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Diminished Criminal Responsibility: A Multinational Comparative Review

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Abstract

This article reviews the legal frameworks of diminished criminal responsibility in eighteen civil law jurisdictions across the globe—Brazil, Chile, China, the Czech Republic, Finland, France, Germany, Greece, Italy, Japan, Luxembourg, Poland, Portugal, Russia, Spain, Switzerland, Taiwan, and Turkey. Specifically, it reports the legal standards and main features of partial responsibility, associated penalty reductions, and potential dispositions following a partial responsibility finding. It also surveys empirical data on the prevalence of diminished responsibility as compared to criminal nonresponsibility. This article, which reflects contemporary penal codes and draws from both English and non-English sources, is the only known existing source to compile these partial responsibility standards or to delineate their

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precise sentencing consequences. It is also the only known source in English to describe Portugal's and Chile's treatment of diminished responsibility. Providing a comparative overview of graduated responsibility in nearly twenty countries invites global discussion on whether and how society should recognize partial responsibility, as well as the punitive and therapeutic consequences that should attend this finding.

Keywords: Criminal responsibility; Diminished responsibility; Comparative; Involuntary treatment; Criminal sentencing; Mental disorder

Introduction

One in every eight people in the world, or 970 million people, lives with a mental health disorder (World Health Organization, 2022). Individuals with mental disorders are disproportionately likely to encounter the criminal justice system, and a higher prevalence of mental disorders exists in the global prison population than in the general population (Fazel et al., 2016; Wainwright & Dawson, 2022). Mental disorder plays a limited role in responsibility assessment, with virtually all countries recognizing the reduced responsibility of individuals whose mental abnormalities produced particular impairments at the time of the criminal act (Fingarette & Hasse, 1979; Stuckenberg, 2016). However, a shortage of information exists on how countries recognize gradations of criminal responsibility and the effects of various approaches.

Criminal responsibility requires normative competence, or the abilities to apprehend one's situation, draw upon moral and legal standards, evaluate options in a rational manner, and act for the good reasons supplied by the law (Brink, 2019; Duff, 2005). Countries largely converge in recognizing irresponsibility due to mental disability (Stuckenberg, 2016). However, they differ in whether and how to recognize partial or diminished responsibility ("DR") (Simon & Ahn-Redding, 2006). In some countries, criminal responsibility is a dichotomous concept—being either full or absent—including in the United States, Austria, and Denmark (Salize & Dressing, 2005). A number of common law countries, including England, Ireland, Scotland, and Singapore, recognize DR only in homicide cases (Reed & Bohlander, 2011; Cheang, 1990). Civil law countries are more apt to conceive of responsibility as a graded concept in all criminal cases.

Presently, a small literature synthesizes international and cross-cultural perspectives on criminal responsibility and mental illness (Mackay & Brookbanks, 2022; Simon & Ahn-Redding, 2006; Reed & Bohlander, 2011; Salize & Dressing, 2005; Dressing, Salize, & Gordon, 2007; Crocker, Livingston, & Leclair, 2017; Bal & Koenraadt, 2000; Every-Palmer et al., 2014; Grossi & Green, 2017; Stuckenberg, 2016; van der Wolf & van Marle, 2018). Particularly rare is exploration of civil law standards, especially outside of Western Europe. Practically no attention has been paid to the sentencing consequences associated with DR findings.

This article seeks to expand existing knowledge by compiling data from eighteen civil law countries—Brazil, Chile, China, the Czech Republic, Finland, France, Germany, Greece, Italy, Japan, Luxembourg, Poland, Portugal, Russia, Spain, Switzerland, Taiwan, and Turkey—to produce a multinational study of legal frameworks of DR, associated penalty reductions, and

possible dispositional outcomes. For purposes of this article, DR is defined as a country's statutory recognition, for all crimes, of a lesser form of impairment than that necessary for irresponsibility, which (a) carries mandatory or discretionary consequences for liability, sentencing, or disposal, and (b) is included either in the responsibility portion of a country's penal code or takes the form of an incomplete irresponsibility defense. This article is the first source to compile these partial responsibility standards and to delineate their precise sentencing consequences. We believe it is also the first English source to detail the diminished responsibility structures of Chile and Portugal. By drawing from sources authored in English, Spanish, French, Portuguese, Turkish, and Greek, it aims to invite global discussion and to inform the evolution of criminal responsibility standards for offenders with mental disorders.

Methods

Researchers identified countries that recognize DR through a review of books on international and comparative responsibility, as well as articles discussing DR standards. This initial literature search used Google Scholar and Westlaw, employing the keywords “diminished responsibility,” “partial responsibility,” and “irresponsibility,” paired with “comparative,” “international,” or “multinational.” Additional sources were identified by reviewing the references of compiled sources. A broad list of countries with possible DR standards was generated. Common law countries that recognize DR only within the context of homicide were excluded. Also excluded was the Netherlands, which recognizes DR in practice but not explicitly through a statutory provision (Gröning et al., 2020).

Eighteen countries whose penal codes explicitly recognize DR in the context of criminal offenses were identified. For each of these countries, another literature search was conducted using APA PsychNet, Google Scholar, PubMed, ScienceDirect, and Westlaw. Keywords included the name of each country along with either “diminished responsibility,” “partial responsibility,” “irresponsibility,” “forensic psychiatry,” “mental illness,” or “mental disorder.” The search results were assessed for relevance and excluded if deemed obsolete or irrelevant. Ultimately, the review comprised a variety of sources including full-text articles, reports, reviews, and papers about criminal responsibility and forensic psychiatry published between 1981 and 2023.

Most sources included in the review originated in English. Researchers translated relevant French, Spanish, and Portuguese sources. Brill's Foreign Law Guide provided English translations of many foreign penal codes. Where a recent English translation of a country's penal code was unavailable, authors used Chat GPT-4 to translate the current (or the most recent available) penal code as a means to confirm the contemporary accuracy of older penal code translations. Where literature on a particular point was unclear, researchers consulted in-country experts to confirm the accuracy (as of September, 2021) of our understanding.

Results and Discussion

3.1 Legal Frameworks and Main Features of Diminished Responsibility

Tables A and B set forth the key components of irresponsibility and DR standards in each of the eighteen civil law countries. DR provisions typically appear within the responsibility sections of countries' penal codes (see, e.g., Brazil, France, Portugal, Switzerland, Turkey,

Finland, China, Japan, Taiwan, the Czech Republic, Poland, Russia) (Table A). Within these countries, DR is often referred to as a defense or partial defense (see, e.g., Germany (Bohlander, 2011); France (Guinchard, 2022); Taiwan (Every-Palmer et al., 2014, p. 10) (“partial defense”). Chile and Spain follow a different model and recognize an incomplete irresponsibility defense (Table A). In some countries, DR may result in a separate verdict or disposal (see, e.g., Luxembourg (Malmendier-Muehlschlegel & Power, 2022)). However, DR typically does not function as a defense in the strict meaning of the word, as it typically does not result in a separate verdict or affect the nature of a conviction. Rather, DR commonly operates as a sentencing provision that leads to a mandatory or optional downward shift in the relevant sentencing scale (Table C).

