

The institutionalization of the fight against white-collar crime in Switzerland, 1970-1990

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ABSTRACT

During the 1970s and 1980s, economic and financial crime turned into a societal issue in Switzerland. The perpetrators of white-collar crime often enjoyed total impunity: legal proceedings were very time consuming, authorities in charge of judicial investigation were under-resourced. This paper investigates how the political and judicial authorities responded to this challenge. By the end of the 1980s, a strong shift towards a more specialized handling of financial crime by public prosecutors occurred. Specialized departments were set up and judges were trained in commercial matters. This transformation breached with a long tradition of leniency and inefficient judicial handling of economic crime. Based on archival evidence, this paper sheds new light on the drivers of an institutionalization process which affected not only the Swiss financial centre, but also all the global judicial proceedings which relied on it. Professionalizing the response to financial crime also aimed at restoring the corporate reputation of Swiss financial firms, in a context of growing competition among offshore financial centers.

KEYWORDS

White-collar crime; institutionalization; legal history; judicial organization

Secrecy and subterfuge are the white collar criminal's best friends. The surest invitation to illegal conduct that man can devise is a hidden conduit for transmission of funds safe from the eyes of law enforcement officials. That is exactly what secret foreign bank accounts do. Although such accounts may be used with perfect innocence by some depositors, they are too tempting a lure for the tax evader, the securities swindler, the corrupter of public employees, the fraud and the cheat. The 'little tin box' of the 1930's has been replaced by the Swiss bank account of the 1970's.

Whitney North Seymour, U.S. Attorney, Southern district of New York, Statement to the United States Senate Committee on Banking and Currency, Hearings before the subcommittee on financial institutions, 91st Congress, 2nd session, S. 3678 and H.R. 15073, 8 June 1970, p. 71.

1. Introduction

Investigating and prosecuting financial crimes represents specific challenges for judicial authorities. Criminological literature on white-collar crime provides general explanations for the particular problems faced by the judicial system (Benson, 2001; Van Slyke et al., 2016, p. 561). Crimes are difficult to detect, since they are usually committed by or within legitimate

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businesses. It is hard for investigators to pinpoint a responsible party. Furthermore, the evidence to convict a suspect is very difficult to gather. Investigations are complex, time-consuming and resource-intensive; they require expertise in different fields (business, accounting) not always available within judicial police. Finally, defendants have abundant legal and financial resources to contest criminal charges. They use different strategies to avoid sentencing. As early as the 1970s, public officials were well aware of the need for specific responses to this growing threat: improving the instruments of control by public authorities in quantity and quality and entrusting the investigation, prosecution and trial of economic-crime offenders to suitably qualified persons were identified as effective measures.¹ As exemplified by the epigraph, secrecy and opacity of business environment were soon considered as major elements in the opportunity structure of white-collar crime. Switzerland, as one of the early offshore financial centers, came under heavy fire from international public and legal authorities. Banking secrecy, numbered accounts and the deception and concealment practices they allowed were targeted, in particular by the US administration. Exposing harmful activities by constructing them as criminal and obtaining access to hidden financial assets play an important part in combating white-collar crime.

This article examines why and how Swiss authorities tried to reform the judicial system in order to improve the fight against economic crime during the 1970s and 1980s. What were the main factors that explain the shift from inadequate prosecution of financial crime (prior to the 1970s) to a more targeted and institutionalized judicial response? In that sense, the study traces the history of the response to white-collar crime and the history of court administration, of prosecutors and judges, rather than the history of white-collar criminals and sensitive court cases. The article provides the first archive-based account of the Swiss case and also contributes to the literature concerned with the political and administrative responses to economic crime. Beyond its interest for Swiss history, the questions raised in this article contribute to the ongoing discussions on corporate reputation, the rise of global offshore finance and broader economic changes in the 1970s. Indeed, Swiss judges and prosecutors were increasingly faced with lawsuits involving international stakeholders and the growing international importance of the financial center meant greater emphasis on Swiss banks' reputational capital. Facing new competition from emerging offshore financial centres, Swiss banks sought to offer a refuge not only from prying eyes, but also from thieves and fraudsters. To some extent, they worked hand-in-hand with judicial and political authorities to improve the handling of economic and financial crime, with the aim of safeguarding their reputation. Furthermore, as this next section will show, the administrative changes that occurred in Switzerland were part of a broader international trend towards greater consideration and increased visibility of the specific challenges of white-collar crime. Against the backdrop of the oil crisis, economic 'stagflation', deregulation, financialization and the rise of global offshore finance during the 1970s, citizens, policymakers, prosecutors and judges became more aware of the seriousness of economic crime, and tried to find an effective response.

