



Swiss Criminal Law

Swiss Criminal Procedure

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Dr. iur. Nadine Zurkinden



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

<https://www.admin.ch/opc/en/classified-compilation/19995395/index.html>

Swiss Criminal Code

<https://www.admin.ch/opc/en/classified-compilation/19370083/index.html>

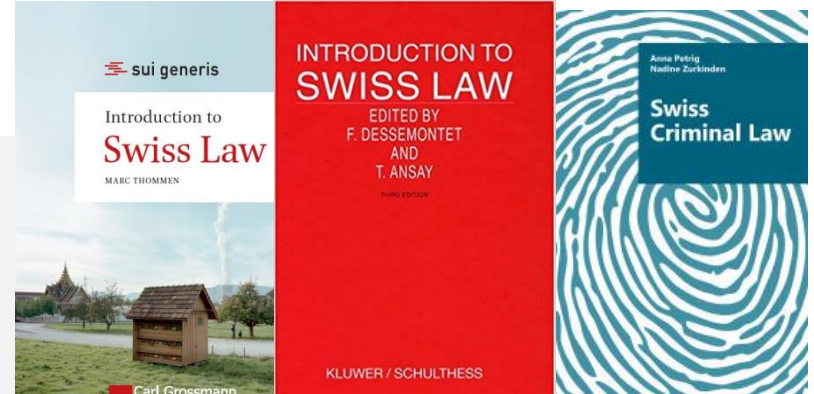
Swiss Criminal Procedure Code

<https://www.admin.ch/opc/en/classified-compilation/20052319/index.html>

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



Information System for Comparative Criminal Law

Introduction to the Legal System and Foundations of Criminal Law

The Information System contains complete and partial country reports covering **25 legal systems**. All reports share a **common structure** to simplify the comparison. The project is designed as a **work in progress**, therefore the reports are supplemented on a regular basis.

1. Select the countries you want to compare.

... (e.g. China, France and Turkey)

COUNTRIES

2. Select a topic. (optional)

... (e.g. purposes of punishment, intent or self-defense)

TOPIC

You can search for keywords or select a topic from the > [table of contents](#).



Substantive Criminal Law

History

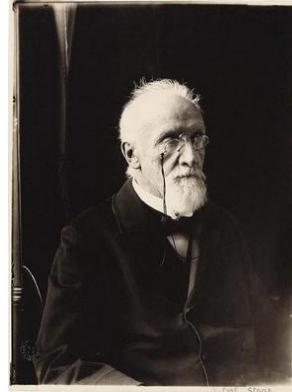
Swiss Confederation 1848

- 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)

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 64^{bis} 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”.



Cantonal Substantive Criminal Law

§ 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)



The image shows a digital view of the Swiss Criminal Code (Schweizerisches Strafgesetzbuch). The main title is "Schweizerisches Strafgesetzbuch". Below it, there is a section for "Militärstrafgesetz (MStG)". The article number "321.0" is visible. The text of the article is: "1. Keine Sanktion ohne Gesetz". Below the article, there is a list of navigation options: "Erstes Buch: Militärstrafrecht", "Erster Teil: 4 Allgemeine Bestim", "Erster Titel: Geltungsbereich", and "Art. 1 1. Keine Sanktion ohne Gesetz".

alles einblenden | Artikelüber

321.0

Militärstrafgesetz
(MStG)

vom 13. Juni 1927 (Stand am 1. Januar 2018)

Die Bundesversammlung der Schweizerischen Eidgen
gestützt auf die Artikel 60 und 123 Absätze 1 und 3 c
nach Einsicht in die Botschaft des Bundesrates vom 2
beschliesst:

-  **Erstes Buch: Militärstrafrecht**
-  **Erster Teil:⁴ Allgemeine Bestim**
-  **Erster Titel: Geltungsbereich**
-  **Art. 1 1. Keine Sanktion ohne Gesetz**

1. Keine Sanktion ohne Gesetz

Fine Strafe oder Massnahme darf nur wegen einer Tr

Secondary criminal law

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

- Road Traffic Act
- Narcotics Act
- Foreign Nationals Act
- Therapeutic Products Act
- Customs Act
- VAT Act