3.1.1 Legal Frameworks

As shown in Table A, the irresponsibility and DR standards of all eighteen civil law countries include both the capacities to appreciate the wrongfulness of one’s act (moral capacity) and to conform one’s conduct to that appreciation (volitional capacity). This conclusion is evident from the text of most countries’ responsibility provisions. However, the text of Chile and Japan’s provisions warrant additional clarification. In Chile, a person will be held irresponsible if he is “mad or demented, unless he has acted in a lucid interval, . . . [or] for any reason independent of his will, is totally deprived of reason” (Cód. Penal, Art. 10 n°1). As is recognized indirectly by the legislation (Cód. Penal, Art. 11 n°1), an impaired ability to reason may be caused by “cognitive disabilities (such as the inability to know that what is being done is prohibited) and volitional disabilities (such as the inability to control one’s own desires) . . .” (Fernández Ruiz, 2021, p. 297). In Japan, the Supreme Court has clarified that “a person is insane, if at the time of the offense as a result of disease of mind the person lacks capacity either to appreciate good and bad or to conform his conduct to the appreciation (Okada, 2020, p. 363 (quoting Japanese Supreme Court, 1931)). The recognition of both moral and volitional incapacity in the eighteen civil law countries surveyed demonstrates a significant departure from those common law jurisdictions (e.g., England and Wales, and some states in the United States) that strictly follow *M’Naghten’s Case* in recognizing only moral incapacity.¹ Acknowledging both forms of incapacity follows scholars’ general consensus on necessary components of responsibility and the American Law Institute’s proposed irresponsibility standard (MPC 4.01) (Brink & Nelkin, 2013; Dressler, 2009).

Table A. Legal frameworks of incapacity required for irresponsibility and diminished responsibility		
	Irresponsibility	Diminished Responsibility
Brazil	“Completely incapable of understanding the illicit nature of the fact or of taking decisions based on this understanding” (D.O.U., Art. 26, Law No. 7.209/84; Taborda, 2001, p. 376)	“Not completely capable of understanding the illicit nature of the fact or is incapable of taking decisions based on this understanding” (D.O.U., Law No. 7.209/84, Art. 26; Taborda, 2001, p. 376)

¹ Some jurisdictions also include a “cognitive incapacity” component, which assesses the defendant’s ability to understand the nature and quality of their act. Cognitive incapacity is of marginal importance, however, because it is subsumed by moral incapacity and very few defendants exhibit this particular deficiency (*Clark v. Arizona*, 2006; Morse, 1984).

Chile	“Mad or demented” or “totally deprived of reason” (Cód. Penal, Art. 10, n°1)	“When all of the requirements necessary to exempt responsibility in [Art. 10, n°1] do not occur” (Cód. Penal, Art. 11, n°1)
China	“Unable to recognize or unable to control his own conduct” (Criminal Law of the People's Republic of China, Art. 18; Jiang, 2022, p. 320)	“Not yet completely lost his ability to recognize or control his own conduct” (Criminal Law of the People's Republic of China, Art. 18; Jiang, 2022, p. 320)
Czech Republic	“Cannot identify the illegal nature of an act... or control his/her conduct” (Trestni zákon, (II)(4)(§26))	“A substantially diminished capacity to recognise the illegal nature of an act... or to control his/her conduct” (Trestni zákon, (II)(4)(§27))
Finland	“Not able to understand the factual nature or unlawfulness of his or her act or his or her ability to control his or her behavior is decisively weakened due to such a reason” (RL, 3:4(2))	“His or her ability to understand the factual nature or unlawfulness of his or her act or his or her ability to control his or her behaviour is significantly weakened” (RL, 3:4(3))
France	“Abolished his discernment or his ability to control his actions” (C. Pén., Art. 122-1 al.1; Guinchard, 2022, p. 227)	“Reduced his discernment or impeded his ability to control his actions” (C. Pén., Art. 122-1 al.2; Guinchard, 2022, p. 227)
Germany	“Incapable of appreciating the unlawfulness of their actions or of acting in accordance with any such appreciation” (StGB, § 20)	“Capacity to appreciate the unlawfulness of the act or to act in accordance with any such appreciation is substantially diminished” (STGB, § 21)
Greece	“Did not have the ability to perceive the wrongfulness of his/her act or to act according to his/her perception of this wrongfulness” (P.K., Art. 34)	“The capacity for imputation has not completely disappeared, but has been significantly reduced” (P.K., Art. 36)
Italy	“In a state of mind excluding the capacity to intend or will” (Cod. Penale, Art. 88; Messina et al., 2019, p. 4)	“In a state of mind greatly affecting, but not excluding, the capacity to intend or will” (Cod. Penale, Art. 89; Messina et al., 2019, p. 4)
Japan	“An act of insanity” (Keihō, Art. 39)	“An act of diminished capacity” (Keihō, Art. 39)
Luxembourg	“Suppressing discernment or control of her or his actions” (Code Penal, Art. 71; Cloos et al., 2005, p. 185)	“Impairing his/her discernment or the control of his/her actions” (Code Penal, Art. 71-1; Cloos et al., 2005, p. 185)
Poland	“Incapable of recognizing its significance or controlling his conduct” (K.K., Art. 31 § 1)	“The ability to recognize the significance of the act or to control one’s conduct was diminished to a significant extent” (K.K., Art. 31 § 2)
Portugal	“Incapacity... to be influenced by the punishment [i.e., to appreciate the act’s unlawfulness] or to conform his conduct in accordance with that appreciation” (Código Penal, Art. 20-1)	“The capacity to appreciate [the act’s] unlawfulness or to conform his conduct in accordance with that appreciation,

		sensibly diminished” (Código Penal, Art. 20-2) ²
Russia	“Unable to understand the actual character or social danger of his actions (inaction) or to govern them” (UK RF, Art. 21)	“Could not in full measure comprehend the actual character and social danger of his actions (inaction), or control them” (UK RF, Art. 22)
Spain	“Cannot comprehend the unlawful nature of the deed, or... act in line with that comprehension” (Cód. Pen., Art. 20.1)	Incomplete exemption: “The causes stated in [Art. 20], when not all the necessary requisites to exclude accountability in the respective cases concur” (Cód. Pen., Art. 21.1) General or analogous mitigation ground: “Any other circumstance of a similar importance to the aforesaid” (Cód. Pen., Art. 21.7)
Switzerland	“Unable... to appreciate that his act was wrong or to act in accordance with this appreciation of the act” (CP, Art. 19.1)	“Only partially able... to appreciate that his act was wrong or to act in accordance with this appreciation of the act” (CP, Art. 19.2)
Taiwan	“Unable to judge his act or lacks the ability to act according to his judgment” (Wu et al., 2017, p. 317 (translating Xing fa, Art. 19.1))	“An obvious reduction in the ability of judgment or to act according to his judgment” (Wu et al., 2017, p. 317 (translating Xing fa, Art. 19.1))
Turkey	“Cannot comprehend the legal meaning and consequences of the act he has committed, or if, in respect of such act, his ability to control his own behaviour was significantly diminished” (Türk Ceza Kanunu, Art. 32.1)	“Ability to control his behaviour in respect of an act he has committed is diminished” (Türk Ceza Kanunu, Art. 32.2)

Each of the eighteen countries models its DR standard closely on its irresponsibility standard. Often, the only difference between a country’s irresponsibility and DR standard is the necessary degree of impairment. Several countries require *total* incapacity for irresponsibility and merely a *reduced* capacity for partial responsibility (Table A: Brazil, France, Luxembourg, Switzerland, China, Russia). Nearly half of surveyed countries’ penal codes clarify that a cognizable impairment for partial responsibility must be significant (Table A: Portugal, Finland, Poland), or even substantial or severe (Table A: Italy, Germany, Czech Republic). In addition, the Japanese Supreme Court has clarified that Japan’s diminished responsibility standard requires “severe” impairment (Okada, 2020, p. 363 (quoting Japanese Supreme Court, 1931)). Two countries only reduce the degree of impairment for one of multiple incapacities (Table A: Greece (lowering necessary impairment level for moral incapacity, and not for volitional incapacity, from “did not have the ability” to “the capacity... has been significantly reduced”),

² When this condition is met, the person “*may* be declared not imputable” or imputable (Código Penal, Art. 20-2 (emphasis added)). In determining the offender’s level of responsibility under Article 20, the court may grade an offender’s responsibility as full, diminished, slightly diminished, or absent (Xavier & Correa, 2005).

