Swiss Criminal Law
Swiss Criminal Procedure

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Criminal Law

Current positions
- Senior Assistant for Substantive and Procedural Criminal Law (since June 2018)
- lawyer for the road traffic department of the Basel Cantonal Police.

Co-author of Swiss Criminal Law (with Anna Petrig, 2015).

Dr. iur. Nadine Zurkinden
Criminal Law

Legal education and research experience

- Law studies in Bern, Switzerland and Leuven, Belgium (2001-2007)
- Doctorate in Zurich (2013)
- Researcher, Max Planck Institute for Foreign and International Criminal Law, Germany (2011-2015)
- Researcher and lecturer in Basel, Switzerland (2015-2018)

Dr. iur. Nadine Zurkinden
Translated Legislation

Federal Constitution of the Swiss Confederation

Swiss Criminal Code

Swiss Criminal Procedure Code

See also www.rwi.uzh.ch/thommen for further information.
Literature in English

• Marc Thommen, Introduction to Swiss Law, Zurich 2018 > http://www.introductiontoswisslaw.ch/
• Anna Petrig/Nadine Zurkinden, Swiss Criminal Law, Zurich 2015
• François Dessemontet/Tugrul Ansay (eds.), Introduction to Swiss Law, 3rd ed., The Hague 2004
• Max Planck Information System for Comparative Criminal Law: Infocrim.org
Substantive Criminal Law

History
Swiss Confederation 1848

- 1848 First Swiss Constitution
- 19th Century: Cantonal Criminal Codes but call for a unified criminal law
- NB: Federal Council ≠ power to legislate but entrusts Carl Stooss with the drafting of a unified code in 1889
Carl Stooss (1849-1934)

- Studies at University of Berne (CH), Leipzig (Ger) and Heidelberg (Ger)
- «Father» of the Swiss Criminal Code (1937)
Carl Stooss (1849-1934)

- 1889: Mandate by the Federal Council of Switzerland to draft a Criminal Code
- 1890-93: Comparison of all 25 cantonal criminal laws
- 1894: First draft CC
Carl Stooss (1849-1934)

− 1898: Article 64bis Const.: «The Confederation is responsible for legislation in the field of criminal law»

− 1918: Federal Council dispatch an official draft of CC to Parliament
Carl Stooss (1849-1934)

- 21 December 1937: Parliament accepts Swiss Criminal Code
- 1 January 1942: Enactment
- 53 years of legislation!
Legal sources of criminal law

In a Confederation
Art. 123 I – Swiss Constitution

“The Confederation is responsible for legislation in the field of criminal law and the law of criminal procedure”.

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The reference to the Swiss Constitution (Art. 123 I) suggests a discussion or lecture on the legal framework related to criminal law and procedure in Switzerland. This constitutional provision underscores the role of the Confederation in these areas, indicating a specific legal authority for legislative matters concerning crimes and their procedures. The text is complemented with a visual aid, possibly a book cover, to provide a enlightening perspective on the topic.
§ 13 CC/Lucerne
„Unwarranted Shooting: Any person who – without authorization – fires a gun or detonates explosive charges at a wedding is liable to a fine“

Article 19 CC/Appenzell A.Rh.
„any person publicly displaying indecent behaviour is liable to a fine.“
Legislation the main source

- **Criminal Code**  
  (in force since 1 January 1942)
- **Juvenile Criminal Act**  
  (in force since 1 January 2007)
- **Military Criminal Code**  
  (in force since 1 January 1928)
Secondary criminal law

In more than 200 acts & ordinaces, e.g.:

- Road Traffic Act
- Narcotics Act
- Foreign Nationals Act
- Therapeutic Products Act
- Customs Act
- VAT Act
Substantive Criminal Law

Swiss Criminal Code of 21 December 1937
Swiss Criminal Law

Criminalistics
Criminology
Philosophy of Criminal Law
Criminal Law
Enforcement of Sentences and Measures

Substantive Criminal Law
(Swiss Criminal Code)

General Part
Art. 1-110
Criminal Liability
Art. 1-33
Sanctions
(sentences/measures)
Art. 34-73
Specific Part
Art. 111-332

Third Part: Introduction of Code

Criminal Procedure
Organisation of Criminal Justice Authorities
Federal Code of Criminal Procedure
I. Principles
II. Trial Rules
III. Parties
IV. Evidence
V. Coercive Measures
VI. Prelim. Proceed.
VII. Principal Proceed.
VIII. Special Proceed. ...
How do the different parts work together?

Article 111 SCC

„Any person who kills a person intentionally... is liable to a custodial sentence of not less than five years“
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Swiss Criminal Law

Criminalistics
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Federal Code of Criminal Procedure

I. Principles
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VIII. Special Proceed. ...
General Provisions on Criminal Liability that apply to all offences
- Territorial Application
- Crime Categories
- Intention/Negligence
- Excuses/Defences
- Law on Attempts
- Participation/Complicity

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Part Two: Criminal Liability
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# Criminal Liability

## Elements of Crime
- **Objective Elements**
  - Offender
  - Object of the Crime
  - Act
  - Result
  - Causation
- **Subjective Elements**
  - Direct Intent
  - Conditional Intent

## Unlawfulness
- **Justification**
  - Self-Defence
  - Necessity
  - Consent
- **Subjective Elements**
  - Knowledge (of threat)
  - Will (to defend)

