capacities at the time of the offense (Easdale, 2022; Saks & Behnke, 1997). Conversely, another school contends that severe dissociation inherent in DID may disrupt consciousness to such an extent that the defendant cannot form the requisite *mens rea*, thus warranting exoneration (Sinnott-Armstrong & Behnke, 2001; Steinberg, 2023; Steinberg et al., 1993).

However, despite its clinical complexity, legal systems often struggle to classify DID within conventional doctrines of criminal responsibility. The Vietnamese legal framework, in particular, lacks procedural or doctrinal guidance on how DID should be assessed in criminal proceedings, leading to ambiguity and inconsistency. This raises a crucial normative question: *Should individuals diagnosed with DID be considered criminally responsible under the law, and if so, how should this responsibility be determined?* Within the Vietnamese legal system, Article 21 of the 2015 Penal Code provides that individuals who, due to mental illness, are unable to perceive or control their actions, are exempt from criminal responsibility. However, there is no explicit recognition or procedural guideline for adjudicating cases involving complex dissociative disorders like DID. This legal gap poses significant challenges for courts in ensuring both fairness to defendants and the integrity of criminal justice outcomes. To address these challenges, a thorough review of existing literature is essential. Such a review will elucidate prevailing theoretical debates, expose gaps in current research, and inform the development of a more coherent legal framework for Vietnam.

This article aims to:

- (i) Examine the conceptual and clinical dimensions of DID relevant to legal responsibility;
- (ii) Compare legal approaches to DID across selected jurisdictions, including the United States, the United Kingdom, Canada, Australia, France, and Germany;
- (iii) Analyze how Vietnam's Penal Code and forensic psychiatric system currently handle mental disorders in criminal law;
- (iv) Propose reform recommendations to improve doctrinal clarity, procedural safeguards, and evidentiary standards.

The analysis is limited to the domain of criminal responsibility under Vietnamese law, with comparative insights drawn exclusively from criminal jurisdictions. It does not cover issues related to civil liability, torts, or mental illness in non-criminal legal settings.

### **Research Methodology**

This study employs a mixed-methods approach that integrates doctrinal legal analysis, comparative legal research, and exploratory quantitative survey in order to examine how criminal justice systems address the issue of criminal responsibility in cases involving DID, while also proposing reform pathways adapted to the Vietnamese legal context.

First, the study adopts a doctrinal method to interpret and evaluate the relevant provisions of the Vietnamese Penal Code 2015 particularly Articles 21 and 51 as well as related legislative instruments such as the Law on Judicial Expertise (2012, amended in 2020), Joint Circular No. 18/2021, and Decision No. 367/QĐ-BYT issued by the Ministry of Health. The aim is to clarify the legal standard of “loss of awareness or control due to mental disease” and assess its compatibility with the specific clinical characteristics of DID. In parallel, the study reviews a range of judicial decisions issued by Vietnamese courts in criminal cases involving other mental disorders.

To broaden the analytical foundation, a comparative legal analysis was conducted between selected jurisdictions representing both common law (e.g., the United States, the United Kingdom, Canada, and Australia) and civil law traditions (e.g., France and Germany). These jurisdictions were purposively selected based on their relevance, particularly their recognition of DID in criminal adjudication, the availability of partial responsibility doctrines, and the institutionalization of forensic psychiatric standards.

Complementing the legal analysis, the study incorporates an exploratory quantitative component using the Dissociative Experiences Scale–II (DES-II), developed by Carlson and Putnam (1993), to assess the prevalence of dissociative symptoms such as amnesia, depersonalization, and identity confusion among non-clinical populations. The survey was conducted with 372 participants across four demographic groups: university students, public-sector officials, private-sector employees, and self-employed individuals. Participants were recruited using purposive sampling on a voluntary and anonymous basis. Data were analyzed using descriptive statistics and mean comparisons to detect variations in dissociative tendencies across socio-demographic subgroups. While the DES-II does not serve as a diagnostic tool, the results offer empirical insight into the distribution of dissociative symptoms within the general population and provide support for the argument that not all dissociative experiences result in a loss of criminal capacity. To complement the above findings, Table 1 presents the proportion of participants in each occupational group whose DES-II scores exceeded the clinical threshold of 30. These results further emphasize the differentiated prevalence of dissociative symptoms across demographic

categories. This contributes a data-informed perspective to the broader normative argument concerning individualized assessments of legal responsibility. (See Table 1)

**Table 1.** Proportion of Respondents with DES-II Scores  $\geq 30$  by Occupational Group

| Occupational Group        | Number of Respondents | % Scoring $\geq 30$ on DES-II |
|---------------------------|-----------------------|-------------------------------|
| University Students       | 186                   | 56.45%                        |
| Public-Sector Employees   | 20                    | 10.00%                        |
| Private-Sector Workers    | 31                    | 22.58%                        |
| Self-Employed Individuals | 8                     | 37.50%                        |

*Source: Author's survey using the Dissociative Experiences Scale-II (DES-II), 2025(Thuyen, 2025).*

Throughout the research process, an interdisciplinary perspective is maintained, combining legal reasoning, forensic psychiatry, and legal philosophy on criminal liability and personhood. Diagnostic frameworks from the DSM-5, neuroimaging studies, and forensic assessment tools such as the SCID-D and DDIS are referenced to bridge the gap between clinical symptomatology and legal standards. This integrated approach not only strengthens the theoretical foundation of the study but also enhances the scientific credibility and practical feasibility of the proposed legal reforms.

### **Literature Review**

The intersection between DID and criminal responsibility has been a focal point of intense scholarly debate. Foundational psychiatric studies established that DID is marked by disruptions in identity, memory, and agency, often resulting in a fragmented sense of self that complicates legal assessments of culpability (American Psychiatric Association, 2013; Dell & O'Neil, 2010). Pietkiewicz and Tomalski (2018) highlighted the clinical difficulty of diagnosing DID reliably, raising concerns about potential malingering in forensic contexts. Scholars advocating for the attribution of criminal responsibility to individuals with DID argue that internal fragmentation should not undermine the legal principle of unified personal accountability. Saks and Behnke (1997) assert that criminal responsibility must be evaluated based on the individual's capacity to understand and control their actions at the moment of the offense,

regardless of dissociative experiences. Easdale (2022) furthers this perspective through the “team responsibility” model, positing that despite the existence of multiple alters, the legal system should recognize the defendant as a single accountable entity. Comparative studies, such as that by Johnston et al. (2023), affirm that most jurisdictions (Johnston et al., 2023), including those in the United States, the United Kingdom, Australia, and Canada, apply doctrines of diminished rather than excluded responsibility in DID cases, reflecting an emphasis on partial cognitive and volitional impairment.

In contrast, critical perspectives emphasize that the severe fragmentation of consciousness in DID cases challenges fundamental legal concepts of mens rea and personal identity. Sinnott-Armstrong and Behnke (2000) argue that DID disrupts the continuity of consciousness necessary for moral and legal agency, thereby questioning the coherence of traditional responsibility frameworks. Steinberg, Bancroft, and Buchanan (1993) similarly maintain that complete dissociation during the commission of an act may sever the mental link between the perpetrator and the offense, necessitating greater accommodation within legal insanity defenses. The acquittal of Billy Milligan, cited widely in both legal and psychiatric discourse, exemplifies the complexities and controversies surrounding DID-based defenses (Frontiers in Psychology, 2022)

Despite extensive academic discourse, significant research gaps persist. Existing studies are predominantly situated within common law contexts and often overlook how civil law jurisdictions, particularly in Asia, approach DID-related criminal responsibility. As highlighted in Vietnamese legal scholarship, while general provisions exist for mental illness defenses, there remains a lack of detailed procedural or substantive guidance specifically addressing DID. Forensic psychiatric evaluations in Vietnam are criticized for their generalized approach, failing to differentiate dissociative disorders from psychotic or mood disorders, thus creating ambiguity in the adjudication of such cases.

The absence of clear standards risks both wrongful convictions and unwarranted exonerations, thereby undermining public trust in the criminal justice system. Addressing this concern requires not only procedural and doctrinal reforms but also a deeper scientific understanding of the complex psychiatric conditions at issue. In particular, synthesizing comparative experiences and forensic psychiatric advancements is crucial for informing reforms tailored to Vietnam’s specific legal and cultural context. Against this backdrop, a robust theoretical understanding of DID becomes essential to properly assess its implications for criminal responsibility. The following section thus provides a detailed exploration of the clinical and neurocognitive characteristics of DID, distinguishing it from other psychiatric disorders, and establishing a functional foundation for forensic evaluations.