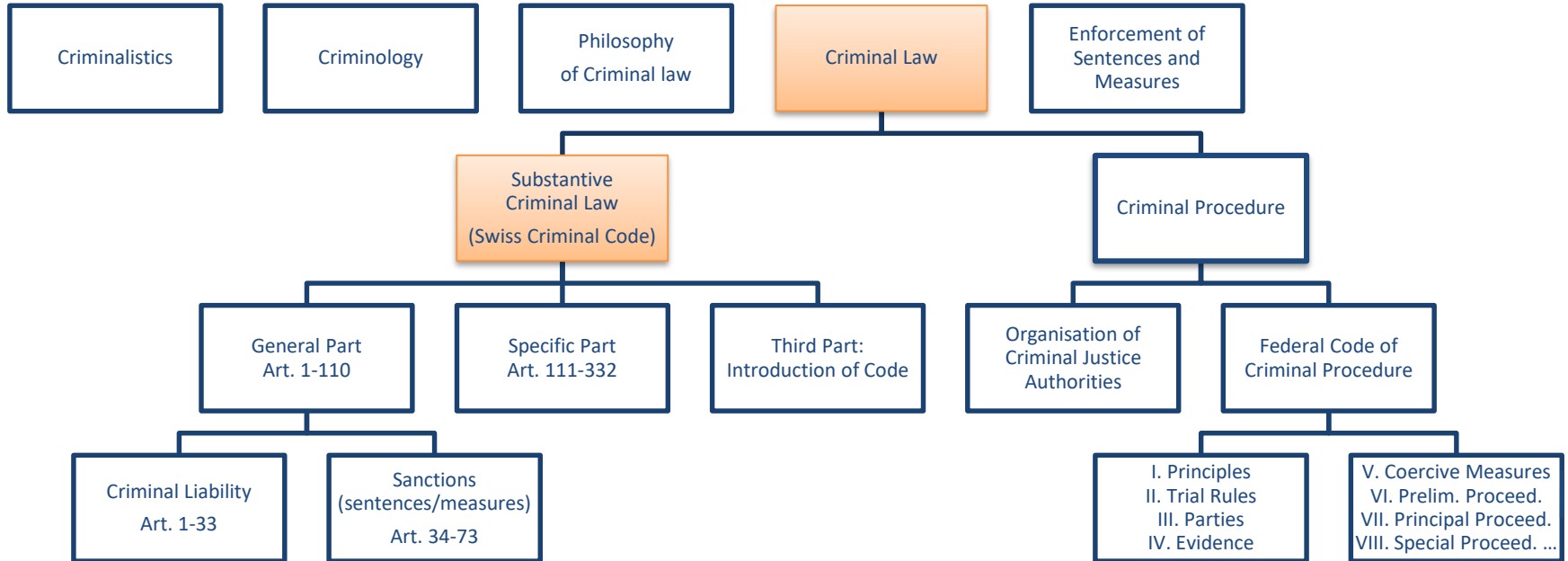




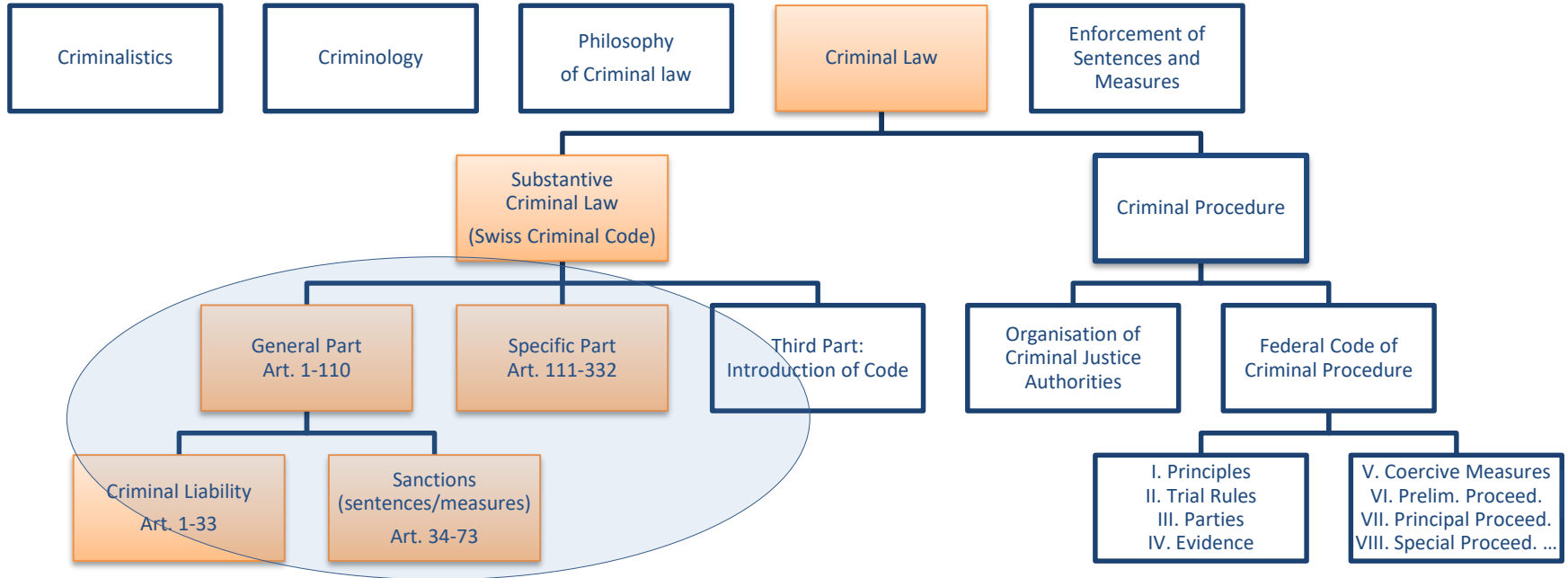
Substantive Criminal Law

Swiss Criminal Code of 21 December 1937

Swiss Criminal Law



Swiss Criminal Law



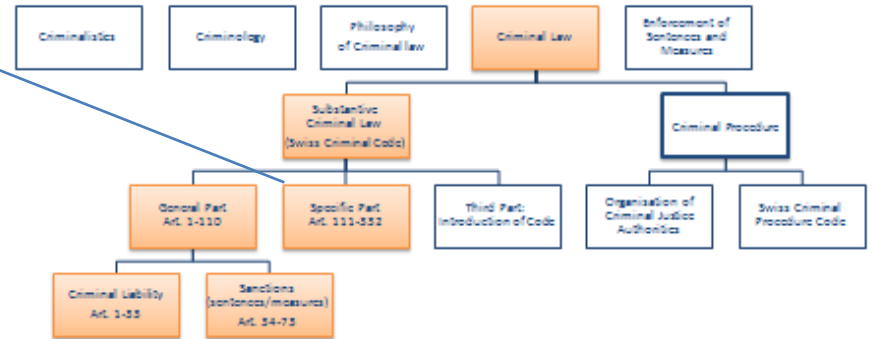
How do the different parts work together?

Article 111 SCC