2. Political and social salience of white-collar crime in the 1970s and early discussions in Switzerland

White-collar crime or economic crime is far from being a recent phenomenon. Contemporary debates and media reports – especially since the 2008 global financial crisis that revealed a new wave of financial crimes – may give the impression that they are a by-product of modern

trends such as globalization and financialization. Economic delinquency is as old as economic activity itself. However, socio-economic transformations of the 19th century, such as industrialization, redistribution of property and modern journalism created new opportunities for criminal activities such as fraud and corruption – and their subsequent disclosure by the press (Berghoff & Spiekermann, 2018). In American history, regulatory response to business fraud shifted over time, moving from a *caveat emptor* (buyer beware) perspective in the nineteenth century to combined efforts to protect consumers and investors in the 1970s (Balleisen, 2017). Historical inquiry into white-collar crime is also engaging in the way it emphasizes the changes in morality across time and space: the same behavior could evolve from being merely perceived as immoral and harmful to being legally prohibited and pursued at various times and in different territorial jurisdictions.

Nevertheless, in the long history of white-collar crime, the period of the 1970s and 1980s represent a watershed in the social awareness of the crimes of economic and political elites (Ruggiero, 2017, p. 126). In American society, major corporate scandals gave rise to growing skepticism towards those holding power (Rosoff et al., 2013, p. 9). Some scholars consider that these scandals resulted in the emergence of a social movement against white-collar crime (Katz, 1980). Disillusionment and declining confidence in the political and business leadership directed more attention to the crimes of the economic elites. This renewed public concern also led to increased funding for white-collar crime research and the spread of empirical studies (Friedrichs, 2009, pp. 17–19). On the other hand, social unrest gave rise to calls for enhanced institutional and judicial responses and spurred the creation of white-collar crime units in American prosecutorial agencies (Katz, 1980).

In Europe, a major shift in the perception and response to white-collar crime occurred as well during the 1970s.² Economic crime gradually became a specific criminal policy issue, that required to be addressed with specialized judicial means. In Germany, an escalation of political debates on economic crime occurred during the 1970s, although some early specialized public prosecution offices had preexisted in some regions since the 1950s (Liebl, 2008). Criminological research on economic delinquency by German scholars was already developing in the 1950s and early 1960s, but the use of the concept ‘Wirtschaftskriminalität’ popularized and became a social issue in the 1970s, under the influence of Armand Mergen, professor of criminology (Dörre, 2016). In Sweden also, the public and political discussions on economic crime emerged in the 1970s. Policy measures, such as the establishment of specialist economic crime police units, were taken, partly as a result of growing media focus on Swedish economic crime (Lindgren, 2002; Korsell, 2015). In the United Kingdom, the creation of the Serious Fraud Office in 1987, the agency in charge of investigating and prosecuting complex fraud and corruption, was the result of growing dissatisfaction with the UK system, dating back to financial scandals in the 1970s (Levi, 2007; Toms, 2015).

Beyond national policy and judiciary reforms, the rising concerns in different European countries also brought about early reflections on the necessity to coordinate the fight against economic crime at an international level. Starting at the beginning of the 1970s, the Council of Europe developed into the favored multilateral forum for those discussions, through the European Committee on Crime Problems (set up in 1958) or the Conference of Justice Ministers (Müller-Rappart, 1984; Wassenberg, 2013, pp. 101–3). In 1981, those efforts resulted in the adoption of a recommendation (R (81) 12) addressing many of the issues related to economic crime. The (non-binding) recommendation entailed various suggestions on how to prevent such crime and to improve cooperation between national authorities.³ To ensure

efficient criminal justice, member states were urged to take various steps: train judges dealing with economic cases specifically, encourage information sharing between public authorities, adopt criminal liability of corporations, avoid excessive delays in the prosecution of economic offenses and also revise the rules of secrecy in certain fields such as banking, which were seen as major legal obstacles to the detection of economic delinquency.