Turkey (lowering the degree of impairment for volitional incapacity, but not moral incapacity, from “significantly diminished” to “diminished”).

Of note, the structure of Spain and Chile’s responsibility frameworks differs from that of other surveyed countries (Table A). In these countries, DR functions as an “incomplete exemption,” which occurs when the elements of irresponsibility are not fully met (Mohino et al., 2011; Morales, 2011). In Chile, a person “totally deprived of reason” is considered exempt from criminal responsibility or “unimputable,” while an individual who acted with some, but an impaired degree of, lucidity or reason may be found to have “diminished imputability” (Garrido Montt, 2003; Villarroel Maldonado, 2016; Cury Urzúa, 1997). Two levels of partial responsibility exist in Spain (Grossi & Green, 2017; Mohino et al., 2011; Cancio Meliá, 2011). Spain recognizes an incomplete irresponsibility defense when the elements for a complete exemption for irresponsibility due to mental anomaly or alteration exist only to a diminished or partial degree (Cancio Meliá, 2011). Spain also recognizes “diminished responsibility by analogy,” which permits attenuation of punishment based on “similarity and analogy to mental disorder” (Lorenzo García et al., 2016, p. 62, 64; Mohino et al., 2011). The two levels of DR differ in that an incomplete irresponsibility defense requires “a severe degree of diminished cognitive and volitional capacities,” while an analogous mitigating circumstance only requires a “mild degree of diminished cognitive and volitional capacities” (Mohino et al., 2011, p. 151).

Diminished responsibility plays a unique role in Portugal’s responsibility framework (Table A; Table D). Prior to 1982, the Portuguese Criminal Code recognized three levels of responsibility in general terms: (1) “imputability,” (i.e., full responsibility), (2) “semi-imputability” (i.e., DR), and (3) “non-imputability” (i.e., no responsibility)³ (do Rosário, 2019). Under this regime, semi-imputability reflected lessened capacity and corresponded to a reduction of guilt, mitigation of punishment, and possible imposition of security measures, including, in the sentence execution phase, internment in a prison-asylum for an extendable duration (do Rosário, 2019). However, the 1982 Criminal Code eliminated the formal category of semi-imputability as well as the necessary link between diminished capacity and attenuated guilt (do Rosário, 2019). However, the effect of semi-imputability continues to be recognized.

Today, the Portuguese Criminal Code expressly provides only a dichotomous responsibility structure consisting of imputability and non-imputability (Teixeira, 2006a). DR functions as a legal theory within this dichotomous framework (do Rosário, 2019). The Portuguese law offers to the judge a flexible norm, which allows the judge to decide, in serious and non-accidental cases, if the agent is “imputable” or “non-imputable,” i.e., if they should or should not be censured for failing to master the effects of their anomaly. When faced with an offender whose capacity to appreciate a criminal act’s unlawfulness or to conform their conduct in accordance with that appreciation is “sensibly diminished” (Código Penal, Art. 20(2)), a judge can either: (1) find the agent unimputable and order appropriate security measures; or (2) treat the agent as imputable, evaluate their guilt, and graduate the penalty accordingly—attenuating or even aggravating it (Table C; do Rosário, 2019; Dias, 1983; Teixeira, 2006b). Because a defendant with DR is capable (although to a diminished extent) of appreciating an act’s unlawfulness and

³ The Criminal Code also recognized semi-imputability as a particular basis of mitigation for certain crimes (e.g., infanticide, Código Penal, Art. 136).

controlling their conduct, non-imputability in this context is considered “fictional” or “artificial” (Pinto, 2018, p. 52).

3.1.2 Mental State Terminology

As Table B illustrates, all countries except Spain limit their irresponsibility and DR provisions to mental abnormalities. Although the Swiss penal code provisions involving reduced criminal responsibility (Articles 19(1) and (2)) do not include a mental condition, the title of Article 19 specifies that absence of responsibility must be “due to a mental disorder” (CP, Art. 19); this requirement applies to DR as well (Graf & Hachtel, p. 323, 2020). Mental state terminology in countries’ penal codes is largely non-specific and does not follow the criteria of the World Health Organization’s International Classifications of Diseases nor the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders. Instead, as in U.S. jurisdictions (Johnston, 2022), the terminology is broad, encompassing a variety of mental conditions capable of producing required impairments. The breadth of countries’ criteria varies from the general term “mental disorder” in the Czech Republic, Luxembourg, Switzerland, Taiwan (“mental disorder or defect”), and France (“psychological or neuropsychological disorder”), to Germany’s more detailed criterion of a “pathological mental disorder, a profound disturbance of consciousness, mental deficiency or any other serious mental abnormality” (Table B). Countries’ legal terminology reflects the core intuition that mental abnormalities of many kinds can significantly corrode rationality and self-control and thus merit consideration in the calculus of criminal responsibility. Given the nature of qualifying mental disabilities, DR determinations in most foreign jurisdictions tend to focus on the specific impairments flowing from a defendant’s mental disability and the extent to which they affected their normative competence at the moment of the criminal act—not on the type of mental abnormality itself.

Table B. Description of mental states qualifying for irresponsibility and diminished responsibility		
	Irresponsibility	Diminished Responsibility
Brazil	“Mental illness or incomplete or retarded mental development” (D.O.U., Art. 26, Law No. 7.209/84; Taborda, 2001, p. 376)	“Mental disorder or incomplete or retarded mental development” (D.O.U., Law No. 7.209/84, Art. 26; Taborda, 2001, p. 376)
Chile	Madness, dementia, or “any reason independent of will” capable of depriving a person of reason (Cód. Penal, Art. 10, n°1; Art. 11, n°1)	
China	Mental illness (Jiang, 2022, p. 320 (translating Criminal Law of the People's Republic of China, Art. 18))	
Czech Republic	“Mental disorder” (Trestní zákon, (II)(4)(§§ 26, 27))	
Finland	“Mental illness, severe mental deficiency or a serious mental disturbance or a serious disturbance of consciousness” (RL, 3:4(2))	“Mental illness, mental deficiency, mental disturbance or disturbance of consciousness” (RL, 3:4(3))
France	“A psychological or neuropsychological disorder” (C. Pén., Art. 122-1 al.1, al.2; Guinchard, 2022, p. 226)	