„Any person who kills a person intentionally...

is liable to a custodial sentence of not less than five years”

Swiss Criminal Law



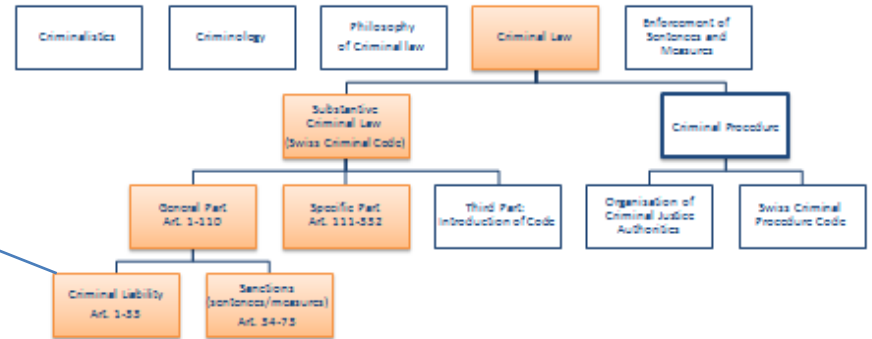
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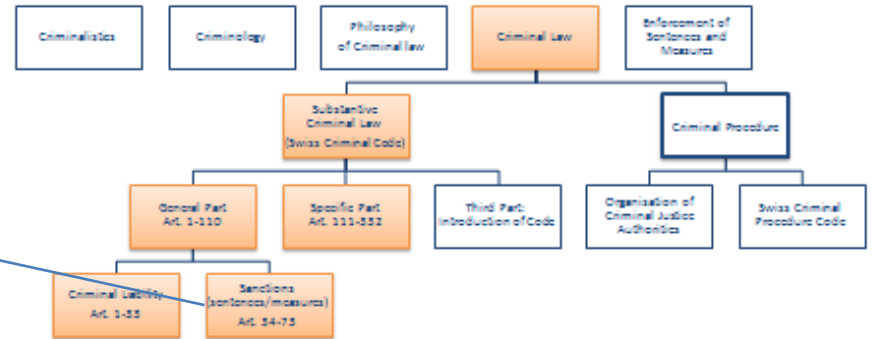
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Article 111 SCC