As with most intergovernmental initiatives, it is difficult to assess the impact of such recommendations at a national (or even regional) level, and to determine if they were effectively enforced. Be that as it may, the efforts of the Council of Europe in the fight against economic crime, stretching over a decade, reflect the salience of this issue in Europe during the 1970s, and the awareness of its international dimension.

In Switzerland, the concerns about the resurgence of economic crime grew as well. At the end of the 1960s, the country developed into a major international financial center. Expanding their core activities of cross-border asset management, Swiss banks attracted foreign capital and reinvested it on foreign markets. The political and social stability of the country, the strength and stability of the Swiss franc, the banking secrecy and a non-cooperative tax administration, i.e. the refusal of legal assistance with foreign authorities for 'mere' tax evasion (vs. tax fraud), were among the key factors for attracting capital (Mazbouri et al., 2012). Especially due to the dynamic expansion of the three largest banks (Union Bank of Switzerland, Swiss Bank Corporation and Credit Suisse), Switzerland, and primarily Zurich, became by 1970 the world's third most important financial center, topped only by New York and London (Cassis, 2010, p. 234). In addition to the transnational activities of the largest Swiss banks, the internationalization was strengthened by the establishment, since the 1960s, of a growing number of foreign banks in Switzerland (mainly in Zurich, Geneva and Lugano) (Giddey, 2013). For the Swiss authorities and banking representatives, the arrival of foreign competitors in the banking market was sometimes seen as a threat to the solid reputation of Swiss financial institutions. As a matter of fact, the outstanding boom of Swiss banking – and the consolidation of its position as a tax haven – generated international criticism since the end of the 1950s. Spearheaded by U.S. American leaders, critical voices especially condemned banking secrecy and the practices it encouraged: tax avoidance, mafia and dictatorship money laundering or the cover-up of Soviet financial transactions (Farquet, 2018. See also Farquet, 2017). For various reasons, those early attempts to tackle Swiss banking secrecy and the parasitic role of Swiss business practices failed in the 1960s. However, the postwar expansion of the Swiss financial center witnessed a period of increased international exposure. For good or bad reasons, the 'gnomes of Zurich', as first labeled by British PM Harold Wilson in 1956, gradually became major international competitors, while symbolizing a stereotypical image of the Swiss banker: discreet, conservative and risk-averse.

The international development of Swiss banking occurred in a period during which the mechanisms and legal architecture that would lead to a global industry of tax avoidance were being set up. Indeed, from 1945 to 1975, offshore finance and tax havens grew significantly, the tax avoidance industry professionalized and paved the way for the dramatic expansion of offshoring practices in the 1970s; taking advantage of the grey areas provided by strict business confidentiality, Swiss banking played a key role in those development (Ogle, 2017). By the mid-seventies, it became increasingly clear that, by international standards, the norms of Swiss banking conflicted with a culture of adherence to formal rules;

this secretive business environment left wide loopholes for various fraudulent practices (Schenk, 2017).

In parallel, on the domestic level, 'economic crime' and its perceived increase developed into a specific field of research for legal scholars. The general explanation for this trend is that the combination of global trade and economic boom during the 1950s and 1960s had generated endless economic opportunities. Intense competition and business ethics based on the pursuit of private profit provided fertile ground for the spread of economic crime (Rimann, 1973, p. 1). In the wake of the German trend of criminological scientific research on *Wirtschaftskriminalität* – reflected in the organization of periodic workshops by the German Federal Criminal Office (*Bundeskriminalamt*) since 1957 –, Swiss legal scholars and criminologist began to invest this field in the 1960s (Berckhauer, 1977, p. 1). As a result, the first national conference on the explicit theme 'white-collar crime' was held in Zurich in October 1970 and brought together over 150 attorneys, auditors, criminologists, researchers, police officers and legal scholars, from 11 countries.⁴ More broadly, the 1970s witnessed the emergence of legal studies on economic delinquency in Switzerland. Of course, economic crime, as a phenomenon, was not born in the 1970s, but its study as an established field materialized during the 1970s and 1980s.