Germany	“A pathological mental disorder, a profound disturbance of consciousness, mental deficiency or any other serious mental abnormality” (StGB, §§ 20, 21; Rauxloh, 2022, p. 249)	
Greece	“Mental or intellectual disorder or disturbance of consciousness” (P.K., Art. 34, 36)	
Italy	“An infirmity” ⁴ (Cod. Penale, Art. 88, 89; Messina et al., 2019, p. 4)	
Japan	Condition producing “insanity” (Keihō, Art. 39)	Condition producing “diminished capacity” (Keihō, Art. 39)
Luxembourg	“Mental disorder” (Code Penal, Art. 71, 71-1; Cloos et al., 2005, p. 185)	
Poland	“A mental disease, mental deficiency or other mental disturbance” (K.K., Art. 31 § 1)	Not specified (K.K., Art. 31 § 2)
Portugal	“A disease of the mind” (Código Penal, Art. 20-1)	“A serious disease of the mind, not accidental and whose effects [the agent] cannot control” ⁵ (Código Penal, Art. 20-2)
Russia	“A chronic or temporary mental derangement, mental deficiency or any other mental condition” (UK RF, Art. 21)	“Mental derangement” (UK RF, Art. 22)
Spain	“Any mental anomaly or alteration” (Cód. Pen., Art. 20.1)	Incomplete exemption: same (Cód. Pen., Art. 21.1) General or analogous mitigation ground: “[a]ny other circumstance of a similar importance” (Cód. Pen., Art. 21.7)
Switzerland	“A mental disorder” (CP, Title to Art. 19)	
Taiwan	“A mental disorder or defect” (Xing fa, Art. 19; Wu et al., 2017, p. 317)	
Turkey	“Mental disorder” (Türk Ceza Kanunu, Art. 32.1, 32.2)	

About three-quarters of the countries surveyed—Chile, China, the Czech Republic, France, Germany, Greece, Italy, Japan, Luxembourg, Poland, Switzerland, Taiwan, and Turkey—limit their DR standards to the same set of mental conditions as their irresponsibility standards (Table B; Mellsoop et al., 2016 (Japan); Golonka, 2016b (Poland)). In contrast, the penal codes of several countries expressly allow a broader range of conditions to support a partial responsibility finding

⁴ “[I]nfirmity could be considered as any condition determining a mental state affecting (or completely undermining) the appreciation capacity or the decisional capacity at the moment of the crime. The condition is therefore broader than the nosographic definition of mental illness” (Messina et al., 2019, p. 4).

⁵ Offenders with DR in Portugal may be declared imputable or not imputable (see *supra* note 2; Table D). Diminished responsibility may result in no penalty, a reduced penalty, or an aggravated penalty (Table C).

(e.g., Finland (Table B)). Taborada (2001, pp. 376, 378) has explained that only “the most severe pathologies... in DSM-IV’s Axis I” and Axis II disorders causing severe impairment can satisfy Brazil’s irresponsibility standard; in contrast, Brazil’s semi-imputability (DR) standard more broadly recognizes both Axis I and II disorders. Additionally, the lesser form of partial responsibility in Spain also accepts less serious mental disorders than those necessary for irresponsibility (Lorenzo García et al., 2016). Recognizing a greater variety of conditions to support DR could reflect a desire to broaden the reach of dispositional options for defendants, such as treatment opportunities and possible long-term incapacitation.

Finally, two countries—Russia and Portugal—narrow the qualifying conditions for partial responsibility (Table B). The decision to restrict DR to a smaller range of mental health contexts than those accepted for irresponsibility verdicts could reflect the intuition that some conditions are inherently unworthy of mitigation. More practically, this move could be motivated by a fear of the misuse of DR findings and a concern over the allocation of scarce treatment resources.

Case law and commentators have clarified the necessary mental states of some countries. For example, a defendant must have a recognized mental health disorder for a DR finding in some countries, including China (Cai et al., 2014; Jiang, 2022), Japan (Mellsop et al., 2016), Luxembourg (Cloos et al., 2005), Switzerland (Graf & Hachtel, 2020), and Turkey (Gorgulu et al., 2015). A formal mental disorder is unnecessary in others, including France (Guinchard, 2022), Germany (Rauxloh, 2022), Italy (Messina et al., 2019), Poland (Golonka, 2016b), and Portugal (do Rosário, 2019). Indeed, inimputability and diminished imputability in Portugal can arise from “exhaustion, hypnosis, extreme fatigue, intense states of affect” (Pinto, 2018, p. 36), and situations caused by extrinsic factors that affect mental capacity. Similarly, Germany recognizes that extreme emotional stages—such as extreme rage, hate, shock, panic, and fear—can impede deliberate decision-making (Bohlander, 2011; Müller-Isberner et al., 2000). In Greece, absent or reduced responsibility can arise from any psychic disturbance, even those that do not derive from pathology, occur in mentally healthy people, and are always transient (Vidalis & Gkotsi, 2012). A number of countries permit intellectual disability to serve as a basis for DR, including Brazil (Taborada, 2001), the Czech Republic (Trestni zákon, (VIII)(§123), Finland (Eronen et al., 2000), Germany (Bohlander, 2011), Portugal (Pinto, 2018), and Russia (Bukhanovsky & Gleyzer, 2001).

Allowing the same qualifying conditions to support both DR findings and irresponsibility verdicts does not result in similar distributions of pathologies among individuals found fully and partially irresponsible. Research shows that psychotic disorders are most often represented in groups judged irresponsible. Organic brain syndrome, moderate or mild intellectual disability, neurocognitive disorders, and personality disorders are more often observed in groups found partially responsible (Eronen et al., 2000; Golonka, 2016b; Hu et al., 2010; Mahé, 2015; Saka et al., 2020; Yang et al., 2017). For instance, Hu et al. (2010) found, in a study of 1,995 forensic assessments in Sichuan province, that 74% (820/1108) of those diagnosed with schizophrenia were judged as nonresponsible; disorders more common in findings of DR included dementia, personality disorder, and organic brain syndrome. Golonka (2016b), in a review of 179 forensic reports in Poland, found that 63% (33/55) of those deemed insane were diagnosed with paranoid schizophrenia, while psycho-organic syndromes, post-traumatic conditions associated with central nervous system damage, alcoholism, and mild intellectual disability were typical causes of diminished sanity. Similarly, Mahé (2015), in a study of 180 cases in France involving full or

partial abolition of discernment, found that schizophrenia and chronic delusions accounted for 80% of the fully irresponsible group, while schizophrenia, intellectual disability, and organic brain damage constituted significant portions (32%, 27%, and 14%, respectively) of the partial irresponsibility group. The difference between schizophrenic subjects deemed fully irresponsible and their counterparts with DR was that full irresponsibility “applied to subjects who were especially delusional or disorganized and whose pathology was the essential driving force behind the commission of the crime” (Mahé, 2015, p. 73). These studies’ findings reflect the consistent, global view that psychotic offenders whose actions are motivated by that psychosis are inappropriate subjects for punishment (Bonnie, 2003; Fingarette & Hasse, 1979), and that a broad spectrum of mental abnormalities can impair (but not abolish) capabilities of understanding, appreciation, reasoning, and control.

3.2 Dispositions Following a Finding of Diminished Responsibility

Table D provides information on the dispositions that may follow a DR finding. Notably, a finding of irresponsibility in *all* countries invariably results in acquittal or dismissal of the case and possible imposition of mental health treatment.⁶ However, countries vary in their response to a finding of DR. All jurisdictions permit a DR agent to be incarcerated (Table D). However, as depicted in Table C and discussed directly below, a number of countries recognize DR by mandating, or at least suggesting, substantial reductions in punishment. These schemes reflect principles of proportional punishment. In addition, most, but not all, countries permit involuntary treatment to accompany a DR finding (Table D). Indeed, commentators suggest that a desire to connect offenders with necessary treatment is a key motivating factor for recognizing partial responsibility in some countries (Konrad & Lau, 2010 (Germany); Okada, 2020 (Japan); van der Wolf & van Marle, 2018, p. 37 (“many jurisdictions”).