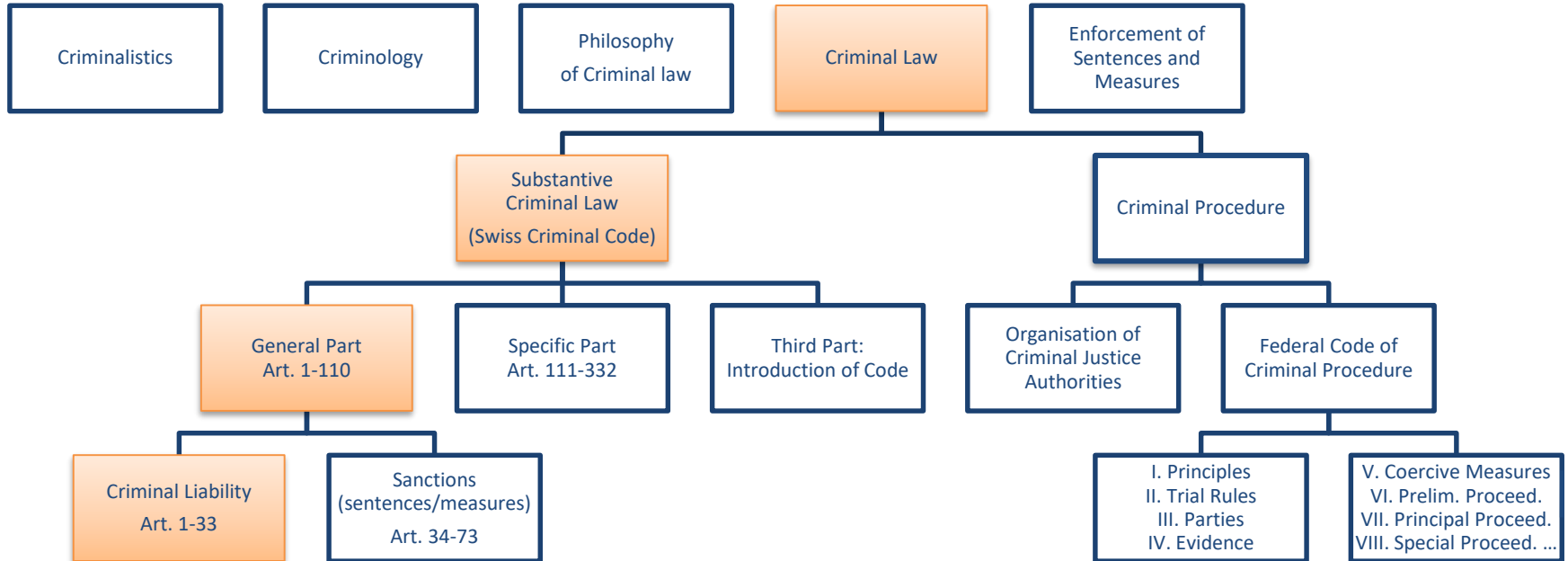
„Any person who kills a person intentionally...

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Swiss Criminal Law



Swiss Criminal Law



General Part I – Art. 1-33 CC

General Provisions on Criminal Liability that apply to all offences

- Territorial Application
- Crime Categories
- Intention/Negligence
- Excuses/Defences
- Law on Attempts
- Participation/Complicity

Table of contents

Book One: General Provisions

Part One: Felonies and Misdemeanours

Title One: Scope of Application

1. No penalty without a law	Art. 1
2. Commencement of applicability of the Code	Art. 2
3. Territorial scope of application	
Felonies or misdemeanours in Switzerland	Art. 3
Felonies or misdemeanours against the state committed abroad	Art. 4
Offences against minors abroad	Art. 5
Offences committed abroad prosecuted in terms of an international obligation	Art. 6
Other offences committed abroad	Art. 7
Place of commission	Art. 8
4. Personal scope of application	Art. 9