In Switzerland, starting from pioneering studies in the 1970s, the research on economic crime in legal studies gradually developed in the 1980s (Bernasconi, 1988; Egli, 1985; Meier, 1986; Neutra Fiduciaire, 1983; Rimann, 1973; Schmid, 1971, 1976, 1980; Wunderlin, 1976; Zimmerli, 1978; Zimmerli, 1984). This body of literature is relevant in two respects. First, the multitude of those studies, often produced by legal experts in charge of investigating and prosecuting such crimes, reflects the salience of such issues during the period examined. Second, it provides informative and descriptive accounts – even if anonymized, not only of legal debates, but also of various cases handled by courts. It should be highlighted that in the context of Swiss legal academia, there was no clear distinction between academic circles and legal practitioners. One of the pioneers of the judicial fight against white-collar crime, Niklaus Schmid, spent his career between positions as judge or public prosecutor and professorship in law. As a result, academic literature is used in this paper as a documentary record not of theoretical thinkers but of hands-on practitioners. However, the existence of these legal studies does not compensate for the lack of historical perspective on the institutionalization of the fight against economic crime in Switzerland during the 1970s and the 1980s. This contribution is based on new archival material and previously unpublished sources. Although using fairly recent judicial documents posed particular challenges with respect to access to classified documents, public and justice authorities in Geneva and Zurich provided interesting documentary material on the administrative and institutional changes within their judiciary.

Before studying the inadequacies of the judicial response to white-collar crime, it is necessary to set out the basic organization of the Swiss judiciary. This article focuses on two regional jurisdictions in Switzerland. The country's organization of the judiciary is traditionally governed by the state law of the 26 Swiss cantons and is still very marked by federalism. This organization therefore differs from canton to canton. Prior to 2011 (enactment of the Swiss Code of Civil Procedure), each canton had its own code of civil procedure. Each canton usually provides for a two-instance judiciary system; many cantons also established other specialized courts, such as labor courts. Cantonal courts have the power to interpret and to apply federal

law as well as the respective cantonal law (Mahon, 2019. See also Gilliéron and Killias (2008)). As a result of this considerable cantonal autonomy, economic and financial offenses are prosecuted and tried by cantonal judicial authorities.

The cantonal organizations of Zurich and Geneva have been selected for this paper. This choice is mainly based on two considerations. First, both cantons represent major urban areas, as well as economic and industrial hubs; they host a large number of business companies and financial institutions and are considered as international financial centers (Straumann, 2018). In 1970, out of a total of 560 banks, 125 (22%) had their head office in Zurich and 62 (11%) in Geneva; in 1990, those figures rose to 216 (33%) and 120 (18%) out of 664 respectively.⁵ Second, the organization of the judiciary is different in Geneva and Zurich, which makes a comparison more relevant. In Geneva, a small and highly urbanized canton, there is only a single judicial district (*arrondissement en matière judiciaire*), with only one first-instance court for civil matters and one for penal matters; furthermore, the Attorney General, head of the public prosecution, is elected directly by the people (citizens) every six years. In Zurich, the most populated canton, the organization of the judiciary is less centralized. The institutional separation between the local district courts (*Bezirksgerichte*) and the supreme court (*Obergericht*) is stronger. The Zurich organization of the prosecution of crimes is also more clearly divided into different levels: investigation, indictment and judgment. Examining the fight against white-collar crime in Geneva and Zurich thus focuses on the two regions primarily concerned with such crimes in Switzerland, but it also provides the opportunity to compare two different experiences of facing white-collar crime⁶ (Lepori, 2018).