## **Theoretical Framework on DID**

### *Definition and Characteristics of DID*

DID previously known as multiple personality disorder (MPD) or psychogenic identity disorder, is a psychiatric condition characterized by the existence of two or more distinct identity states within one individual, accompanied by disruptions in memory, behavior, and sense of self (American Psychiatric Association, 2013; Putnam, 1984, 1986). The earliest description of DID dates back to 1646, credited to Paracelsus in the 16th century (Putnam, 1991). Besides, DID is defined as a condition in which an individual experiences a disconnection in their sense of self or identity, characterized by “the presence of two or more distinct identities or a sense of being controlled by an external force”, a phenomenon often likened to spirit possession in folklore (sometimes perceived as demonic possession in cultural contexts). This explanation aligns with the description of multiple personality disorder (MPD), one of five dissociative disorders outlined by the American Psychological Association (APA) in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) (American Psychiatric Association, 2013). 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.

Although interest in DID surged during the 19th century, it declined in the early 20th century due to controversies surrounding its diagnosis and the rising focus on schizophrenia. Clinically, DID is considered a trauma-based developmental disorder, often linked to severe childhood abuse or neglect (Hart & Horst, 1989). Traumatic experiences are theorized to fragment consciousness as a coping mechanism, with different identities encapsulating distinct memories and functions (Loftus & Davis, 2006). Individuals with DID may experience dissociative amnesia, internal dialogues between alters, and sudden behavioral or emotional changes, leading to profound disruptions in daily functioning.

Diagnosis of DID requires exclusion of organic brain injury and substance-induced conditions, and relies on specialized clinical tools. The Structured Clinical Interview for DSM Dissociative Disorders (SCID-D-R) is regarded as the gold standard, assessing key symptoms like dissociative amnesia, depersonalization, and identity alteration (Mychailyszyn et al., 2020). Complementary tools include the Dissociative Experiences Scale (Ross et al., 1991), and the Multidimensional Inventory of Dissociation. Emerging instruments like the Trauma and Dissociation Symptoms Interview (TADS-I) also aim to enhance diagnostic precision (Pietkiewicz, 2021). Notably, childhood trauma, particularly sexual and physical abuse, is identified in up to 90% of DID cases (American Psychiatric Association, 2013). Women are significantly more likely than men to be diagnosed with DID (Ross et al., 1998). Despite

its rarity, DID is estimated to affect approximately 1–1.5% of the general population in the United States and Western Europe (Reuben, 2016).

#### *Cognitive and Volitional Functioning in DID*

While early psychiatric theories posited that individuals with DID suffered from complete memory loss between identity states, contemporary research demonstrates a more nuanced reality. Rather than exhibiting absolute amnesia, DID patients frequently experience partial awareness commonly termed "co-consciousness" across different identity states (AATS Reinders et al., 2003). Through structured clinical interviews, found that a significant majority of DID patients reported some level of concurrent awareness between alters. (AATS Reinders et al., 2003) corroborated these findings using positron emission tomography (PET) studies, demonstrating that although identity states activated distinct neural networks, overlapping activity remained in regions responsible for self-awareness and emotional regulation.

Further supporting evidence comes from (Huntjens et al., 2006), who utilized memory transfer experiments to investigate whether information acquired by one identity state could be accessed by another. Their study found substantial levels of inter-identity memory transfer, suggesting that despite subjective reports of amnesia, DID patients often retained implicit knowledge across alters. Similarly, (Dorahy et al., 2014; Dorahy et al., 2021) observed that co-consciousness is not only common but can manifest through passive observation and active commentary between identity states. (Brand et al., 2009) provided a comprehensive neuropsychological profile of DID patients, concluding that executive functioning, attention, and rational decision-making are generally preserved within alters. Importantly, their work demonstrated that DID patients, even while experiencing dissociative symptoms, maintained cognitive integrity sufficient for purposeful behavior and understanding of reality.

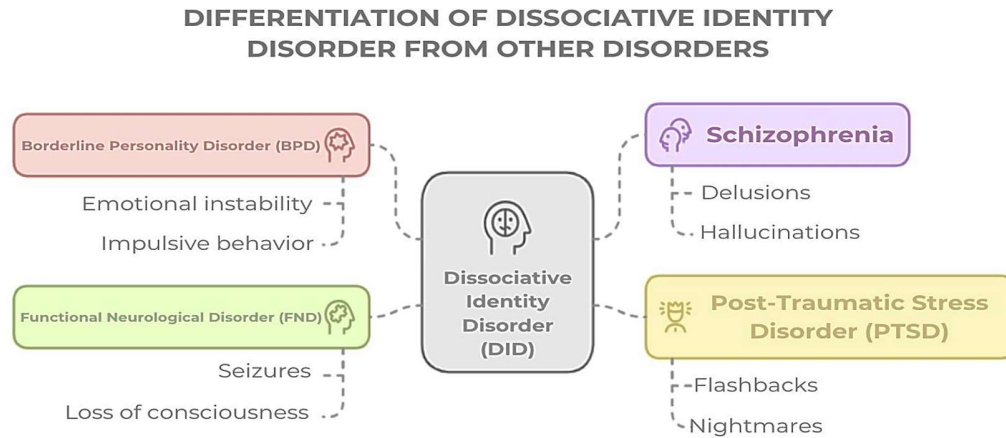
#### *Comparison of DID with Other Disorders*

In contrast, disorders such as schizophrenia involve primary impairments in reality testing, with hallucinations and delusions profoundly distorting the perception of the external world (Sartorius et al., 2009). DID patients, however, typically recognize external reality but experience internal disruptions in memory and identity (Dell & O'Neil, 2010). Moreover, unlike acute psychotic states, where thought processes become globally disorganized, DID reflects a compartmentalized but organized dissociation, preserving logical reasoning within specific identity states (Al-Issa, 2018). These converging lines of evidence strongly undermine the notion that DID inherently negates criminal responsibility. Although dissociative fragmentation may disrupt the continuity of subjective experience, it does not fundamentally eliminate cognitive awareness or volitional control (Dell, 2006; Huntjens et al., 2006; Reinders et al., 2016). Co-consciousness across identity states and the preservation of executive functioning have been consistently documented, indicating that individuals with DID are often

capable of understanding the nature and wrongfulness of their actions. Therefore, forensic evaluations must move beyond simplistic assumptions of total incompetence and instead conduct nuanced, case-specific inquiries into the functional capacities of the dominant identity state at the material time of the offense (Brand & Loewenstein, 2010; Dorahy et al., 2014) .

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 (Sartorius et al., 2009; Tandon, 2010). Acute psychotic episodes similarly present with sudden, pervasive disorganization of thought and behavior, disrupting the individual's understanding of lawful conduct (American Psychiatric Association, 2013). Severe intellectual disability involves substantial deficits in intellectual functioning and adaptive behavior, impairing basic comprehension of social norms and legal standards (Schalock, 2010).

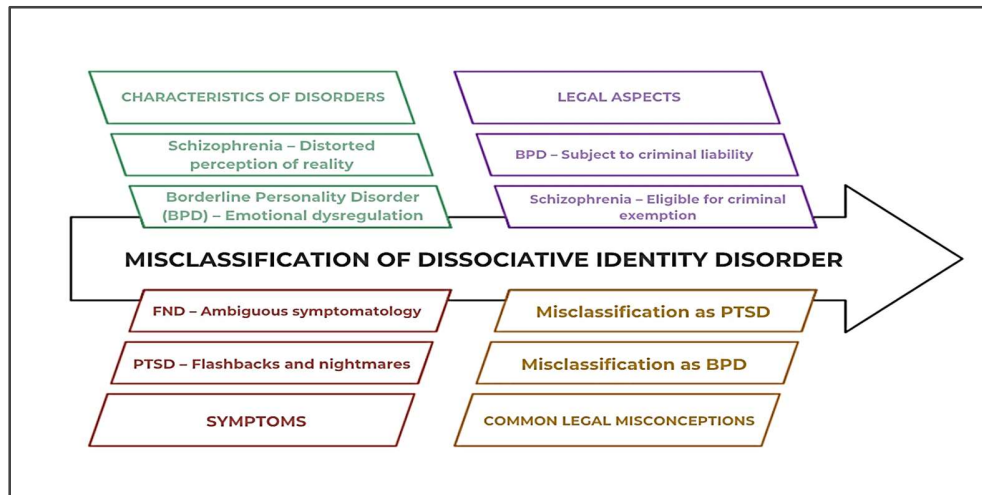
These conditions produce generalized cognitive deficits, preventing individuals from appreciating the nature, wrongfulness, or consequences of their actions across all circumstances. By contrast, DID patients generally maintain intact executive functioning, rational planning, and realistic appraisal of external circumstances within distinct identity states. Although dissociation can cause memory gaps or state-dependent amnesia, forensic research consistently shows that DID patients often exhibit co-consciousness, maintaining partial or full awareness of actions undertaken by other alters ((Huntjens et al., 2006) et al., 2006). Figure 1 illustrates how DID is clinically distinguished from other psychiatric conditions such as schizophrenia or acute psychosis.