Title Two: Criminal Liability

1. Felonies and misdemeanours	
Definition	Art. 10
Commission by omission	Art. 11
2. Intention and negligence	
Definitions	Art. 12
Error of fact	Art. 13
3. Lawful acts and guilt	
Act permitted by law	Art. 14
Legitimate self-defence	Art. 15
Mitigatory self-defence	Art. 16
Legitimate act in a situation of necessity	Art. 17
Mitigatory act in a situation of necessity	Art. 18
Absence of legal responsibility due to a mental disorder and diminished responsibility	Art. 19
Doubt as to legal responsibility	Art. 20
Error as to unlawfulness	Art. 21
4. Attempts	
Criminal liability for attempts	Art. 22
Withdrawal and active repentance	Art. 23

Criminal Liability

Elements of Crime	Objective Elements <ul style="list-style-type: none"> - Offender - Object of the Crime - Act - Result - Causation 	Subjective Elements <ul style="list-style-type: none"> - Direct Intent - Conditional Intent 	Objective Wrong
Unlawfulness	Justification <ul style="list-style-type: none"> - Self-Defence - Necessity - Consent 	<ul style="list-style-type: none"> - Knowledge (of threat) - Will (to defend) 	
Culpability	<ul style="list-style-type: none"> - Criminal Responsibility - Error of Law - Unreasonableness 		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.



E.g.: Art. 12 Intention and negligence/Definitions

² 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 misdemeanour 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.



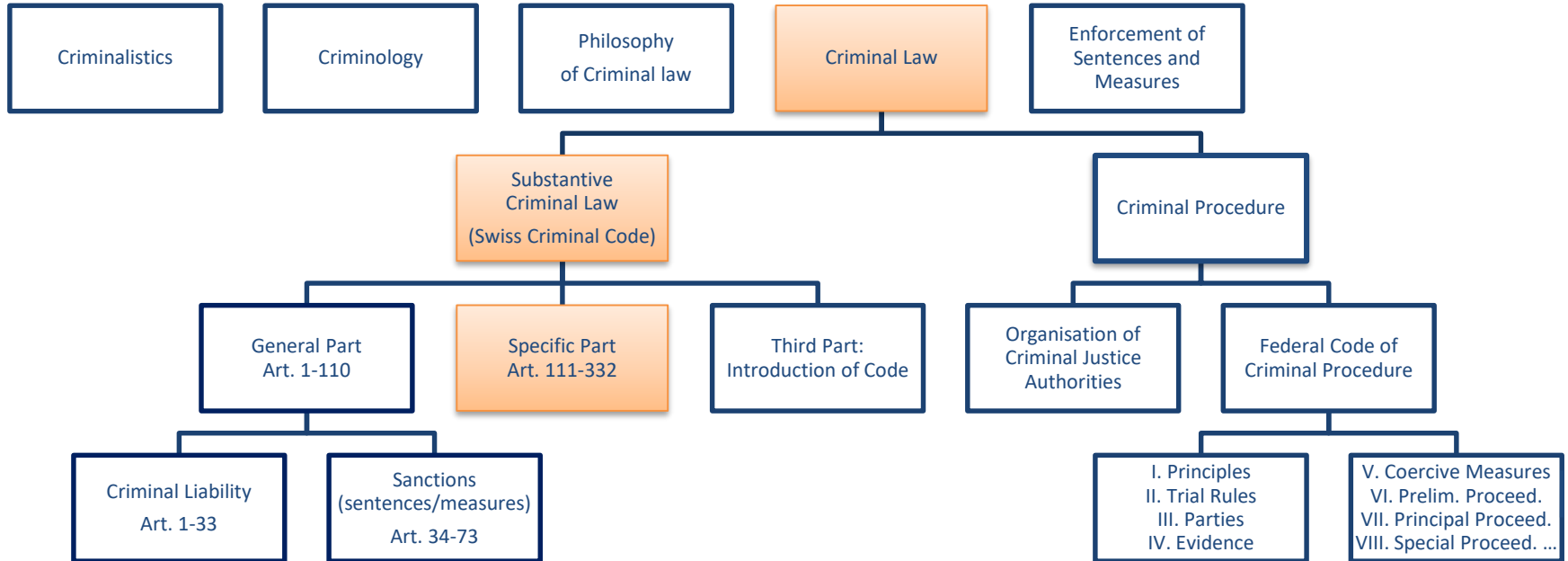
E.g.: Art. 12 Intention and negligence/Definitions

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?