The rest of this paper is structured as follows. The third section exposes the shortcomings of the judicial organization in the prosecution of white-collar crime prior to the shifts that occurred during the 1970s. The fourth section examines the new responses in the fight against economic crime in the 1970s and 1980s, in two different jurisdictions: Zurich and Geneva. The final section provides some concluding remarks.

3. Investigating financial crime in postwar Switzerland: judiciary not up to the task

In the context of the booming economy of postwar Switzerland, policymakers soon became aware of the deficiencies of the justice system in the handling of economic crime. The observation was simple: the means and methods of conventional criminal law did not suffice for the prevention of economic crime. The lack of specialized bodies and specifically trained prosecutors and investigators was soon identified as a major problem. In a 1975 report to the head of cantonal justice ministers, Joseph Voyame, director of the Justice Division of the Federal Department of Justice and Police, described some of the shortcomings of the judicial control of economic crime in a personal retrospective recollection: 'I remember being appointed, when I was a young lawyer, as an extraordinary investigating judge in a fraudulent bankruptcy of ten million francs and I assure you that I was completely lost in front of a businessman, who knew the business a lot better than me, sometimes even ridiculing me a little. I therefore think we should have specialized bodies, full of competent men, independent of the economic and financial world.'⁷

Two examples illustrate the inadequate handling of financial crime by Swiss judiciary prior to the 1970s.

Between 1947 and 1959, the *eidgenössische Bankenkommision*, the Swiss federal agency in charge of banking supervision, filed four successive complaints against the *Kredit- und Verwaltungsbank Zug*, a small financial institution, about charges of fraud, embezzlement, falsification of documents and unlawful business practice.⁸ The first investigation was terminated after more than three years: the intent of the false accounting was not proven; the senior bank managers were not convicted, as the falsification could have happened negligently. Subsequent investigations, as the fraudulent practices continued, showed a similar pattern: the bank managers appealed against the initial sanctions of the agency, as part of a deliberate delaying tactic. Furthermore, the investigating judge in charge of the case was a police magistrate, unfamiliar with financial matters, as he was mainly dealing with traffic violation cases.⁹ Although the canton Zug was developing since the 1920s into a cantonal tax haven, attracting business and residents, the judiciary was still unable to cope with economic delinquency (Orsouw, 1995). In 1964, the Zug justice finally delivered its verdict: the civil investigation was dismissed, but the defendants (the board members of the bank) were also indicted on criminal charges. However, at the time of the verdict, the limitation period of violations of the banking law had expired. The suspected criminals were set free, and the liquidation of the bank led to financial losses for depositors.

The second example occurred a few years later, in spring 1965. The Muñoz affair, called by *Time Magazine* 'one of the worst scandals in the annals of Swiss banking', broke out.¹⁰ Media reports revealed that two middle-sized Swiss banks, the *Banque Suisse de Commerce et de Crédit* in Geneva and the *Schweizerische Spar- und Kreditbank* in St. Gallen, had been taken over by a Spanish businessman, Julio Muñoz, in 1956 and 1962 respectively. Both banks went bankrupt in 1965.¹¹ In 1965, Muñoz was involved in two judicial investigations. First, he was mentioned as the party responsible for corrupting the President of the Swiss Federal Banking Commission, Max Hommel. As the investigation showed, Hommel was on Muñoz's payroll for 18 months, as financial adviser. The preliminary investigation was closed in September 1967: both the corrupted and the corrupter were cleared, as it could not be proven that the financial mandate had resulted in undue economic advantage. Second, Muñoz was the subject of a complaint on suspicion of business fraud and disloyal management (*Betrug, gewerbsmässiger Betrug* and *ungetreue Geschäftsführung*). After being arrested in Zurich and spending five days in prison, Julio Muñoz was released on bail (1 million Swiss francs!) and fled to Spain. The first reaction of the defendant was to accuse the banking supervisors of false allegations, thus delaying the handling of the initial complaint. Then, Zurich and Geneva courts fought over the jurisdictional competence of the case. In September 1966, the Swiss Supreme court ruled that the Geneva Judiciary was in charge of addressing the complaint. Thereupon, the case was handed over to three successive investigating judges for various reasons (illness, reappointment, lack of resources) between 1966 and 1969. The investigation was also obstructed by the attitude of the defendant, Muñoz, who ignored all the court summons. In August 1974, the procedure was 'in a more than stationary state, [...] in a total stalemate'.¹² In 1975, when media reported the upcoming expiry of the 10-year limitation period for the offenses, a parliamentary inquiry at the Geneva cantonal parliament shed some light on the dilatoriness of the justice on this case.¹³ The cantonal government was forced to admit that the judiciary was overburdened and lacked the resources to move