3.2.1 Incarceration and Penalty Reduction

Consistently among countries, a finding of DR results in either a mandatory or a discretionary reduction in penalty. As Table C reflects, a penalty reduction for a finding of DR is mandatory in 7/18 countries: Brazil, Greece, Italy, Japan, Spain, Switzerland, and Turkey. In addition, France applies an automatic penalty reduction for any term of incarceration, but—if the offense is liable to less than ten years’ imprisonment (which constitutes 99% of cases going to trial)—the court may, after extensively stating its reasons, choose not to apply this reduction⁷ (Guinchard, 2022). An additional six countries suggest mitigation of sentence. The specificity of the statutory suggestion and methods of possible mitigation vary by country. Approaches include: (a) dictating the consideration of specific penalty reductions (Finland), (b) indicating that a specific mitigation measure may be appropriate (Germany, Poland; see also Turkey (“the penalty to be imposed may be reduced by no more than one-sixth”)), (c) suggesting mitigation in general terms (China, Taiwan (“punishment may be reduced”)), and (d) designating DR as an extenuating circumstance (Chile; see also Spain for less severe impairments) (Table C). Three

⁶ The availability of involuntary hospitalization for individuals found irresponsible often depends on the dangerousness of the offender or the social dangerousness of the offense (see, e.g., Luxembourg, Code Penal, Art. 71).

⁷ “When, after medical advice, the court considers that the nature of the disorder justifies it, the chosen sentence may allow for the convicted person to undertake treatment adapted to his health status” (Guinchard, 2022, p. 227; C. Pén., Art. 122-1).

additional countries mandate consideration of a defendant’s DR at sentencing without suggesting the suitability of mitigation: the Czech Republic,⁸ Russia, and Luxembourg (Table C).

Mandatory penalty reduction	Mandatory specific reductions	<p>Brazil: “penalty [must] be reduced from 1/3 to 2/3” (D.O.U., Law No. 7.209/84, Art. 26; Taborda, 2001, pp. 376-78 (specifying that, although the statutory language states the penalty “may” be reduced, authorities concur that the verb “may” be interpreted as “must”)</p> <p>France: “shall take [DR] into account when it decides the penalty and determines its regime:” a custodial sentence is reduced by 1/3, or, in the case of a <i>crime</i> with a penalty of imprisonment or a life sentence, the sentence will be reduced to 30 years; however, in case of liability for a <i>delit</i> (which carries a possible sentence of less than ten years) the court can, “after having extensively stated its reasons,” decide not to apply this sentence reduction (C. Pén., Art. 122-1 al.2; Guinchard, 2022, p. 227)</p> <p>Greece: “a reduced penalty is imposed” (P.K., Art. 36): “instead of life imprisonment, imprisonment is imposed;” imprisonment of at least 10 years is reduced to imprisonment of between 2 and 8 years; imprisonment of up to 10 years is reduced to imprisonment of between 1 and 6 years; “[i]f the law provides for a cumulative prison sentence and a fine, only the latter may be imposed” (P.K., Art. 83)</p> <p>Spain: incomplete exemption — “shall impose a lower punishment in one or two degrees... considering the number and entity of the requisites absent or concurring, and the personal circumstances of the offender” (Cód. Pen., Art. 68)</p> <p>Turkey: a penalty of “aggravated life imprisonment shall be” reduced to 25 years, and life imprisonment is reduced to 20 years (Türk Ceza Kanunu, Art. 32.2)</p>
	Discretionary specific reductions ⁹	Greece: “a reduced penalty is imposed” (P.K., Art. 36): “the judge shall reduce the sentence freely to the minimum” (P.K., Art. 83) ¹⁰
	No specified reductions	<p>Italy: “the punishment is reduced” (Cod. Penale, Art. 89; Messina et al., 2019, p. 4)</p> <p>Japan: “shall lead to the punishment being reduced” (Keihō, Art. 39; Okada, 2020, p. 363)</p> <p>Switzerland: “shall reduce the sentence” (CP, Art. 19.2)</p>

⁸ However, judges in the Czech Republic *must* reduce a carceral sentence below the lower limit of the term sentence if they believe that correction may be achieved by a shorter sentence with the parallel imposition of protective therapy (Trestní zákon, (V)(2)(1)(§40)).

⁹ The entry for France above also includes an important discretionary element (Table C).

¹⁰ This applies in cases besides those with a particular punishment listed in the “mandatory specific restrictions” row above (P.K., Art. 83).

<p>Discretionary penalty reduction</p>	<p>Discretionary specific guidance</p>	<p>Chile: DR operates as an extenuating circumstance (Cód. Penal, Art. 11, n°1) that must be weighed together with other circumstances that attenuate and aggravate; rules vary by type of penalty (see Cód. Penal, Arts. 65-69 BIS)</p> <p>Finland: “the [sentence mitigation] provisions [in RL, 6:8(3)-(4)] are to be taken into account in the determination of the sentence” (RL, 3:4(3)); “at most 3/4 of the maximum sentence of imprisonment or fine and at least the minimum sentence provided for the offence may be imposed;” life imprisonment is reduced to term of 2 to 12 years;¹¹ “[i]f the maximum punishment for the offence is imprisonment for a fixed period, the court may... impose a fine as the punishment instead of imprisonment, if there are especially weighty reasons for this” (RL, 6:8(2)–(4))</p> <p>Germany: “may be mitigated pursuant to [StGB §49(1)]” (StGB, § 21); life term is reduced to at least 3 years of imprisonment; for a fixed term or fine, “no more than 3/4 of the statutory maximum... may be imposed;” lowers particular minimum terms of imprisonment (StGB § 49(1))</p> <p>Poland: “may apply an extraordinary mitigation of the penalty” (K.K., Art. 31 § 2); “[t]he extraordinary mitigation of a penalty shall consist in the imposition of a penalty below the lower statutory level, or the imposition of a penalty of lesser severity, in accordance with the following principles: for a crime, “the court shall impose a penalty of not less than 1/3 of the lower statutory level;” for a misdemeanor with a statutory minimum at not less than one year’s deprivation of liberty, “the court shall impose either a fine, the penalty of restriction of liberty or deprivation of liberty;” for a misdemeanor with a statutory minimum at less than one year’s deprivation of liberty, “the court shall impose either a fine or the penalty of restriction of liberty” (K.K., Art. 60 § 6); “[i]f the act in question is subject, alternatively, to [a fine, restriction of liberty, or deprivation of liberty], the extraordinary mitigation of a penalty shall consist in renouncing the imposition of the penalty, and [in] the imposition of a penal measure as specified in Article 39 §§ 2-8 [pertaining to penalties such as interdiction on driving vehicles or on practicing certain professions]”¹² (K.K., Art. 60 § 7)</p> <p>Spain: mitigation ground — penalty response varies by the aggregate number of mitigating and aggravating circumstances (Cód. Pen., Art. 66)</p>
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¹¹ Until 2004, a 25% punishment reduction for diminished responsibility was mandatory in Finland (Putkonen & Vollm, 2007); Seppänen et al., 2020); Kaltiala-Heino, 2005).

¹² For a discussion of the variety of penal measures available under the Polish Criminal Code, see Indeck & Jurewicz, 2014, pp. 54–65.