Swiss Criminal Law



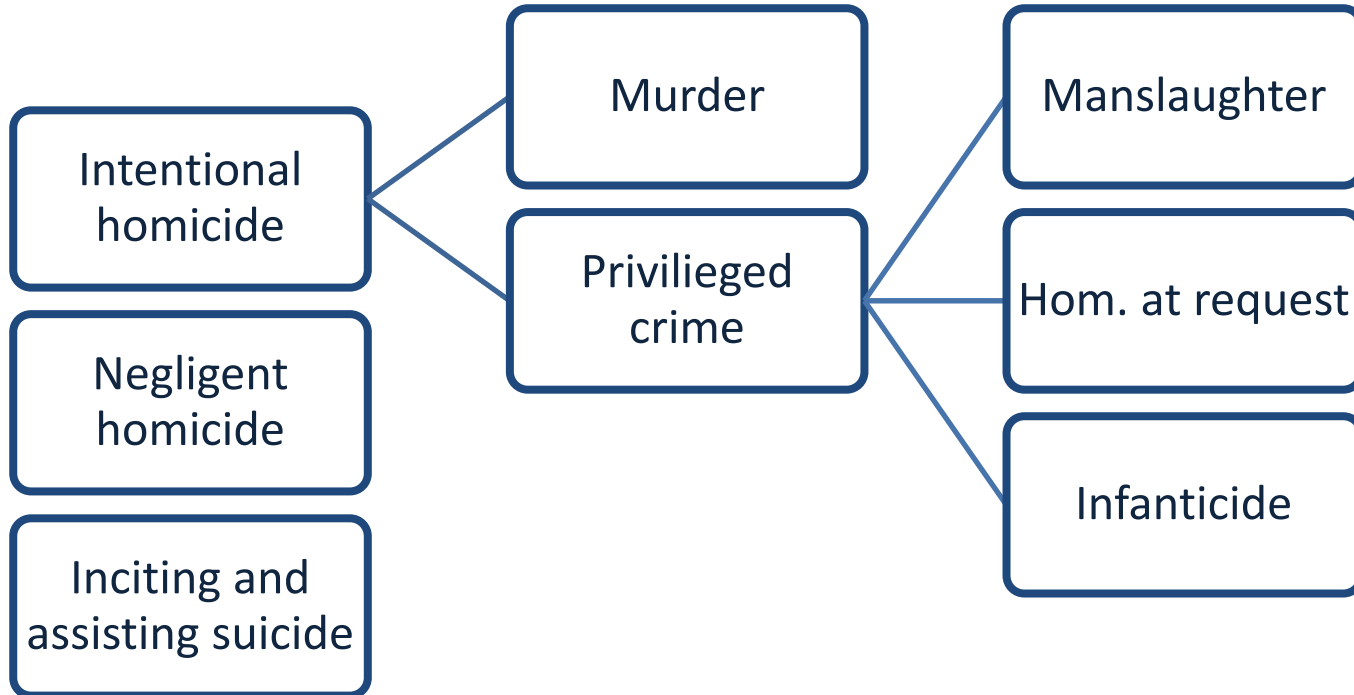
Specific Criminal Acts

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.)

Title One: Offences against Life and Limb

1. Homicide	
Intentional homicide	Art. 111
Murder	Art. 112
Manslaughter	Art. 113
Homicide at the request of the victim	Art. 114
Inciting and assisting suicide	Art. 115
Infanticide	Art. 116
Homicide through negligence	Art. 117
2. Abortion	
Illegal abortion	Art. 118
Legal abortion	Art. 119
Contraventions by physicians	Art. 120
Repealed	Art. 121
3. Assault	
Serious assault	Art. 122
Common assault	Art. 123
Female genital mutilation	Art. 124
Assault through negligence	Art. 125
Acts of aggression	Art. 126
4. Endangering the life or health of another	
Abandonment	Art. 127
Failure to offer aid in an emergency	Art. 128
False alarm	Art. 128 ^b
Endangering life	Art. 129
Repealed	Art. 130–132
Brawling	Art. 133
Attack	Art. 134
Representations of acts of violence	Art. 135
Administering substances capable of causing injury to children	Art. 136

E.g. types of homicide



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.



Article 114 Homicide at the request of the victim

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.