**Figure1:** Differentiation of DID from other Disorders

In ensuring accurate diagnosis, forensic clinicians rely on validated diagnostic tools, such as the Structured Clinical Interview for DSM Disorders-Dissociative Disorders Module (SCID-D), which assesses symptoms of identity alteration, amnesia, depersonalization, derealization, and identity confusion (Steinberg, 1994, 2023). Neuropsychological testing further differentiates DID patients, who generally preserve higher executive functioning compared to individuals with schizophrenia or severe intellectual disabilities (Brand & Loewenstein, 2010). Functional imaging studies confirm these differences: Reinders et al. (2006) demonstrated distinct yet organized brain activation patterns in DID patients, contrasting with the diffuse dysfunction typically observed in psychotic disorders.(Reinders, 2006). Moreover, the subjective internal fragmentation characteristic of DID must not be confused with the externally observable disorganization found in psychosis. As (Dell, 2006) notes, DID patients can maintain social functioning, engage in purposeful behavior, and understand legal and moral norms when assessed within specific identity states. Given these distinctions, forensic evaluations must not simplistically equate the presence of dissociation with incapacity. Instead, case-specific assessments should determine whether, at the material time, the operative identity possessed sufficient cognitive and volitional capacities to satisfy the mental elements of the offense. Misdiagnosis risks serious injustices: either wrongfully exculpating those capable of criminal responsibility or unjustly punishing individuals with genuine incapacity. Thus, the existence of DID alone does not negate criminal responsibility; rigorous diagnostic differentiation and functional capacity evaluations are imperative. As shown in Figure 2, the risks of

misclassification due to lack of diagnostic clarity are significant, potentially leading to unjust outcomes



**Figure2:** Misclassification of DID

### **Philosophical and Legal Theories of Responsibility in DID Cases: Competing Models and Implications**

While legal systems traditionally assume a stable, continuous subject capable of forming intent and exercising control, DID challenges this assumption by presenting fragmented streams of consciousness referred to as alters that may independently govern behavior and memory. As such, determining whether criminal liability should attach to the person as a whole or only to the alter in control at the time of the offense becomes a central jurisprudential dilemma. To navigate this complexity, several theoretical approaches have emerged in legal scholarship. A dominant functionalist position argues that responsibility should be grounded in the cognitive and volitional state of the controlling identity at the time of the criminal act, regardless of whether that identity is the so-called "host" or a subordinate alter (Sinnott-Armstrong & Behnke, 2001). This view aligns with longstanding doctrines of criminal law emphasizing mental state at the material moment *actus non facit reum nisi mens sit rea* and resists importing metaphysical debates about unified personhood into legal adjudication.

In contrast to the functionalist approach, alternative models propose diverging frameworks for attributing culpability. One variant focuses on the host personality, treating it as the central legal subject and diminishing the legal relevance of alters who may have committed the offense. Another, more radical position advanced by Elyn

Saks (1997) (Saks & Behnke, 1997) argues for general non-responsibility unless all alters are complicit in or fail to prevent the crime. Saks posits that alters may satisfy philosophical conditions for personhood rationality, self-awareness, moral agency drawing on Daniel Dennett's six criteria (Sinnott-Armstrong & Behnke, 2001). If this view is accepted, then criminal liability could implicate innocent "persons" within the same body. While intellectually provocative, Saks' theory raises serious legal and practical concerns. Chief among them is the difficulty of proving universal alter acquiescence or complicity, which could incentivize defensive fabrication and obstruct fair adjudication. Furthermore, such a model risks fracturing legal accountability to an unmanageable degree, particularly in systems where personhood must be coherent and unitary for the purposes of legal identity.

To counter this fragmentation, Sinnott-Armstrong and Behnke (2001) advance a persuasive rebuttal grounded in metaphysical and empirical reasoning. They argue that all alters in a DID system constitute a single legal person, based on continuity of brain structure, bodily integrity, and convergence in experiential memory chains (pp. 284–290). Their position draws useful analogies to individuals with amnesia, bipolar disorder, or other dissociative conditions none of whom are generally absolved of responsibility merely due to shifts in psychological states.

The strength of this position is bolstered by contemporary psychiatric research. Empirical findings demonstrate that DID patients frequently exhibit co-consciousness between alters (Dell, 2006), preserve executive functioning (Brand & Loewenstein, 2010), and retain implicit memory across states (Huntjens et al., 2006). These observations support the view that DID is a compartmentalized rather than incapacitated mental condition. Thus, the presence of DID should not be treated as automatically exculpatory, but rather as a trigger for more careful evaluation of functional capacity. Building on these foundations, I argue that the controlling identity at the time of the offense should be the focal point of legal analysis. Whether that identity is dominant or subordinate, host or alter, becomes secondary to their actual capacity to understand the wrongfulness of their actions and to conform their conduct accordingly. This approach not only adheres to core criminal law principles but also reflects a realistic appreciation of the psychiatric features of DID.

In conclusion, while DID undoubtedly complicates the attribution of legal responsibility, it does not undermine the need for accountability. A functionalist approach anchored in the operative mental state of the controlling identity strikes the most appropriate balance between psychiatric realism and legal consistency. By integrating this model into both statutory design and forensic practice, jurisdictions can respond more justly and accurately to the challenges DID presents.

### **Practical Analysis of Criminal Responsibility for Individuals with DID**

Across jurisdictions, criminal responsibility hinges fundamentally upon the actor's cognitive and volitional capacities (Fletcher, 1998; Robinson, 1997). Both the

common law and civil law traditions require that the accused, at the time of the offense, possessed sufficient mental faculties to understand the wrongfulness of their acts and to control their behavior accordingly (Dressler, 2012). However, the operationalization of these concepts diverges significantly across the two systems, especially when addressing complex psychiatric phenomena like DID. This divergence not only impacts individual outcomes but also raises broader questions about the fairness, adaptability, and scientific rigor of different legal systems (Perlin, 2016).

#### *Criminal Responsibility for Individuals with DID in Common Law Systems*

In common law jurisdictions such as the United States, the United Kingdom, Australia, and Canada, the assessment of criminal responsibility for individuals diagnosed with DID is grounded in long-established legal doctrines. The foundational criteria are encapsulated in the M'Naghten Rule and the standards set forth by the Model Penal Code (MPC), both of which emphasize the defendant's cognitive and volitional capacities at the time of the offense. Under these frameworks, an individual may be exonerated if, due to a "defect of reason from disease of the mind," they either failed to understand the nature and quality of the act or were incapable of recognizing its wrongfulness (American Law Institute, 1985; Walker, 1968). However, when DID is introduced into criminal trials, courts have struggled to apply these doctrines consistently, leading to divergent judicial outcomes. This inconsistency reflects the challenges inherent in evaluating disorders characterized by identity fragmentation and state-dependent memory, conditions that challenge traditional notions of a unified actor.

One of the most emblematic criminal cases highlighting the complexities of adjudicating DID under the common law tradition is *State of Ohio v. Billy Milligan* (1978)(Kranc, 2023). In this case, Billy Milligan was charged with multiple counts of rape and robbery, and his defense hinged on a diagnosis of DID, then referred to as Multiple Personality Disorder. Psychological evaluations diagnosed him with 24 distinct identities, several of which allegedly committed the crimes without the dominant alter's knowledge or control. Applying the traditional insanity defense standards, Milligan's legal team successfully argued that, at the time of the offenses, the operative identity lacked the capacity to appreciate the wrongfulness of his acts or to control his behavior in accordance with the law. As a result, the jury rendered a verdict of not guilty by reason of insanity, and Milligan was committed to a psychiatric institution rather than sentenced to prison (Keyes, 1981) This outcome, however, was not without controversy. Scholars such as Foote (2006) questioned the reliability of the DID diagnosis and warned about the potential for malingering in forensic settings(Foote et al., 2006). The Milligan case sparked intense debate over whether DID truly incapacitated an individual to the extent required for legal insanity or whether dissociative phenomena merely complicated, but did not abolish, cognitive or volitional faculties. Critics emphasized that despite internal identity fragmentation, the

orchestration of complex criminal acts suggested the preservation of executive functioning, thus challenging the exculpatory value of a DID diagnosis.

A related but contrasting decision is found in *State v. Darnal* (1980), where the Oregon appellate court addressed the criminal responsibility of a defendant claiming DID. The court ruled that the mere presence of multiple personalities does not automatically absolve a defendant from criminal liability. Instead, it left the assessment to the jury to determine whether, at the time of the offense, the operative personality had sufficient cognitive and volitional capacities to be held responsible. This case illustrates the judiciary's early caution in preventing DID from being a blanket exemption from accountability.