the case forward: the lawsuit was so complex that it would have been necessary to assign an investigating judge and a substitute to the Attorney General working full time for a whole year, which was impossible with all the remaining pending criminal cases.¹⁴

Eventually, the case was closed in December 1978 by the Geneva Attorney General. It turned out that a settlement had been reached between the civil parties: Muñoz agreed to pay a compensation of 3 million Swiss francs to the remaining prejudiced creditors of the bank.¹⁵ Besides, more than 15 years after the commission of the offenses and 13 years after the initial complaint, all the fraud offenses were prescribed.

Both the 1959 case of the Zug bank and the 1965 case of Muñoz developed a similar mechanism. Senior bank officials were charged with fraud, embezzlement and criminal mismanagement. The Banking supervision state agency was the plaintiff in both cases. Both times, the defendants used different legal methods (appeals, defamation complaints), in order to delay the judicial processing of the cases. Both times, the judiciary was inefficient to handle the cases competently: in Zug, the judges lacked the necessary business knowledge and training; in the Muñoz case, cantonal courts first contested the jurisdictional competence and tried to avoid the case in a buck-passing strategy. Both times, those deficiencies in the judicial processes favored the interests of the suspected criminals, since the statute of limitations had passed for all the offenses committed.

In addition to the dysfunctions exposed in the two above-mentioned examples, the management of the growing issue of economic crime by the Swiss judicial enforcement authorities prior to the 1970s was also deficient in other respects. Legal scholars and contemporary experts identified four different aspects of inadequate management within the judiciary (Schubarth, 1974, pp. 396–406).¹⁶

First, it appeared that information management on economic crime was poor. Even in a canton like Zurich, considered the Swiss spearhead of the modern fight against economic crime, a special register recording the people, companies and commercial paper involved in economic crime cases, was still lacking in 1968. Some first suggestions for the setting up of such a centralized register, run by an information office within the cantonal police, were made in Zurich in 1968.¹⁷ A major loophole was expected to be closed by registering the relevant information on economic crime properly. While such a centralized information office was not even working within a cantonal jurisdiction, intercantonal or national information sharing was even more incipient.

Second, at least in political discourse, cantonal and federal authorities used a pass-the-buck tactic to blame each other for the difficulties in the fight against economic crime. Of course, federal authorities had always been reluctant to take the lead in centralizing legal jurisdictions at the federal level, as the judiciary organization, in the Swiss legal order, lies with the cantons. The creation of a centralized agency in charge of economic crime within the Office of the Prosecutor of the Confederation (*Ministère public de la Confédération*) was vaguely mentioned in the 1970s.¹⁸ But very soon it raised suspicion, among representatives from the cantons, of strengthening the growing trend towards federal centralization and was quickly dropped. Ultimately, the Confederation obtained additional powers in the judicial processing of economic crime in 2002. More surprisingly, the pass-the-buck strategy was also used the other way around: cantonal politicians rhetorically required a –very unlikely– intervention of the Confederation to support the cantonal efforts.¹⁹

Third, before the 1970s, investigating and prosecuting authorities did not have easy access to experts with business competences. Indeed, even in a canton like Zurich, there was no permanent staff with commercial or accounting training available within the judiciary.²⁰ Experts were commissioned on request, on a case-by-case basis. The main drawbacks of this situation were that external experts were difficult to find, and, above all, that those external specialists intervened at a late stage of the investigation²¹ (Lemmenmeier & Straumann, 2017). Their reports and recommendations could take even longer to be produced, which implied important delays in the inquiries, to the benefit of the offenders.