		Turkey: “the penalty to be imposed may be reduced by no more than 1/6” (Türk Ceza Kanunu, Art. 32.2) ¹³
	No specified guidance	China: “may be given a lesser or a mitigated punishment” (Criminal Law of the People’s Republic of China, Art. 18; Jiang, 2022, p. 320) Taiwan: “punishment may be reduced” (Xing fa, Art. 19) Czech Republic: “shall take it into consideration when determining the type and extent of the sentence” (Trestni zákon, (V)(2)(1)(§40)) Russia: “shall be taken into consideration... when it imposes punishment” (UK RF, Art. 22) Luxembourg: “take into account this circumstance to determine the sentence” (Code Penal, Art. 71-1; Cloos et al., 2005, p. 185)
No penalty reduction measure		Portugal: no measure specified; may result in no penalty, a reduced penalty, or an aggravated penalty (Dias, 2007; Teixeira, 2006b)

Among the fourteen countries that encourage sentence reduction, nine provide specific guidelines to direct the degree of reduction that must or may attend a DR finding (Brazil, Chile, Greece, Finland, France, Germany, Poland, Spain, and Turkey) (Table C). Brazil compels a judge to reduce the punishment for a partially responsible offender by one- to two-thirds (Table C). Greece significantly reduces the maximum sentence that may be imposed, with the degree of reduction differing for crimes of varying severity (P.K., Art. 83). France automatically reduces carceral sentences by one-third, but this sentence reduction can be overridden by reasoned decision for most offenses (C. Pén., Art. 122-1; Guinchard, 2022). Other countries, including Germany and Finland, suggest reducing the maximum of a prescribed sentencing range by at least a quarter (StGB § 49(1); RL, 6:8(2)). An alternative approach, adopted by Poland and Turkey, is to permit sentence reduction up to, but not beyond, a certain amount (Table C). In China, Greece, and Finland, a sentence for an offender with diminished responsibility may be mitigated at the court’s discretion to the minimum punishment of the crime (Hu et al., 2010; P.K., Art. 83; Männynsalto et al., 2009). Italy requires some degree of mitigation in response to a finding of diminished responsibility (Table C); in practice, sentences for dangerous offenders are typically reduced “approximately by one-third” (Peloso et al., 2014, p. 476).

Countries employ other approaches to mitigation as well. Spain directs a judge to lower the degree of the punishment of an offender with an incomplete irresponsibility defense; the degree of reduction depends on the severity of the defendant’s impairments and the personal circumstances of the offender (Cód. Pen., Art. 68). For those with less disabling impairments, Spain treats DR as a mitigation ground that must be considered with any other mitigating or aggravating circumstances (Cód. Pen., Art. 66). Similarly, in Chile, DR operates as an extenuating circumstance that must be weighed together with other circumstances that attenuate

¹³ The permissive abatement of one-sixth of the prescribed punishment applies to sentences other than aggravated life imprisonment and life imprisonment, which appear in the “mandatory specific restrictions” row above (TCK., Art. 32.2).

and aggravate (Cód. Penal, Art. 11, nº1). The particular sentencing response varies by type of penalty and combination of circumstances (see Cód. Penal, Arts. 65-69 BIS). Some countries suggest the imposition of noncarceral penalties for low-level offenses (Greece, Finland, and Poland) or otherwise stress that a defendant's DR should factor into the *type* of punishment imposed (Czech Republic) (Table C).

The penal code of Portugal does not include any generally applicable provision concerning the criminal reaction that should or may attend an offense committed by a person with DR who is found imputable¹⁴ (Pinto, 2018). This permits Portuguese judges to fully evaluate the culpability of the agent and tailor their punishment accordingly. Sometimes, the agent's mental condition will be such that their failure to abide by the law is understandable, justifying mitigation of guilt and reduction of the penalty. Alternatively or in addition, the psychic anomaly that reduced the agent's capacity to understand an act's wrongfulness will make them especially dangerous, justifying a court's aggravation of guilt and punishment (Pinto, 2018). The Supreme Court of Portugal has acknowledged the ambivalence that can arise in these cases from the divergence between retributive and preventative considerations (do Rosário, 2019).

Treating DR as an aggravating circumstance may also be possible in other countries. The statutory structures of the Czech Republic, Russia, and Luxembourg (which require the consideration of DR in sentencing) seem to permit a court to aggravate—in addition to mitigate or leave undisturbed—an offender's sentence in response to DR. However, we were unable to find evidence of actual aggravation in these countries. Indeed, aggravation is a conceivable response to DR in any country that does not mandate mitigation. There is some evidence that “attenuated responsibility [is] increasingly used to sentence more severely mentally ill than non-mentally ill offenders, because of their perceived dangerousness” in France, which employs an automatic—but rebuttable—penalty reduction mechanism (Guinchard, 2022, p. 224).

France has made efforts to narrow judges' discretion in sentencing DR offenders. Prior to 2014, the French Penal Code did not require penalty reduction for DR; rather, it directed that “the court shall take [DR] into account when it decides the penalty and determines its regime” (Fournet, 2011, p. 357). The provision's language “more often than not” led to harsher punishments (Fournet, 2011, p. 358). Salas (2012, p. 427) reports that the provision resulted in a “half-insane, double penalty,” meaning that, in addition to the criminal act, the law “punishe[d] the underlying psychiatric dangerousness while forgetting the infirmity component of the mental illness in the criminality.” In response, the French Parliament amended the responsibility article in 2014 to provide for an automatic reduction of carceral sentences of one-third (Guinchard, 2022; C. Pén., Art. 122-1). However, because judges can decline to apply this reduction in the vast majority of criminal cases through reasoned decision, this presumptive penalty reduction has had uncertain effect (Guinchard, 2022).

¹⁴ Recall that a DR agent in Portugal may be found either imputable or unimputable (Table D). While the Portuguese penal code lacks sentencing guidance for imputable, DR offenders as a general matter, the law expressly identifies the state of “semi-imputability” as a mitigating factor for certain crimes. An example is infanticide committed shortly after birth (Código Penal, Art. 136), where “semi-imputability” decreases the agent's guilt in light of the disruptive effects of childbirth (Fernando Silva, 2017).

3.2.2 Involuntary Treatment

In addition to or as an alternative to incarceration, twelve of eighteen countries permit a court to intern offenders with DR for psychiatric treatment (Table D). Most of these countries permit joint application of penalties and security measures on the same offender (e.g., Germany, Spain, Italy, Switzerland) (Pinto, 2018). This system allows a court to recognize both the decreased fault and possible dangerousness of an offender with responsibility-diminishing impairments. In contrast, Portugal permits *either* a penalty or a security measure, depending on whether the court chooses to treat the DR offender as unimputable or imputable (Pinto, 2018) and whether the agent’s lesser imputability is considered an attenuating or aggravating factor.

Often, countries limit involuntary hospitalization to dangerous offenders at a high risk of recidivism or who committed particularly serious offenses (Table D). Japanese courts will only order forensic mental health treatment when an offender with DR committed an offense involving serious harm to others, the mental disorder that caused the reduced responsibility is still present and responsive to treatment, and the offender would pose a substantial risk of violent recidivism if untreated (Okada, 2020). In Germany, commitment to a forensic psychiatric hospital is only permissible if “the overall evaluation of the offender and of the offence reveals that, due to the offender’s condition, he or she represents a danger to the general public on account of it being expected that he or she will in [the] future commit serious unlawful acts which will result in the victims of the offense suffering or being exposed to the considerable danger of severe emotional trauma or physical injury or which will cause serious economic damage” (StGB § 63). Judges’ evaluations tend to favor detention, and researchers estimate that only one-third of forensic patients in Germany actually pose a danger to the public (Rauxloh, 2022).