Although no reported American court case has conclusively affirmed co-consciousness as a basis for denying the insanity defence, legal scholars have noted that the presence of partial awareness among identity states complicates the application of traditional tests for criminal responsibility. Saks and Behnke argue that when co-consciousness exists, the legal system may reasonably attribute mens rea to the defendant, as shared cognitive access undercuts claims of total incapacity (Saks & Behnke, 2001). This position reflects a broader judicial reluctance to excuse criminal conduct solely on the basis of dissociative symptoms when cognitive and volitional capacities remain demonstrable.

Further tightening judicial scrutiny, the Washington Supreme Court in *State v. Greene* (Supreme Court of Washington, 1999) excluded DID evidence on the grounds that it failed to meet the required scientific reliability standards (Daubert standard). The defendant had claimed that an alternate personality was responsible for the murder of his therapist; however, the court found the expert testimony unconvincing and inadmissible. Similarly, in *State v. Lockhart* (Supreme Court of Appeals of West Virginia, 2000), the court rejected the defendant's attempt to present DID as a defense against charges of sexual assault, ruling that the diagnosis was speculative and failed to satisfy the evidentiary thresholds required for admissibility. These cases demonstrate a growing judicial insistence on rigorous scientific validation when DID is raised as part of a criminal defense.

These cases collectively reveal that while common law systems permit the presentation of DID as part of an insanity defense, success is highly contingent upon convincing evidence that the disorder abolished the requisite mental faculties. Expanding beyond the United States, other common law jurisdictions have similarly confronted the forensic complexities posed by DID. For instance, in *R v. Oommen* (Supreme Court of Canada, 1994), the Supreme Court of Canada affirmed that a finding of not criminally responsible on account of mental disorder (NCRMD) requires clear and convincing evidence that the defendant lacked the capacity to appreciate the nature or wrongfulness of the act. Moreover, in *R v. Swain* (Supreme Court of Canada, 1991), although the case did not directly involve DID, the Supreme Court of Canada articulated a fundamental principle: findings of mental disorder must be grounded in

individualized assessments of the defendant's cognitive and volitional capacities, rather than presumptions based solely on psychiatric diagnoses.

Collectively, these cases underscore that across common law systems, DID diagnoses alone are insufficient to excuse criminal behavior. Courts require rigorous, individualized forensic evaluations to determine whether, at the material time, the operative personality lacked the requisite mental faculties for criminal responsibility. This approach highlights the necessity of distinguishing between mere psychiatric diagnosis and the specific legal standards for criminal incapacity. To further illustrate the diversity of judicial responses to DID-based defenses, Table 2 summarizes representative criminal cases across multiple jurisdictions, highlighting the variability in court rulings and the reliance on scientific evidence.

**Table 2. Judicial Outcomes in Criminal Cases Involving DID**

| Case              | Year | Allegation          | Advocate                               | Court ruling                                                                                                              | Background                                                                                                                                                                            |
|-------------------|------|---------------------|----------------------------------------|---------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| State v. Milligan | 1978 | Rape, murder        | Not guilty by reason of insanity (DID) | The defendant was not guilty due to having a facial identity disorder                                                     | The defendant was arrested for raping three victims at OSU after committing multiple felonies and armed robberies.                                                                    |
| State v. Darnall  | 1980 | Killing             | Not guilty by reason of insanity (DID) | Excludes the defendant's criminal liability due to the crime DID.                                                         | The defendant was charged with murdering his father. However, it was testified that he had a weak nature and developed an aggressive personality to defend himself, leading to crime. |
| State v. Grimsley | 1982 | Driving while drunk | Not guilty by reason of insanity (DID) | The defendant is guilty because she was fully capable of perceiving and controlling her actions at the time of the crime. | The defendant was arrested for driving under the influence. She claimed that another personality was in control of the body during the incident.                                      |

|                       |      |                        |                                                                 |                                                                                                                                                                                                                                               |                                                                                                                                                                                     |
|-----------------------|------|------------------------|-----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Kirkland<br>v. State  | 1983 | Bank robbery           | Not guilty by<br>reason of insanity<br>due to mental<br>illness | The presence of other<br>personalities is not a<br>reason to be exempt<br>from criminal<br>liability.                                                                                                                                         | In 1981, from June to<br>August, Phyllis Kirkland<br>committed several armed<br>robberies.                                                                                          |
| State v.<br>Rodrigues | 1984 | Rape                   | Not guilty by<br>reason of insanity<br>(DID)                    | The judge found the<br>defendant unable to<br>defend himself and<br>deferred the acquittal.                                                                                                                                                   | Rodrigo Rodrigues, a 23-year-<br>old Marine, was indicted on<br>three counts of sodomy and<br>one count of rape, appealing<br>the verdict on the grounds of<br>insanity due to DID. |
| State v.<br>Jones     | 1988 | Killing                | Not guilty by<br>reason of insanity<br>(DID)                    | Not accepting the<br>defense of personality<br>change leads to the<br>inability to distinguish<br>between right and<br>wrong.                                                                                                                 | Jones met Pauline Rodde<br>in a bar, then strangled<br>and sexually<br>assaulted her.                                                                                               |
| J. Weston Maxwell     | 1988 | Bank robbery           | Not guilty by<br>reason of insanity<br>(DID)                    | The defendant was<br>convicted due to<br>repeated offenses.                                                                                                                                                                                   | Juanita Maxwell was charged<br>with bank robbery.                                                                                                                                   |
| State v.<br>Moore     | 1988 | Killing                | Not guilty by<br>reason of insanity<br>(DID)                    | The defendant was<br>convicted and the<br>court rejected the<br>defense of insanity<br>due to DID because<br>both personalities<br>were aware of the<br>crime and had the<br>ability to control their<br>actions at the time of<br>the crime. | Thomas Moore was charged<br>with murder.                                                                                                                                            |
| US v.Denny<br>Shaffer | 1991 | Crime of<br>kidnapping | Not guilty by<br>reason of insanity<br>(DID)                    | The insanity defense<br>was rejected on the<br>grounds that the<br>controlling sub-<br>personality during the<br>commission of the<br>crime was sufficiently<br>sane and aware of the<br>nature of the<br>wrongdoing.                         | Shaffer, an obstetrics nurse,<br>kidnapped and transported a<br>baby across multiple states to<br>convince her exboyfriend that<br>it was their child.                              |

|                             |      |                          |                                              |                                                                                                                                                     |                                                                                                                                                                                               |
|-----------------------------|------|--------------------------|----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Kirby v.<br>State           | 1991 | Fraud and<br>misdemeanor | Not guilty by<br>reason of insanity<br>(DID) | The defendant was<br>found guilty but<br>mentally ill                                                                                               | The defendant is a used car<br>salesman who defrauded<br>many people of nearly<br>\$300,000.                                                                                                  |
| State v.<br>Huskey          | 1992 | Rape, murder             | Not guilty by<br>reason of insanity<br>(DID) | The court convicted<br>the defendant of rape.<br>However, the 1999<br>murder trial was<br>mistrial.                                                 | Thomas Dee Husky, also<br>known as "Zoo killer",<br>accused of raping and<br>murdering many women.<br>He argued that different<br>personalities within the<br>body committed these<br>crimes. |
| State v. Greene             | 1998 | Killing                  | Not guilty by<br>reason of insanity<br>(DID) | Testimony testimony<br>DID not reliable<br>enough, the<br>defendant was<br>declared guilty.                                                         | Greene was charged with<br>indecent exposure and<br>kidnapping and sexually<br>assaulting his<br>psychotherapist.                                                                             |
| State v.<br>Lockhart        | 2000 | Sexual assault           | Not guilty by<br>reason of insanity<br>(DID) | Due to lack of scientific<br>evidence, the defense<br>of insanity due to<br>DID was not<br>recognized, and the<br>defendant was<br>declared guilty. | Carl Lockhart appealed the<br>charges of sexual assault,<br>assault, and theft on the<br>grounds of personality<br>change.                                                                    |
| Commonwealth<br>v. Orndorff | 2000 | Killing                  | Not guilty by<br>reason of insanity<br>(DID) | The court denied<br>defendant's<br>motion for retrial to<br>introduce<br>evidence of DID<br>diagnosed after the<br>conclusion of the trial.         | J.L. Orndorff was<br>charged with murdering her<br>husband and using a<br>weapon to commit a crime.                                                                                           |

|                          |      |                                     |                                        |                                                                                                                                                                                      |                                                                                                                               |
|--------------------------|------|-------------------------------------|----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Orndorff v. Commonwealth | 2010 | Crime of murder and use of firearms | Not guilty by reason of insanity (DID) | The jury in the court of appeals did not reach a different conclusion than the trial court. There was no evidence that defendant's DID caused her to be legally mentally disordered. | J.L. Orndorff appealed the verdict of murdering her husband and using a weapon to commit a crime at the first instance court. |
|--------------------------|------|-------------------------------------|----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|

*Source: Compiled by the author from judicial decisions and case reports, including Keyes (1981), Kranc (2023), Frontiers in Psychology (2022), and official court rulings (e.g., State v. Greene, 1999; State v. Lockhart, 2000). See References*

From these cases, several key observations emerge. First, the flexibility inherent in common law systems enables nuanced, case-by-case adjudications. Courts are empowered to weigh expert testimony, psychiatric reports, and observable behavior in crafting decisions tailored to individual circumstances. This flexibility has allowed some DID defendants to successfully mount insanity defenses where cognitive or volitional incapacity could be convincingly demonstrated, as seen in Milligan's case. However, this same flexibility introduces significant challenges. Outcomes often depend heavily on the quality and persuasiveness of psychiatric evidence, leading to inconsistent verdicts even among factually similar cases. Moreover, the lack of standardized forensic criteria for diagnosing and evaluating DID increases the risk of both wrongful exculpations (where malingering is not properly detected) and wrongful convictions (where genuine incapacity is disregarded due to skepticism). Finally, common law courts exhibit a high level of scrutiny toward DID claims, generally requiring substantial corroborative evidence of incapacity beyond the mere presence of a psychiatric diagnosis. The critical issue is not whether the defendant had DID, but whether the operative identity at the time of the offense possessed the cognitive and volitional faculties necessary for criminal responsibility. This standard preserves the fundamental principle of individual accountability while accommodating legitimate cases of mental incapacity.