Fourth, the issue of how and when to release information to the public was addressed inconsistently. Niklaus Schmid – at the time an investigating judge in Zurich – revealed that public relations practices by the prosecution were still improvised and sometimes delicate (Schmid, 1970). On the one hand, calling for press conferences and warning the public could prevent the fraudulent party from fooling more investors into their scheme. On the other hand, it could lead to bank panic and have adverse effects for potential victims. As a result, disclosure of information to the general public about ongoing investigations was made with great caution.²²

As the first international studies on the judicial response to white-collar crime have shown, the deficiencies identified in the Swiss case were also widespread among other European and western justice authorities (Baer & Gottlieb-Duttweiler-Institut für Wirtschaftliche und Soziale Studien, 1972). But this inadequacy had broader consequences in Switzerland because of the international entanglement of its financial center and the global dimension of the financial transactions it hosted.

4. Professionalization and specialization: new responses in the judiciary organization in the fight against economic crime during the 1970s and 1980s.

In the course of about twenty years, roughly between 1970 and 1990, the administration of investigating and prosecuting economic crime in Switzerland changed significantly. This section will proceed chronologically and geographically, examining consecutively the situation in Zurich and Geneva.

4.1. Zurich

During the postwar era, Zurich developed into a major business hub for multinational corporations; US companies in particular set up many subsidiaries serving as regional headquarters providing direct access to Swiss banking services (Leimgruber, 2015; Müller, 2008). In 1971, the failure of two financial institutions, the *AG vormal Schweizerischer Creditorenverband* and the *Zentrum Bank*, which led to losses for over 22,000 small savers, sparked the initial political debate about a more efficient fight against economic crime.²³ But the reply from the cantonal government consisted in expecting a more stringent banking supervision with the upcoming amendment of the federal banking act in 1971 and in advising small savers to make more conservative investments, in so-called savings books. In other words, no change in the judiciary or in the legislative approach was then considered necessary.

As a matter of fact, a first step had already been taken in 1970, when the cantonal Justice department had obtained from the cantonal parliament the increase of the number of district attorneys (in the Zurich District) from 25 to 30.²⁴ This rise was justified by the increasing workload, which was due to the economic crime cases, considered particularly burdensome. Between 1964 and 1969, the average investigation length had extended from 85 to 116 days. The five new positions were accepted by the parliament without discussions.²⁵

In November 1974, the issue was again discussed in the cantonal parliament. Hans Oester, member of the Evangelical party, tabled a motion for strengthening measures to combat economic crime.²⁶ The high risk that white-collar criminals never face a court of justice due to the statute of limitations, and the undermining of public trust in the justice system and in the legal order, were seen as major social threats. The political debate in the Zurich Parliament was lively: the liberal representative Hans Georg Lüchinger highlighted that the good reputation of Zurich as a worldwide economic and financial center was at stake, as well as the danger of small savers getting swindled out of their savings. Despite ideological differences regarding the role of free-market economy and the greed for profit in the spread of economic crime, the majority of parliamentarians agreed on the inadequacy of the lay jury court (*Geschworenengericht*) to judge economic crime cases. The Zurich government also agreed with the idea of abolishing the lay jury for complex economic cases, but was facing technical judicial problems enforcing this change. As a result, a new expert committee was appointed, and produced a revised bill of criminal procedure code, submitted in December 1975.²⁷