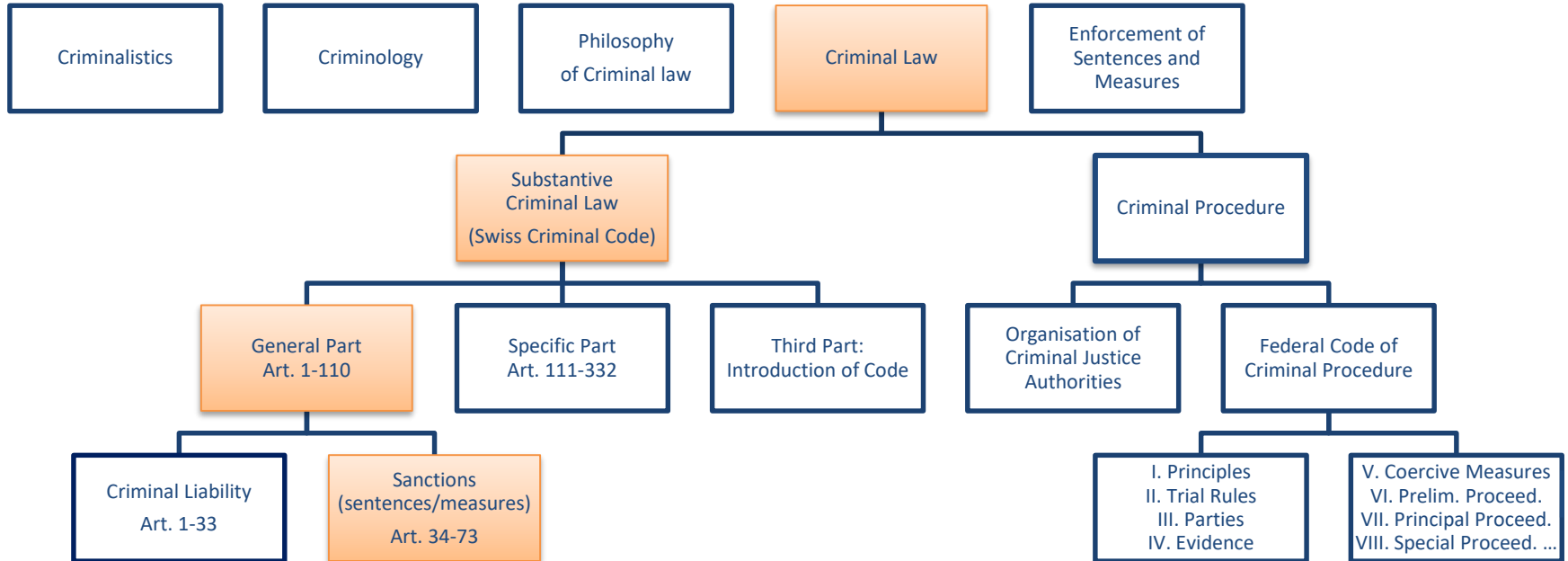


Crime categories

Severity ↑

	Sanction	example
Felonies	Custodial sentence of more than 3 years (Art. 10 Abs. 2)	Intentional homicide (Art. 111)
Misdemeanours	Custodial sentence not exceeding 3 years or monetary penalty (Art. 10 Abs. 3)	Assault (Art. 123)
Contraventions	Fine (Art. 103)	Minor assault (Art. 126)

Swiss Criminal Law



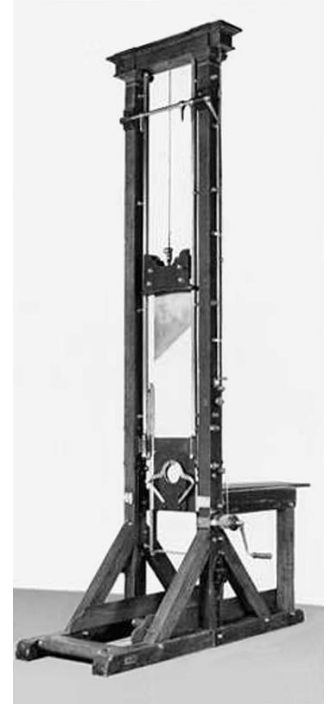
Death penalty is history

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

18 October 1940: Hans
Vollenweider > Last person
executed in Switzerland



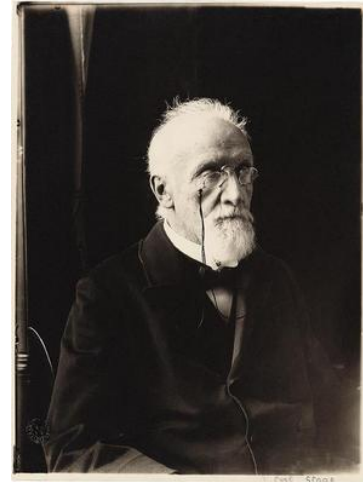
Fictional portrait by Patrick Lo Giudice