#### *Criminal Responsibility for Individuals with DID in Civil Law Systems*

Unlike the flexible and precedent-driven nature of common law systems, civil law jurisdictions including France, Germany, and Vietnam regulate criminal responsibility through codified statutory frameworks. These systems emphasize strict adherence to legal provisions, with judicial discretion more limited than in common law. Regarding mental disorders such as DID, civil law jurisdictions generally maintain that only those who have lost the capacity to appreciate the nature or wrongfulness of their acts, or to control their actions, may be exempted from criminal responsibility.

In France, Article 122-1 of the French Penal Code stipulates that an individual is not criminally responsible if suffering from a psychological or neuropsychological disorder that abolished discernment or control at the time of the act (Francaise, 2014). Similarly, Section 20 of the German Strafgesetzbuch (StGB) (Ministry of Justice, 1998) excuses offenders who, at the time of committing the offense, were unable to comprehend the wrongfulness of their conduct or to act accordingly due to pathological mental disturbance (Justice, 2021).

Civil law systems rely heavily on forensic psychiatric evaluations to establish the presence and degree of mental incapacity. The diagnosis of a mental disorder alone is insufficient; it must be proven that the disorder completely abolished cognitive and volitional faculties at the critical moment. This standard poses particular challenges in DID cases, where the fragmentation of consciousness may be partial or selective rather than total. The practical application of these standards is illustrated in several cases. In France, the *Affaire du double crime d'Évreux* (2001) involved a defendant diagnosed with DID who killed two individuals (Par Valérie Brioux 2004). Although the court recognized the DID diagnosis, it found that the defendant exhibited planning and purposeful behavior, such as selecting weapons and attempting to conceal evidence, which indicated preserved executive functioning. As a result, the court rejected the defense of complete incapacity and imposed full criminal responsibility (Europe, 1950). Similarly, German courts have traditionally been skeptical of DID defenses. In a notable case adjudicated by the Düsseldorf Regional Court, the defendant asserted a DID diagnosis after committing serious violent offenses (Europe Council of human right). The court, relying on forensic expert assessments, concluded that while dissociative symptoms were present, they did not amount to a complete loss of understanding or self-control. Consequently, criminal responsibility was upheld.

### **Legal and Practical Framework for Psychiatric Evaluation in Vietnam: Challenges Regarding DID**

Vietnamese law, while historically rooted in the civil law tradition, has increasingly incorporated progressive principles from common law systems in recent years, particularly in the development of judicial practices and legal reforms aimed at enhancing procedural fairness and the protection of individual rights. The Penal Code 2015 (PC) reflects a functionalist approach to criminal responsibility, emphasizing the cognitive and volitional state of the defendant at the time of the offense. This is evident in Article 21 of the PC (National Assembly, 2015), which exempts individuals from liability only if they completely lack such capacities due to mental illness. In parallel, Article 51(1)(m) allows for sentence mitigation where mental illness merely limits but does not abolish those capacities. However, both provisions rely heavily on forensic evaluation, and in the context of DID, this dependence becomes problematic due to a lack of standardized diagnostic procedures.

Vietnam's forensic psychiatric framework is governed by the Law on Judicial Expertise 2012 (as amended in 2020), Joint Circular No. 18/2021/TTLT-BYT-BTP-

BCA-VKSNDTC-TANDTC, and Decision No. 367/QĐ-BYT (2009) on psychiatric evaluation standards. These instruments set out the criteria for determining criminal responsibility based on whether a mental disorder entirely abolished cognitive awareness or volitional control at the time of the offense. However, these procedures remain insufficiently responsive to the complexities of dissociative psychopathology. Current practice follows ICD-10 classifications but lacks any distinct provisions, protocols, or validated tools such as the SCID-D, DES-II, or DDIS to identify and assess DID reliably.

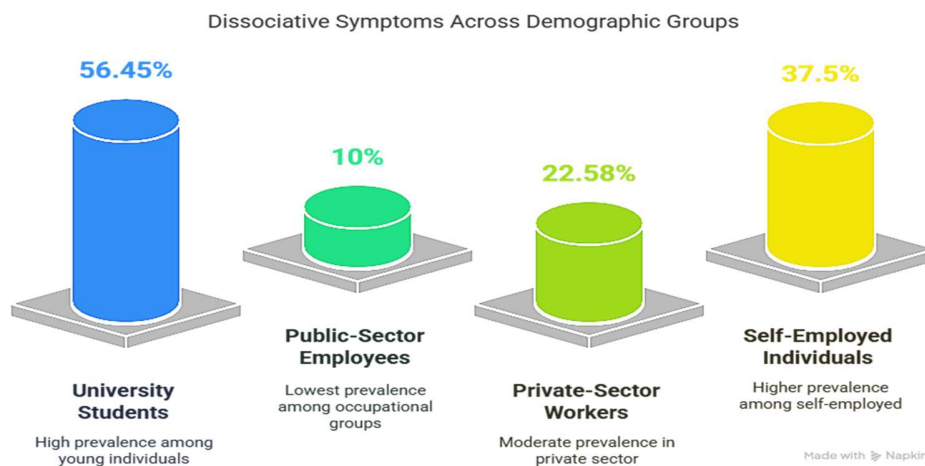
This diagnostic gap leads to multiple challenges. First, individuals with DID may be misclassified as suffering from other disorders, such as schizophrenia or borderline personality disorder, resulting in either inappropriate criminal liability or wrongful exemption. Second, the legal standard remains binary: Article 21 allows exemption only for complete incapacity, while intermediate states like partial impairment common in DID are excluded from formal recognition in culpability assessments. Third, forensic psychiatrists often lack training in dissociative diagnostics, increasing the risk that clinically significant symptoms will go undetected.

These systemic deficiencies give rise to a substantial risk of erroneous judicial determinations in cases involving individuals with DID. In the absence of clearly defined and dissociation-specific forensic standards, such individuals may be deemed exempt from criminal liability pursuant to Article 21 of the PC, on based solely on generalized assessments of cognitive and volitional impairment. This approach fails to account for the operative mental state of the controlling alter at the material time, thereby creating a dual risk: on the one hand, an unwarranted exemption from criminal liability; on the other, an erroneous imputation of culpability. Both outcomes compromise the fundamental principle of individualized adjudication and the legitimacy of criminal responsibility as grounded in actual mental state.

These shortcomings highlight the urgent need for interprofessional coordination between psychiatry and law. Without clinical protocols tailored to dissociative disorders, even the mitigation provided under Article 51 remains largely theoretical. Comprehensive reform combining forensic training, validated instruments, and interpretive legal guidance is essential to ensure that dissociative conditions are evaluated rigorously, fairly, and consistently within the Vietnamese criminal justice system.