The duration of forensic inpatient treatment that may be imposed on an offender with DR varies by country. Some countries, like Greece, Italy, Spain, and Turkey, limit the duration of inpatient treatment to the carceral term of the offense (Table D). In this way, they ensure that the penalty and security measure imposed upon an offender are proportionate to the gravity of the crime. Several countries authorize indefinite inpatient treatment for offenders who committed particularly serious crimes or those with a high risk of recidivism, including Brazil (Taborda et al., 2007), the Czech Republic (Trestni zákon, (V)(3)(2)(§99)(2), (6)), Germany (Osterheider & Dimmek, 2005; Fuss et al., 2015), and Portugal (Código Penal, Art. 92(3)). In these countries, the objective is to conclude the security measure when the risk of dangerousness has been sufficiently ameliorated. To measure rehabilitative progress, the law in many countries stipulates that an offender receiving inpatient treatment must be reassessed periodically (Fujii et al., 2014 (Japan); D.O.U, Law No. 7.209/84, Art. 97 (Brazil); Trestni zákon, (V)(3)(2)(§99)(6) (Czech Republic)); P.K., Art. 70(2) (Greece)).

	Incarceration	Involuntary Inpatient Psychiatric Treatment	Involuntary Inpatient Treatment Limited by Seriousness of	Duration of Involuntary Inpatient Treatment Limited to	Indefinite Duration of Involuntary Inpatient

		as Security Measure	Offense or Dangerousness of Offender	the Carceral Term of the Offense	Treatment Possible
Brazil	Yes. (Taborda, 2001)	Yes. (Taborda, 2001)	Yes. ¹⁵ (D.O.U, Law No. 7.209/84, Arts. 97, 98; Taborda et al., 2007)	No. (D.O.U., Law No. 7.209/84, Arts. 97, 98; Taborda, 2001; Taborda et al., 2007)	Yes. (D.O.U, Law No. 7.209/84, Arts. 97, 98; Taborda, 2001; Taborda et al., 2007)
Chile	Yes. (Cód. Penal, Arts. 65 & 69)	No. (Cód. Proc. Pen., Arts. 455, 457 (authorizing compelled inpatient treatment only for unimputable agents); Villarroel Maldonado, 2016)	N/A	N/A	N/A
China	Yes. (Criminal Law of the People's Republic of China, Art. 18)	No. (Criminal Law of the People's Republic of China, Art. 18; Wang et al., 2006)	N/A	N/A	N/A
Czech Republic	Yes. (Trestni zákon, (V)(3)(2)(§99)(4))	Yes. (Trestni zákon,	Yes. (Trestni zákon, (V)(3)(2)(§99)(2))	No. (Trestni zákon,	Yes. (Trestni zákon,

¹⁵ Article 97 of the Brazilian Penal Code notes that hospitalization and outpatient treatment will cease only when the offender is no longer dangerous (D.O.U, Law No. 7.209/84, Art. 97).

		(V)(3)(2)(§99)(4)		(V)(3)(2)(§99)(6)	(V)(3)(2)(§99)(6)
Finland	Yes. (Eronen et al., 2000)	No. (Seppänen & Eronen, 2012; Eronen et al., 2000)	N/A	N/A	N/A
France	Yes. (C. Pén., Art. 122-1)	No. (Fovet et al., 2020; Michaud & Prat, 2015)	N/A	N/A	N/A
Germany	Yes. (StGB, §§ 21, 49; Trestman et al., 2007))	Yes. (StGB, § 63; Konrad & Völlm, 2014)	Yes. (StGB, § 63; Rauxloh, 2022; Konrad & Völlm, 2014)	No. (Fuss et al., 2015; Osterheider & Dimmek, 2005)	Yes.
Greece	Yes. (P.K., Arts. 36, 83)	Yes. (P.K., Art. 71)	Yes. (P.K., Arts. 71(1), 69A(1))	Yes. (P.K., Arts. 71(3), 70(1))	No. (P.K., Arts. 71(3), 70(1))
Italy	Yes. (Cod. Penale, Art. 89; Messina et al., 2019)	Yes. (Messina et al., 2019)	Yes. (Messina et al., 2009; Peloso et al., 2014; Simon & Ahn-Redding, 2006)	Yes. (Messina et al., 2019)	No. (Messina et al., 2019)
Japan	Yes. (Keihō, Art. 39; Okada, 2020)	Yes. (Okada, 2020; Fujii et al., 2014; Nakatani et al., 2010)	Yes. (Okada, 2020)	No. Fujii et al., 2014; Okada, 2020)	Yes. (Fujii et al., 2014)
Luxembourg	Yes. (Code Penal, Art. 71-1)	No. (Malmendier-Muehlschlegel & Power, 2022)	N/A	N/A	N/A

Poland	Yes. (K.K., Arts. 31.2, 60.6)	No. (K.K., Art. 95; Ciszewski & Sutula, 2000)	N/A	N/A	N/A
Portugal: <i>option 1</i> : DR offender treated as unimputable (Pinto, 2018)	No. (Código Penal, Arts. 20(2), 91(1);Pinto, 2018)	Yes. (Código Penal, Art. 91(1);Pinto, 2018)	Yes. (Código Penal, Art. 91(1); Carvalhão et al., 2019)	Typically, yes. (Código Penal, Art. 92(2);Pinto, 2018; Carvalhão et al., 2019)	Typically, no. ¹⁶ (Constitution of the Portuguese Republic, Art. 30(1); Código Penal, Art. 92(2);Pinto, 2018; Carvalhão et al., 2019)
Portugal - <i>option 2</i> : DR offender treated as imputable	Yes. (Pinto, 2018)	No. (Pinto, 2018)	N/A	N/A	N/A
Russia	Yes. (UK RF, Art. 22(2); Bukhanovsky & Gleyzer, 2001)	Yes. (UK RF, Arts. 22(2), 97(1)(c), 97(2), 99; Ryzhova & Pamenkova, 2016)	Yes. (UK RF, Art. 97(2); Ryzhova & Pamenkova, 2016)	No. (UK RF, Art. 102(2))	Unclear.
Spain	Yes. (Cód. Pen., Arts. 66, 68; Mohíno et al., 2011))	Yes. (Cód. Pen., Art. 104; Torres-González & Barrios, 2005)	Yes. (Cód. Pen., Art. 95)	Yes. (Cód. Pen., Art. 104(1); Torres-González & Barrios, 2005)	No. (Cód. Pen., Arts. 99, 104(1); Torres-González & Barrios, 2005)

¹⁶ But note that, if an act committed by an unimputable person corresponds to a crime carrying a sentence exceeding eight years and the danger of new acts of the same type is so serious that release is not advisable, internment may be extended for successive periods of two years until the court verifies that the individual is no longer dangerous (Código Penal, Art. 92(3); Pinto, 2018).