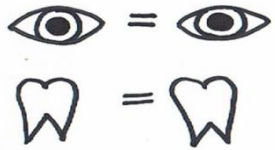
Carl Stooss (1849-1934)

- His dual system of sanctions
→ Sentences and Measures
had great influence on legal
systems of other european
countries



Carl Stooss (1849-1934)

Dual System of Sanctions



Retribution

Prevention

Sentences

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

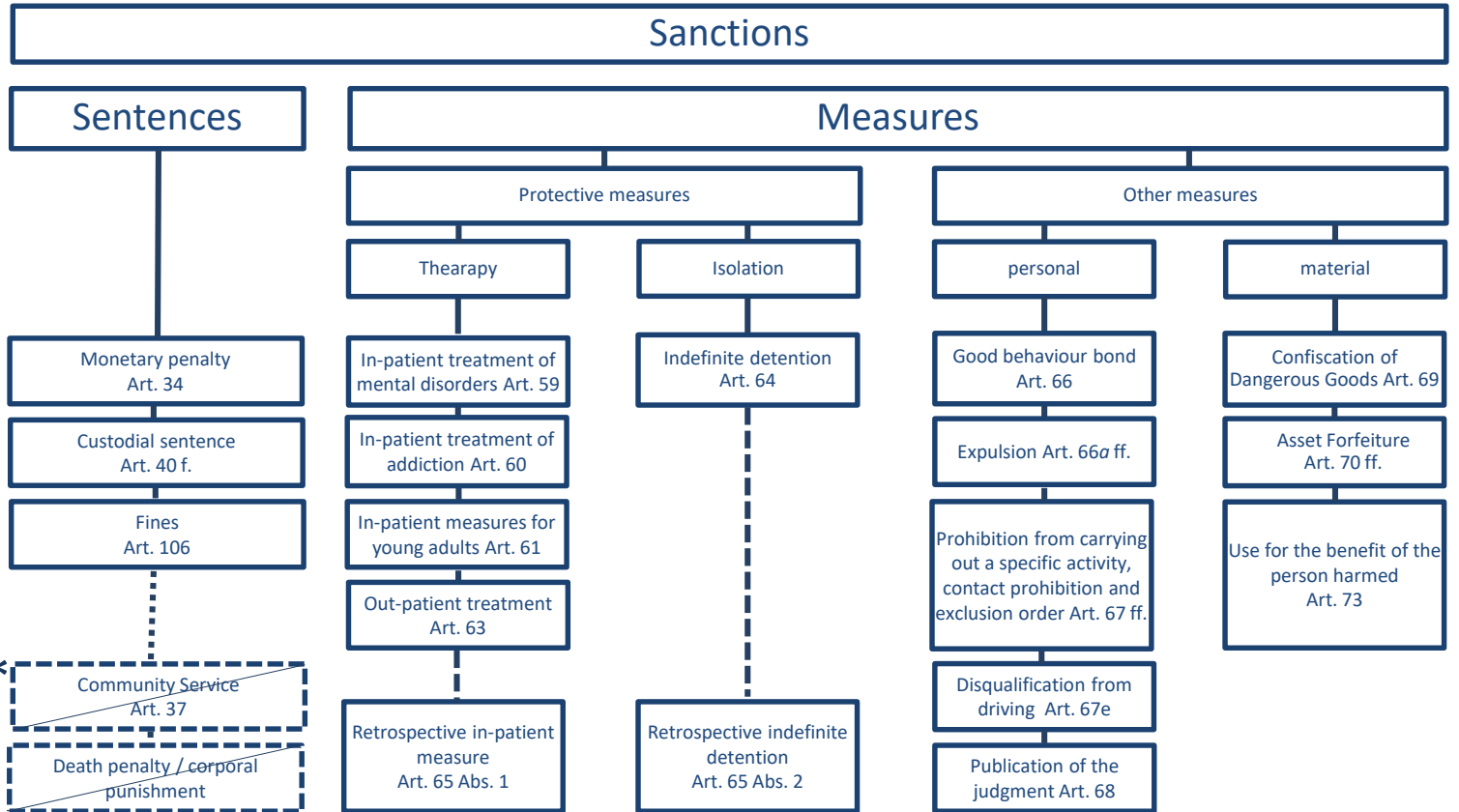
Sentences

- 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