Importantly, empirical studies such as those employing community-based surveys and tools like DES-II have shown that dissociative symptoms, including identity fragmentation, do not necessarily eliminate cognitive or volitional capacity. While such data cannot substitute for individualized clinical assessment, they provide valuable context and raise critical questions about how forensic systems interpret psychiatric complexity. The results reveal notable disparities across demographic groups. Among the 186 university students surveyed(Thuyen, 2025), the average DES-II score was 34.87, with 56.45% scoring above the clinical threshold, indicating a high likelihood of dissociative tendencies. In contrast, public-sector employees (mean: 20.11), private-

sector workers (22.74), and self-employed individuals (22.50) recorded lower average scores, with 10%, 22.58%, and 37.5%, respectively, exceeding the threshold. These findings suggest that dissociative symptoms such as memory lapses, depersonalization, or identity confusion are present across occupational groups, with particularly high prevalence among younger or less institutionally anchored individuals. Importantly, while elevated DES-II scores do not confirm a clinical diagnosis of DID, they reflect dissociative tendencies that may affect psychological functioning without fully abolishing cognitive or volitional capacities. This supports the author's position that individuals reporting dissociative symptoms can still retain legal responsibility, especially in systems like Vietnam's where the legal threshold for criminal non-responsibility under Article 21 (National Assembly, 2015) requires complete incapacity. Moreover, all participants in this survey were members of the general population with no prior clinical diagnoses, underscoring the fact that dissociative symptoms may appear even among psychologically "normal" individuals. This suggests that the presence of DID or related symptoms does not negate legal accountability. Rather, the decisive issue lies in whether the controlling identity at the time of the offense possessed the requisite cognitive and volitional faculties to give rise to culpability under the subjective element of criminal liability. From this perspective, the survey findings lend further support to the central thesis of this study: that a diagnosis of DID, in and of itself, should not operate as an automatic ground for exemption from criminal responsibility. Instead, it should necessitate a rigorous, individualized assessment of the mental state of the actor at the material time, with particular attention to the presence or absence of fault as defined under criminal law.



**Figure 3.** Average DES-II Scores by Occupational Group in Vietnam. The data represent mean scores from a sample of 372 respondents, grouped by employment status: university students (n=186), public-sector officials (n=80), private-sector employees (n=62), and self-employed individuals (n=44).

These findings also underscore a crucial tension: the current Vietnamese legal framework lacks the diagnostic nuance to distinguish between genuine dissociative incapacity and residual responsibility, potentially allowing some defendants to exploit psychiatric defenses, while others with partial impairments remain fully liable. The empirical evidence suggests that a more differentiated, scientifically grounded approach is needed, one that neither equates all dissociative symptoms with incapacity nor dismisses their legal relevance entirely. While no criminal case involving DID has yet been publicly adjudicated in Vietnam, a review of cases involving other psychiatric conditions highlights the practical consequences of this legal formalism. In Case No. 97/2020/HS-PT, for example, the defendant was diagnosed with epilepsy accompanied by personality changes ("Deliberate infliction of bodily harm upon another person," 2020). The psychiatric assessment found a partial reduction in cognitive and volitional faculties, yet the court held the defendant criminally responsible, opting to treat the mental disorder solely as a mitigating factor. Similarly, in Case No. 173/2020/HS-ST, the defendant exhibited symptoms consistent with emotionally unstable personality disorder (F60.3-ICD-10) and had been subject to compulsory psychiatric treatment ("Deliberate infliction of bodily harm upon another person," 2020). Nonetheless, upon clinical stabilization, the court proceeded with a conviction, reaffirming that the threshold for exemption under the law remained unmet. Another illustration arises in Case No. 1012/2024/HS-PT, in which the defendant had a documented history of bipolar disorder with psychotic features ("Deliberate infliction of bodily harm upon another person," 2024). However, procedural obstacles in securing in-patient forensic evaluation led to the exclusion of any mental illness defense, and the case was adjudicated without reference to the defendant's psychiatric condition.

### **Comparative Observations**

A comparative examination of how common law and civil law systems address criminal responsibility in cases involving DID reveals not only procedural disparities but also fundamental differences in the conceptualization of mental incapacity and culpability. These divergences are particularly salient when considering three persistent legal challenges that cut across both systems: (i) the forensic difficulty of diagnosing DID, (ii) the assessment of operative mental capacity at the time of the offense, and (iii) the balance between individualized justice and the need for legal certainty.

To begin with, the issue of diagnostic uncertainty is handled with greater flexibility in common law jurisdictions. Courts in the United States, for example, have accepted DID-based defenses in high-profile cases such as *State v. Milligan*, where expert testimony persuaded the jury despite ongoing debate surrounding diagnostic validity. This judicial openness stems from the adversarial nature of proceedings, which allows for competing psychiatric interpretations to be fully tested and weighed. In contrast, civil law systems including France and Vietnam tend to rely heavily on official forensic

psychiatric institutions, often demanding categorical conclusions as to whether the defendant had *complete* loss of cognitive and volitional capacity. This reliance on binary psychiatric conclusions limits the legal system's capacity to meaningfully engage with disorders like DID, whose symptoms often manifest in fragmented, context-dependent ways.

The second challenge concerns the legal assessment of operative capacity. Common law systems offer greater doctrinal space for nuance: courts can examine whether the specific personality state (or "alter") in control at the time of the offense satisfied the legal standards of *mens rea*. This flexibility was evident in *People v. Calvin Jackson*, where partial co-consciousness among alters led to a finding of responsibility despite the existence of DID. Civil law systems, by contrast, adopt a more rigid framework. As shown in the Vietnamese cases of Nguyễn Văn P and Nguyễn Hoàng S, forensic findings of *partial* impairment do not lead to reduced culpability but are treated merely as mitigating circumstances. The absence of intermediate categories such as "diminished responsibility" a concept widely used in Anglo-American law prevents courts from accounting for nuanced mental impairments that fall short of total incapacity. This results in a system where defendants are either fully liable or fully exempt, with no formal recognition of gray areas in mental functioning.

In contrast to Western jurisdictions, several Asian legal systems such as Japan and South Korea also grounded in civil law traditions have adopted more dynamic approaches to psychiatric conditions in criminal responsibility. For instance, Japan's Code of Criminal Procedure and the Medical Treatment and Supervision (Ministry of Justice Japan, 2005) Act allow for conditional non-responsibility with psychiatric detention and ongoing assessment (Nakatani, 2020). South Korea's Mental Health Welfare Act mandates qualified forensic experts for criminal evaluations, and recent case law has recognized partial responsibility based on dissociative states (Kim, 2023). These practices show that while full exemption is rare, partial impairment is taken into account.

Finally, both systems confront the enduring dilemma of reconciling public protection with fairness toward mentally ill defendants. The common law's case-specific adaptability permits a more individualized approach to justice but entails variability and unpredictability, which may affect public perceptions of fairness and consistency. Civil law systems, with their emphasis on uniform forensic procedures and statutory clarity, offer procedural certainty and institutional trust. However, such formalism risks producing outcomes that are legally coherent but clinically unresponsive particularly in cases involving complex, state-dependent disorders like DID. The Vietnamese experience, as reflected in the cases reviewed, illustrates this tension clearly: in the absence of definitive forensic standards for dissociative conditions, courts default to the binary logic of existing statutes, potentially mischaracterizing the legal agency of defendants whose mental impairments do not conform to absolute thresholds.

Taken together, the comparison suggests that while common law systems demonstrate a greater willingness to incorporate evolving psychiatric knowledge into legal analysis,

they do so at the cost of consistency and predictability. Civil law systems, conversely, maintain doctrinal stability and procedural discipline, but may inadvertently obscure clinical complexity under rigid legal classifications. In the case of DID, this structural rigidity leaves a significant gap in ensuring justice that is both medically informed and legally principled.

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### **Discussion and Recommendation**

#### *Discussion: Structural Gaps in Law and Forensic Psychiatry*

These examples underscore a persistent tension between the clinical complexities of mental illness and the legal system's demand for categorical clarity. In the absence of specialized forensic guidelines for dissociative conditions such as DID, Vietnamese courts are left to navigate these matters within an inflexible framework. The result is a system that often fails to accommodate disorders marked by intermittent or compartmentalized impairments, thereby risking the imposition of full criminal responsibility in cases where mental capacity may have been substantively compromised at the time of the offense. This highlights an urgent need for both legislative reform and interprofessional dialogue to bridge the gap between legal doctrine and psychiatric practice. To complement the legal analysis with empirical data, the author conducted a survey using the Dissociative Experiences Scale–II (DES-II) across four population groups in Vietnam: public-sector employees, private-sector workers, university students, and self-employed individuals. The DES-II is a validated screening tool that measures the frequency of dissociative symptoms on a 0–100 scale, with a clinical threshold commonly set at 30 points (Carlson & Putnam, 1993).

While the preceding survey results provide a preliminary picture of dissociative symptoms across demographic groups in Vietnam, their significance lies not merely in statistical distribution, but in the legal and forensic challenges they expose. The fact that dissociative experiences are present even among individuals not clinically diagnosed with DID raises important questions about how mental disorders are conceptualized, assessed, and treated within the criminal justice system.

Crucially, these findings underscore the need to distinguish between the presence of dissociative phenomena and the loss of legal capacity. The Vietnamese legal framework, as currently constructed, assumes that mental disorders relevant to criminal responsibility must entirely abolish perception or behavioral control. This binary model fails to accommodate individuals whose cognitive and volitional faculties may be partially impaired especially in conditions like DID, where such impairments can be state-dependent and fluctuate across personality states. It also overlooks the

possibility that some individuals may retain legal culpability despite exhibiting clinically significant dissociative symptoms.