					Barrios, 2005)
Switzerland	Yes. (CP, Art. 19(2))	Yes. (CP, Arts. 19(3), 56)	Yes. (CP, Art. 59)	No. (CP, Art. 59)	No. ¹⁷ (CP, Art. 59)
Taiwan	Yes. (Every-Palmer et al., 2014; Yang et al., 2017)	Yes. (Xing fa, Art. 87 § 2; Wang et al., 2018)	Yes. (Xing fa, Art. 87 § 2; Wang et al., 2018)	No. (Xing fa, Art. 87 § 3; Every-Palmer et al., 2014)	No. (Xing fa, Art. 87 § 3; Every-Palmer et al., 2014)
Turkey	Yes. (Türk Ceza Kanunu, Art. 32(2))	Yes. (Türk Ceza Kanunu, Arts. 32, 57)	Yes. ¹⁸ (Türk Ceza Kanunu, Art. 57(2))	Yes. (Türk Ceza Kanunu, Art. 32(2))	No. (Türk Ceza Kanunu, Art. 32(2))

3.3 Prevalence of Diminished Responsibility Findings

As responsibility is a normative (not scientific) concept, it is not surprising that countries' use of DR varies. In some countries, examination of forensic reports reveals that irresponsibility judgments exceed DR findings. A Chinese study of 2081 persons assessed between 1997 and 2006 to determine level of responsibility found that 975 individuals (46.9%) were deemed not responsible for the offense, 444 (21.3%) to have DR, and 576 (27.7%) to be fully responsible (Hu et al., 2010). In Japan, Shiina et al. (2015) found, in an examination of patients hospitalized for assessment based on the Medical Treatment and Supervision Act (all of whom must be considered irresponsible or to have DR), that many more cases involved irresponsibility than DR. In particular, of 171 cases assessed between 2013 and 2014, 105 (61.4%) were not prosecuted by reason of insanity, 33 (19.3%) involved suspended prosecutions by reason of DR, 3 (1.2%) were found not guilty by reason of insanity (NGRI) by a court, and 16 (9.4%) received suspended sentences of imprisonment with DR. Similarly, a survey of 284 cases from 2005 to 2007 found that 220 (77.5%) were not prosecuted by reason of insanity, 10 (3.5%) involved suspended prosecutions by reason of DR, 2 (0.7%) were found NGRI by a court, and 23 (8.1%) received suspended sentences of imprisonment with DR (Shiina et al., 2015).

¹⁷ However, lifelong preventative detention is possible in Switzerland for highly dangerous offenders who committed crimes due to their severe psychiatric disorders and are deemed untreatable (CP, Art. 64; Graf & Hachtel, 2020).

¹⁸ Article 57(2) provides, "A mentally disordered person subject to security measures may be released, by a judge or a court decision, provided that a report prepared by the health commission of the institution in which he is accommodated, states that the danger to society no longer exists or is considerably diminished" (Türk Ceza Kanunu, Art. 57).

In other countries, DR findings tend to exceed irresponsibility verdicts. In Germany, Rauxloh (2022) reported that, out of 4.9 million cases prosecuted in 2017, 10,812 (0.2%) were discontinued by the prosecution because the offender lacked culpability, while in 16,753 cases (2.3%) the defendants were determined to have DR. She noted that exculpations and findings of DR are more frequent for violent than nonviolent crimes. St. Denis's study of 1605 evaluated offenders in Chile found that approximately 4% were deemed not criminally responsible, 7% had DR, and 84% were fully responsible for their crimes (St. Denis et al., 2012). In France, Mahé (2015) analyzed a sample of 1001 offenders between the years 2001 and 2010, 180 (17.9%) of whom had been deemed either fully irresponsible or to have DR due to mental disorders. Of the 180 subjects, 67 (37.2%, or 6.7% of all subjects) were found to be fully irresponsible while 113 (62.8%, or 11.3% of all subjects) were considered to have DR. As Mahé (2015) notes, overall "[the DR penal code provision] was applied 1.7 times more often than [the irresponsibility provision]," and "this ratio . . . was 1.8 for misdemeanors and 1.3 for felonies" (p. 73). Similarly, in Poland, a review of 179 completed court proceedings where insanity or DR was adjudicated between 2004 and 2012 found 55 (30.73%) insanity judgments and 124 (69.27%) determinations of partial responsibility (Golonka, 2016b; Golonka, 2016a).

Studies comparing rates of DR over time have reached varying conclusions. In Geneva, Switzerland, Niveau & Sozonets (2001) found the rate of DR determinations did not significantly differ between 1973/1974 (n = 75) and between 1997/1998 (n = 94). Specifically, 68.0% (51/75) of individuals were found to have DR in the earlier sample, while 57.4% (54/94) were found to have DR in the sample taken twenty years later (p. 486). In this study, researchers excluded cases of total irresponsibility "as their number was statistically too low" (p. 484). In contrast, Kaltiala-Heino (2005) reported that the use of DR dropped markedly in Finland between 1991 and 2001. In 1991 to 1992, the Authority of Medico-Legal Affairs (TEO) found that 18.6% of those forensically assessed lacked criminal responsibility, 32.9% had DR, and 48.4% were fully responsible. In 2000, the figures were 21.9%, 22.5%, and 54.4%, respectively; in 2001, they were 19.0%, 21.5%, and 59.0%; finally, in 2002, 22.7% were deemed irresponsible, 15.5% had DR, and 60.8% were found fully responsible (Kaltiala-Heino, 2005) (citing statistics of TEO)). Commentators have speculated that the decreased use of DR in Finland over that span might have reflected resistance to the then-mandatory penalty reduction for DR offenders with personality disorders and substance dependence, who many believed were likely to recidivate (Kaltiala-Heino, 2005; Seppänen et al., 2020).

Conclusions

Throughout history, societies around the globe have recognized the exculpatory and mitigating potential of mental disabilities. Societies differ, however, in how mental disability factors into criminal responsibility. This article details the legal frameworks and dispositional consequences of eighteen civil law countries with graduated responsibility structures. Analysis shows that all countries model their DR definitions closely on their irresponsibility standards. Most extend DR to the same set of mental conditions. Often the only difference between a country's irresponsibility and DR standard is the required level of impairment. Because DR requires a lesser degree of impairment than irresponsibility, personality disorders tend to satisfy the former standard more often than the latter (see, e.g., Lorenzo García et al., 2016).

The dispositional consequences that follow a DR finding vary by country. All countries permit incarceration following a finding of DR. Almost half of surveyed countries mandate a penalty reduction for a finding of DR, although judges in France may choose not to apply this reduction in most cases upon providing a reasoned decision. An additional six countries suggest mitigation of sentence, either by indicating that a penalty reduction may be appropriate or by directing that the defendant's partial responsibility factor into sentencing and then setting forth particular penalty reductions for consideration. Directed mitigation may take the form of minimum or maximum percentage reductions in sentence length, reductions in maximum sentences, reduction in degree of punishment, or imposition of noncarceral penalties. Crucially, judges always maintain discretion to select a sentence within a dictated statutory range. Statutory language in the Czech Republic, Luxembourg, Portugal, and Russia suggests that judges in those countries may respond to partial responsibility by aggravating (as an alternative to mitigating or leaving undisturbed) a defendant's punishment.

In addition, most countries permit involuntary inpatient psychiatric treatment to rehabilitate an offender found to be only partially responsible. Some of these countries limit the imposition of involuntary hospitalization to the most serious offenses or dangerous offenders. Further, some countries limit the length of involuntary hospitalization to the carceral length of the offense of conviction. Other countries, meanwhile, have no such durational limits, and indefinite or lifelong placement in inpatient treatment may be imposed.

Diminished responsibility remains an understudied topic. Little is known about the motivations behind countries' differing legal frameworks or their effect in practice. It is unclear, for instance, the extent to which a DR finding actually reduces offenders' sentences, or if in reality it aggravates them. It is also possible that carceral terms are served under more difficult conditions for individuals labeled as DR. Similarly, it is unclear how well these frameworks connect offenders to treatment, whether such treatment is effective, and how DR affects the overall length of incapacitation. Little is also understood about the expressive message of DR: how victims of crimes, offenders, and their communities perceive DR findings. The answers to these questions will no doubt reflect the values, cultures, and resources of each country. Compiling this information—and better understanding the legal structures and attendant consequences detailed in this article—will be useful in informing global conversations on graded responsibility and how best to structure a fair, just, and effective system responsive to diminished blameworthiness and an ongoing need for treatment.

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