

Preface and Acknowledgements

This monograph is devoted to enriching the understanding of European and American prosecutors and to furthering the comparative dialogue on the prosecutorial function. Prosecutors, whose traditional legal duty lies in determining whether or not a criminal case should enter the criminal justice process, turn out to be the centerpiece of the process. This key position of the prosecutor in the criminal justice system is strengthened by the fact that in some instances, he acts as the sole adjudicator of the criminal case. The practice of plea bargaining in the United States and the penal order procedure in Europe best illustrate the power of the *de facto* adjudication of prosecutors. Plea proposals are only rarely rejected by the judge. The same is true for penal orders in those criminal justice systems where the approval of the court is required. The Swiss penal order, for its part, is an excellent example of a *de jure* power of the prosecutor to adjudicate cases. In the last years, some criminal justice systems in Europe have undergone a clear change by introducing the possibility of informal negotiations between the prosecution and the defense; this is in response to the pressure for greater efficiency in criminal justice systems. Thus, several continental European jurisdictions have adopted adversarial elements. It follows that the European prosecutor has become more like his American counterpart than inversely. Given the broad power of American and European prosecutors, it is essential that they exercise this power in the most responsible fashion. However, since there is an unavoidable risk that prosecutors abuse this power, every criminal justice system should have a system that holds prosecutors accountable.

This research provides a comparative analysis of the prosecution service in Switzerland and in the United States and is completed by an overview of the prosecution institutions in France and Germany. The position, powers, and accountability of public prosecutors are examined within their respective judicial systems. Several factors influenced my decision to analyze public prosecution services in Switzerland, the United States, Germany, and France. In recent years, significant changes in criminal procedure and in public prosecution have occurred in many parts of the world, including Switzerland, as a result of rationalization of criminal justice systems. On January 1, 2011, the first Swiss Criminal Procedure Code came

into force and replaced the 26 cantonal criminal procedure codes and the Federal Act on the Administration of Federal Criminal Justice. Prior to 2011, the inquiry models could basically be differentiated between those cantons following the system of an investigating judge, inspired by the French legal system and those that have adopted the German system of the prosecutor with one or more district prosecutors. The unified Swiss Code of Criminal Procedure has opted for the German system and thus the examining magistrate, previously known in some cantons, has been abolished. In contrast to other European criminal justice systems, the Swiss legal system is only rarely considered in comparative research. This contribution closes that gap. Because the Swiss legal system was influenced by the French and German criminal justice systems, this research could not have been done without taking a look at the evolution and current situation of the prosecutorial role in those countries. The increasing workload of criminal justice systems will make prosecutorial discretion more and more of a necessity. However, before modifying a current system, it is important to know all the advantages and disadvantages related to a prosecutor having broad discretionary power. Absolute prosecutorial discretionary power having a long history in the U.S. system, it was an obvious choice to include American prosecutors in this research. Comparison of different legal and prosecutorial systems aims to improve the systems currently in place.

This research has been accepted as habilitation thesis by the Faculty of Law of the University of Zurich in March 2013 under a slightly different title. For the present publication, the original presentation of the manuscript has been adapted to meet the publisher's guidelines.

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