Some commentators might argue that the existence of sentence mitigation under Article 51 of the Penal Code, or the application of mandatory psychiatric treatment under Article 49, provides a form of intermediate recognition for mental disorders. However, such mechanisms do not alter the fundamental legal conclusion that the defendant remains criminally responsible. Mitigation under Article 51 merely reduces the severity of punishment without modifying the legal nature of culpability, and treatment under Article 49 functions as a procedural safeguard rather than a substantive reassessment of responsibility. In contrast to models of diminished responsibility found in common law jurisdictions, Vietnam's approach offers no formal category for partial mental incapacity that could influence the determination of guilt or classification of offenses.

The lack of procedural guidance and diagnostic specificity for dissociative disorders further amplifies these challenges. In the absence of structured assessment tools or standardized training in dissociative pathology, forensic evaluators may misclassify symptoms, and courts may be forced to adjudicate based on incomplete or ambiguous evidence. This gap creates a dual risk: genuine impairments may go unrecognized, and maladaptive claims may be used to circumvent legal accountability. Such uncertainty not only undermines justice in individual cases but erodes broader public trust in the integrity of psychiatric defenses.

The structural rigidity of Vietnam's current legal framework is further illuminated when viewed through the lens of comparative legal models, particularly those in common law jurisdictions. Although no system has resolved all the challenges associated with adjudicating mental disorders like DID, common law systems have developed a set of doctrinal and procedural mechanisms that better accommodate clinical nuance and individual variability.

One of the most distinctive features of these systems is their recognition of intermediate mental states. Doctrines such as "diminished responsibility" or "partial mental impairment" allow courts to acknowledge that a defendant may not be fully insane and thus not exempt from liability but also not fully capable of forming the mens rea required for certain offenses. This middle-ground approach permits a more proportionate attribution of culpability, often resulting in charge reduction or sentencing mitigation grounded in psychiatric evidence. By contrast, the Vietnamese model offers no equivalent: the law recognizes only full capacity or total exemption, with no legal route for partial exculpation based on impaired but intact mental faculties.

Equally important is the procedural openness of common law courts to consider diverse forms of psychiatric and behavioral evidence. Judges and juries are permitted indeed, expected to engage with expert testimony that reflects not only diagnostic categories but also contextual factors such as the operative mental state during the offense, co-consciousness, and behavioral control across identity states. This flexibility facilitates a more individualized analysis of criminal intent, especially in dissociative

conditions where mental states may shift fluidly across time and context. In Vietnam, however, the absence of procedural standards for dissociative evaluation means that even the most clinically relevant variables often remain unexamined, and conclusions rely heavily on categorical diagnostic labels. Moreover, some common law systems have incorporated safeguards against both malingering and under-recognition, by requiring rigorous evidentiary standards for psychiatric defenses while also training forensic experts in the nuances of complex disorders like DID. These systems do not presume that all dissociative symptoms negate responsibility, but they also avoid excluding such claims outright. In doing so, they strike a balance between protecting public safety and ensuring procedural justice for mentally impaired defendants.

#### *Recommendations for Improvement*

**Introduce a Formal Definition and Recognition of DID:** First and foremost, Vietnamese law should formally recognize Dissociative Identity Disorder as a mental condition that can affect criminal responsibility. Currently, the law speaks generally of “mental disease” but provides no further guidance. We recommend that either the Penal Code or accompanying legal documents (such as judicial guidelines or a circular from the Supreme People’s Court and Ministry of Health) include a clear definition of DID and related dissociative disorders. This definition can draw from established psychiatric criteria – for example, the DSM-5 describes DID as *“the presence of two or more distinct identity states” accompanied by memory gaps and impaired sense of self*. Embedding such a description in legal texts or official commentary would raise awareness and understanding among legal practitioners. It would signal that DID is a legitimate clinical condition, not a pseudo-diagnosis, thereby guiding judges and examiners who might otherwise be skeptical. For instance, an official guideline could state: *“Dissociative Identity Disorder (multiple personality disorder) is recognized as a form of mental illness characterized by distinct identity states and memory dissociation. In criminal proceedings, verified DID shall be considered under the provisions on mental incapacity or mitigation, as appropriate.”* By naming DID explicitly, Vietnam would join some progressive jurisdictions that tailor their legal approach to specific disorders rather than using only generic terms. Even if the Penal Code itself is not amended to list disorders, a supplementary official interpretation can achieve this clarity. The outcome would be that lawyers can raise a DID defense or argument with more confidence, and courts have a reference point to assess such claims. This reform addresses the current ambiguity and “legal gap” noted in the study regarding complex disorders. It ensures that DID is not beyond the contemplation of Vietnamese law, thereby improving fairness (defendants with genuine DID are recognized) and preventing misuse (courts can better scrutinize claimed DID against a standard definition).

**Amend Article 21 of the Penal Code (Insanity Defense) for Clarity:** Article 21 of Vietnam’s 2015 Penal Code provides that a person who commits an act while suffering from a mental disease that causes loss of awareness or inability to control behavior is exempt from criminal responsibility. This is effectively the insanity defense clause (lack

of criminal capacity). To improve its application to disorders like DID, we propose a clarification or amendment to Article 21. The goal is not to change the fundamental threshold – which rightly requires a total lack of understanding or control – but to clarify that this includes cases of *severe dissociation*. For example, an amended Article 21 or its official commentary could specify: “*Mental disease includes serious dissociative disorders that render the person unable to form the necessary mens rea.*” This would directly address scenarios where an alter personality, unbeknownst to the primary identity, commits the offense. If evidence shows that at the time of the act the dominant personality was not conscious or in control (essentially the person was acting under a distinct alter with autonomous behavior), this should qualify as lack of criminal capacity under Article 21. Currently, Vietnamese courts have no experience with DID to set a precedent, and they might hesitate to apply Article 21 to a dissociative condition. By spelling it out, the law would give judges the confidence to acquit by reason of insanity in the rare cases where DID truly causes a loss of reality or control equivalent to psychosis. Comparative insight supports this: for instance, courts in the United States and UK have in some cases extended the insanity defense to DID defendants when the alter in control met the insanity criteria. Vietnam’s law could similarly acknowledge that DID, in extreme presentations, can fall under the insanity exemption. Conversely, the clarification can also stress that not *every* case of DID will reach this level – it must cause an inability to understand or control actions at the material time. This guards against misuse by requiring the same stringent standard of proof (as certified by forensic psychiatric evaluation) as any insanity plea. The benefit of amending Article 21 in this way is providing guidance and consistency: it preempts confusion by legal actors if a DID case arises, and it ensures that the law keeps pace with psychiatric knowledge (recognizing that “disease of the mind” is not limited to schizophrenia or intellectual disability, but can include complex dissociative disorders). Such an amendment or official interpretation would reinforce the principle that the law excuses those who genuinely *cannot* be responsible for their actions, even if the cause is an unusual condition like DID.

Amend Article 51 of the Penal Code (Mitigating Factors) to Embrace Partial Impairments: Article 51 lists circumstances that mitigate criminal liability; notably, Clause 1(m) (as numbered in Vietnamese texts) considers “*the offender has a disease that limits his/her awareness or control of his/her acts*” as a mitigating factor. This clause already provides a basis for acknowledging DID in cases where the disorder does not completely eliminate responsibility but does diminish it. However, to ensure it is applied to DID, a more explicit reference or guidance could be introduced. We recommend amending Article 51 or issuing a judicial guideline to explicitly include *dissociative disorders that partially impair cognition or volition* under this mitigating circumstance. For example, the law could be revised to say “the offender suffered from a mental illness (including dissociative disorders) that significantly limited but did not completely lose their capacity...”. Even without altering the statutory language, the Supreme People’s Court could issue an interpretive guidance (as a directive or commentary on Article 51) stating that clinically diagnosed DID may qualify as falling

under Clause 1(m) when it can be shown to have impacted the defendant's mental functioning at the time of the offense. The original study alludes to this approach, suggesting that DID could be handled as a mitigating factor rather than a full defense. Making it official would fill the current vacuum where judges have no instruction on DID. This reform would effectively introduce a form of "diminished responsibility" into Vietnamese practice without creating a new statute: by leveraging the existing mitigating framework, courts can reduce punishments appropriately for DID-afflicted offenders instead of choosing only between full guilt or full insanity acquittal. As a result, an offender with DID who knew generally what they were doing but had impaired self-control or only partial awareness could be found guilty but with a substantially reduced sentence to reflect diminished culpability. This brings more *nuance* and *justice* to outcomes. Notably, such an approach aligns with how many jurisdictions treat partial mental impairment – for instance, several U.S. states and the UK allow consideration of mental dysfunction short of legal insanity to lessen charges or sentences (the classic "diminished capacity" concept). By formalizing this in Vietnam, either through direct amendment or authoritative guidance, the legal system gains a calibrated tool for DID cases. It also prevents the scenario of outright acquittal in cases where the defendant wasn't entirely blameless, thereby addressing public safety and moral accountability concerns. Importantly, any use of Article 51 mitigation for DID should require rigorous proof from forensic experts, to prevent malingering. But when applied, it would exemplify the law's ability to balance empathy for mental illness with the need for accountability – a balance stressed in comparative scholarship as crucial for fairness.