## Culpability
- **Criminal Responsibility**
- Error of Law
- Unreasonableness

## Objective Wrong

## Subjective Blame
E.g.: Art. 12 Intention and negligence/Definitions

1 Unless the law expressly provides otherwise, a person is only liable to prosecution for a felony or misdemeanour if he commits it wilfully.
A person commits a felony or misdemeanour wilfully if he carries out the act in the knowledge of what he is doing and in accordance with his will. A person acts wilfully as soon as he regards the realisation of the act as being possible and accepts this.
E.g.: Art. 12 Intention and negligence/Definitions

3 A person commits a felony or misdemeanor through negligence if he fails to consider or disregards the consequences of his conduct due to a culpable lack of care. A lack of care is culpable if the person fails to exercise the care that is incumbent on him in the circumstances and commensurate with his personal capabilities.
E.g.: Art. 12 Intention and negligence/Definitions

Chris robs Lenny on a bridge and beats him up. He then throws him into the cold river where Lenny dies.

Intentional or negligent homicide?
Specific Criminal Acts

Life and Limb (Art. 111 ff.)
Property (Art. 137 ff.)
Personal Honour (Art. 173 ff.)
Liberty (Art. 180 ff.)
Sexual Integrity (Art. 187 ff.)
Family (Art. 213 ff.)
Public (Art. 221 ff.)
Counterfeiting of Money (Art. 240 ff.)
Forgery (Art. 251 ff.)
Public Order (Art. 258 ff.)
Genocide, Crimes against Humanity, War Crimes (Art. 264 ff.)
State and National Security (Art. 265 ff.)
Will of the People (Art. 279 ff.)
Official Powers (Art. 285 ff.)
Foreign Relations (Art. 296 ff.)
Administration of Justice (Art. 303 ff.)
Offences against Official or Professional Duty (Art. 312 ff.)
Bribery (Art. 322ter ff.)
E.g. types of homicide

- Intentional homicide
- Negligent homicide
- Inciting and assisting suicide
- Murder
- Privilieged crime
  - Manslaughter
  - Hom. at request
  - Infanticide
Article 111 Intentional homicide

Any person who kills a person intentionally, but **without fulfilling the special requirements of the following articles**, is liable to a custodial sentence of not less than five years.
Article 112 Murder

Where the offender acts in a particularly unscrupulous manner, in which the motive, the objective or the method of commission is particularly depraved, the penalty is a custodial sentence for life or a custodial sentence of not less than ten years.
Article 113 Manslaughter

Where the offender acts in a state of extreme emotion that is excusable in the circumstances, or in a state of profound psychological stress, the penalty is a custodial sentence from one to ten years.
Any person who for commendable motives, and in particular out of compassion for the victim, causes the death of a person at that person’s own genuine and insistent request is liable to a custodial sentence not exceeding three years or to a monetary penalty.
Article 115 Inciting and assisting suicide

Any person who for selfish motives incites or assists another to commit or attempt to commit suicide is, if that other person thereafter commits or attempts to commit suicide, liable to a custodial sentence not exceeding five years or to a monetary penalty.
Article 116 Infanticide

If a **mother kills** her child either **during delivery** or while she is under the influence of the effects of giving birth, she is liable to a custodial sentence not exceeding three years or to a monetary penalty.
Article 117 Homicide through negligence

Any person who causes the death of another through negligence is liable to a custodial sentence not exceeding three years or to a monetary penalty.
Domestic Tyrant (BGE 122 IV 1)

Y constantly abused his wife X. In January 1993, he told their daughter that her mother was going to die during the course of that year. On 15 March 1993, Y showed his wife a revolver he had bought in order to kill her. He then put it under his pillow and went to sleep. At one o’clock in the morning, X took the revolver and shot Y dead while he was sleeping.
## Crime categories

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Death penalty is history

13 June 1782: Anna Göldi(n) > last person executed/beheaded for witchcraft in Europe.

18 October 1940: Hans Vollenweider > Last person executed in Switzerland
Carl Stooss (1849-1934)

- His dual system of sanctions
  → Sentences and Measures had great influence on legal systems of other European countries
Dual System of Sanctions

Retribution

Sentences

Prevention

Measures
Art. 56 – Therapeutic Measures and Internment

A measure is ordered if a penalty alone is not sufficient to counter the risk of further offending by the offender...
Art. 57 – Relationship between measures and penalties

1 If the requirements for both a penalty and a measure are fulfilled, the court shall order both sanctions.

2 The implementation of a measure under Articles 59-61 takes precedence over a custodial sentence that is imposed at the same time or which is executed through revocation of a suspended sentence or recall to custody. Likewise, the reactivation of the execution of a measure in accordance with Article 62a takes precedence over a cumulative sentence imposed at the same time.

3 The deprivation of liberty associated with the measure must be taken into account in determining the penalty.
Law of criminal sanctions

Sentences
- Monetary penalties
- (Community service; until 2017)
- Custodial sentences
- Suspended sentences
- Determination of the sentences

Measures
- Indefinite incarceration
- Therapeutic Measures
- Employment ban
- Driving ban
- Forfeiture etc.
* Community service is no longer a separate type of sentence. However all sentences up to 6 months can be converted into community service (Art. 79a).
Art. 47 – Principles of Sentencing

The court determines the sentence according to the culpability of the offender...
Thank you