**Update Forensic Psychiatric Evaluation Procedures:** Legal reforms must be accompanied by procedural reforms, particularly in how forensic psychiatric evaluations are conducted in DID-related cases. A major recommendation is to establish standardized protocols for assessing DID in criminal defendants. This could be achieved by the Ministry of Health (which oversees forensic psychiatry in Vietnam) issuing a specialized protocol or updating the existing forensic psychiatry guidelines. The protocol should include the use of validated diagnostic instruments for dissociative disorders. Tools such as the Structured Clinical Interview for DSM Dissociative Disorders (SCID-D), the Dissociative Experience Scale (DES-II), or the Dissociative Disorders Interview Schedule (DDIS) are internationally recognized for evaluating dissociative symptoms. Incorporating these into the evaluation process will lend objectivity and reliability to diagnoses of DID, reducing the chance of both false positives (malingered DID) and false negatives (missing a genuine DID). For example, an evaluation could require that any defendant claiming memory blanks or alternate identities be given the DES-II screening; if they score above a certain cutoff, a full SCID-D assessment by a trained psychiatrist follows. Additionally, the evaluation procedure should mandate a thorough exploration of the defendant's psychiatric history, trauma history, and possibly input from multiple professionals (psychiatrist, psychologist, neurologist) to rule out other

conditions. The new protocol might also call for *observation over time* – since DID symptoms can fluctuate – perhaps by hospitalizing the defendant for a period of psychiatric observation if needed. By codifying these steps, Vietnam would move away from ad hoc practices toward a more uniform, evidence-based approach in forensic exams. This addresses the current deficiency noted in the study: the lack of diagnostic clarity and procedural guidance for disorders like DID. Furthermore, such a protocol should be paired with a clear reporting format for experts: forensic psychiatric reports to the court should explicitly state whether the diagnostic criteria for DID are met, and how the symptoms affect the defendant's capacity in legal terms (using the definitions of Article 21 or 51 as applicable). A national guideline jointly authored by judicial and health authorities could outline these criteria and procedures, ensuring consistency across cases. The outcome of this reform would be two-fold: courts would receive higher-quality, more standardized expert evidence, and defendants with DID would be evaluated with tools that are internationally accepted, enhancing the scientific rigor of legal proceedings. This brings Vietnamese practice closer to international forensic psychiatry standards (for instance, akin to the AAPL's Practice Guidelines for forensic evaluations in the U.S, adapted for local use). It would also guard against miscarriages of justice – both the risk of wrongful exoneration by a too-lenient insanity finding and the risk of unfair punishment due to under-diagnosis are mitigated when evaluations are rigorous and standardized.

**Enhance Training and Capacity of Forensic Examiners:** Legal and procedural rules mean little without the human capacity to implement them. Therefore, a crucial reform is to invest in training and capacity-building for forensic psychiatrists and psychologists in Vietnam. The complexity of DID requires examiners who are knowledgeable about dissociative phenomena, trauma, and malingering detection. Currently, forensic psychiatry in Vietnam has faced challenges an example being the 2020 scandal at Biên Hòa National Institute of Forensic Psychiatry, which exposed issues of corruption and professional lapses. In response, the Ministry of Health in 2024 issued Directive 07/CT-BYT calling for strengthening forensic psychiatric work and preventing unethical practices. This momentum should be built upon with targeted training programs. We recommend developing specialized training modules on DID and other complex mental disorders for all forensic examiners. This could involve workshops led by international experts in dissociative disorders, exchange programs or fellowships for Vietnamese psychiatrists to train abroad in forensic units, and the inclusion of DID case studies in the routine training curriculum. The training should cover both the clinical aspects (diagnosing DID, differences from schizophrenia or seizure disorders, etc.) and the legal interface (how to present findings in court, how to apply legal standards to psychiatric conclusions). Certification or continuing education requirements could be introduced so that examiners remain up-to-date with the evolving science (for example, new research on DID neurobiology or improved psychological tests). Another aspect of capacity-building is infrastructure: creating dedicated forensic psychiatry centers (perhaps regional centers of excellence) that are equipped for complex evaluations. The article suggested establishing dedicated

forensic psychiatric institutions, which would allow concentration of expertise and better facilities (e.g. video recording of interviews, long-term monitoring equipment, etc.). The government should consider investing in at least one specialized unit that can handle high-profile or complicated cases requiring in-depth evaluation (similar to forensic hospitals in many countries). By enhancing both skills and infrastructure, Vietnam ensures that the reforms of law (as discussed above) are effectively applied. Judges rely on experts to inform them whether a defendant has DID and to what extent it impairs them; well-trained experts will provide credible, nuanced opinions, enabling judges to make informed decisions. This reduces the current knowledge gap in the judiciary about DID. Additionally, improved capacity will help in safeguarding against abuse of the DID defense – trained experts are better at detecting fabricated or exaggerated symptoms, ensuring that only genuine cases are afforded leniency. In summary, investing in forensic expertise is an indispensable complement to statutory reform: laws on paper change little unless practitioners are equipped to enforce them in practice. This recommendation aligns with international calls to strengthen forensic mental health services in justice systems, especially in countries modernizing their laws (e.g., initiatives in Southeast Asia to improve prison mental health and forensic evaluations emphasize training and resources. Vietnam's proactive development of its forensic psychiatric capacity will not only solve current shortcomings but also future-proof the system for emerging challenges in criminal psychiatry.

Although Elyn Saks (1997) argues that holding any individual with DID criminally liable risks punishing “innocent alters” within the same body, her theory has been critiqued for its impracticality and overextension of the concept of personhood. Sinnott-Armstrong and Behnke (2001), for instance, reject the idea that alters constitute separate legal subjects. They contend that all alters are mental states of a single neurobiological entity and emphasize bodily unity, continuous brain activity, and shared memory traces. From this standpoint, legal responsibility must be anchored in the operative cognitive state at the time of the offense not the metaphysical autonomy of internal “selves.”

Furthermore, Foote et al. (2006) warn against using DID as a blanket exculpation, citing clinical data where patients exhibiting dissociative symptoms still retained executive functioning. Similarly, studies by Huntjens et al. (2006) and Reinders et al. (2003) reveal inter-identity memory transfer and preserved affective processing in DID subjects, challenging the notion of total amnesia or volitional paralysis. While these studies affirm the reality of dissociation, they collectively suggest that DID does not inevitably preclude legal responsibility.

In the Vietnamese context, the assumption that mental illness equates to full exemption (Article 21, Penal Code) risks oversimplifying these nuances. The comparative findings therefore advocate for a more individualized assessment of fault one grounded in clinical-functional capacity rather than diagnostic category alone.

Such a shift requires recalibrating both legal doctrine and forensic evaluation to reflect the state-dependent nature of DID.

### **Conclusion**

The article on criminal responsibility and DID in Vietnam provides a pioneering look at a complex issue, but our analysis identified notable limitations in its methodology, logic, and comparative scope. By systematically addressing these weaknesses through enhanced research design, clearer logical frameworks, and context-specific comparative analysis the study's contributions can be made more robust and credible. The recommended reforms for Vietnam's legal system (defining DID in law, amending Articles 21 and 51, improving forensic protocols, and training experts) are designed to fill the gaps highlighted by the study and align Vietnam's practice with contemporary international standards of justice and psychiatry. Implementing these reforms would not only resolve the current shortcomings (ensuring defendants with DID are treated neither too leniently nor too harshly) but also position Vietnam as a leader in the region on this front. The potential for Vietnam to influence ASEAN norms and international discussions underscores that local reforms can have global significance.

Ultimately, addressing DID in criminal law is about striving for a balanced model of accountability – one that upholds legal responsibility where appropriate but also recognizes genuine mental incapacity where it exists. This balance, as the article intimated, is delicate but necessary for fairness. By learning from other jurisdictions yet tailoring solutions to its own context, Vietnam can develop a framework that is both just and scientifically informed. In doing so, it contributes to the evolving global understanding that justice systems must adapt to psychiatric realities without compromising legal principles. The lessons learned and the reforms enacted will serve as a valuable reference for scholars, lawmakers, and clinicians around the world, illustrating how a traditionally rigid system can evolve to meet the demands of modern forensic psychiatry. Thus, through critical analysis and guided improvement, the path is laid for Vietnam to transform a scholarly study into tangible legal progress, and to transform domestic progress into international leadership in the realm of criminal responsibility and mental health.

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Not applicable

#### **Informed Consent**

Not applicable

#### **Statement Regarding Research Involving Human Participants and/or Animals**

Not applicable

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