Meanwhile, growing pressure in favor of a more efficient judicial treatment of economic delinquency was building up among civil society as well. In the spring of 1976, a free gazette (mainly an advertising newspaper), the *Züri Leu*,²⁸ succeeded in collecting enough signatures from Zurich citizens for a cantonal popular initiative regarding 'a better prosecution of economic crime'.²⁹ More precisely, in less than 6 weeks, 8800 people (while 5000 was the minimum required) signed a popular initiative that asked to put to a vote two proposals. Firstly, it requested the attachment of an 'economic department' (*Wirtschaftsabteilung*) to the Zurich District attorney offices. This department would be in charge of prosecuting economic crime cases for the whole canton, and would include business and accounting specialists. Secondly, it demanded the inclusion of a 'chamber for economic offenses' (*Wirtschaftsstrafkammer*), consisting of supreme court judges and economists, to the Zurich supreme court. This chamber would function as the single authority for accusations of fraud, deception, embezzlement, disloyal management or falsification of documents.³⁰ The initiative committee who supported the proposal represented a broad spectrum of local and national politicians: nearly every political party participated.³¹ The most active members of the committee seemed to be Werner Leutenegger (Swiss People's Party, conservative), Hans Georg Lüchinger (Free Democratic Party, liberal) and Hans Oester (Evangelical People's Party, christian democratic). The more established Zurich press considered the entire process as a publicity campaign for the politicians involved, rather than a serious legislative work.³² Others regarded the initiative as a political move directed at the socialist Head of Justice department Arthur Bachmann (1922-1983).³³ However, it was unusual, in Swiss political standards of the 1970s, that a media company, rather than a political party, launched an initiative. Furthermore, collecting citizens' signatures for a popular initiative on a topic such as justice administration organization was an unconventional way of policy-making. At international level, popular

referenda on how to improve the fight against white-collar crime were (and still are) probably very uncommon (Schmid, 1980, p. 201).

As a matter of fact, the Zurich government criticized the whole process, deeming it unnecessary. Head of justice department Arthur Bachmann reacted negatively, saying that the initiative was 'pushing at an open door', since the main proposals were already put forward by the government and were about to be accepted.³⁴ Indeed, in March 1976, a few weeks before the start of the public campaign by the free newspaper *Züri-Leu*, the Justice Department had put forward a change in the judiciary organization: a special service for economic crime was to be created within the public prosecutor's offices. The government accepted this proposal on 5 May 1976, while the collection of signatures was still ongoing. The *Wirtschaftsabteilung der Bezirksanwaltschaft Zürich* began its activities in July 1976 (Schmid, 1980, p. 202).³⁵ A first milestone towards an improved response to economic crime had been reached.

In the fall of 1976, the Zurich government presented a double bill that adopted the principles of the popular initiative. A constitutional amendment and simultaneously a legislative change in the Judicature Act was proposed, in order to withdraw the judgment concerning economic crime offenses (fraud, deception, embezzlement, disloyal management or falsification of documents) from the lay jury court and to transfer it to the Supreme court (made exclusively of professional judges).³⁶ The Jury court was seen as inadequate for handling economic crime cases, because the participating lay judges were lacking the required expertise for a competent judgment. Additionally and above all, the court was considered inadequate because such cases involved lots of documents (rather than oral testimony) and the lay jury would be overburdened by the study of files. As a result, the lay jury was often unable to handle such cases in due time; in 1976 three cases of economic crime occupied the lay jury during 80 out of 117 meeting days.³⁷

The bill was accepted by the cantonal parliament in March 1977.³⁸ In the direct aftermath, the initiative committee withdrew the popular initiative, considering that its goals had been achieved with the governmental bill. However, as this bill entailed a constitutional amendment, a referendum still had to be organized. On 25 September 1977, Zurich citizens were called to the polls to approve the double bill. The campaign leading up to the vote was very calm. No political party or association officially opposed the bill. The vote result was explicit: both proposals were accepted by an overwhelming majority.³⁹ This was no surprise: who would block requests in favor of a more efficient fight against economic crime? The reforms were widely seen as necessary. Press comments in the fall of 1977 also pointed to the fact that this reform was only a small step in the right direction: the improvement of the court proceedings would remain useless, if the investigating and prosecuting authorities were not able to bring cases to trial, and if the substantive law was not tightened to grasp economic criminality.⁴⁰

The next stage in the specialization of the judicial response to white-collar crime occurred in March 1978. The cantonal parliament accepted a proposal to raise the number of Supreme court judges from 31 to 35.⁴¹ The increase of Supreme court judges in the postwar era had been slowed down in the preceding 15 years.⁴² With the transfer of economic crime cases to the Supreme Court, raising the number of judges was seen as the logical consequence, despite the significant cost factor for the cantonal budget. Indeed, it should be highlighted that the authorities were faced with a fundamental funding problem when trying to increase the resources of prosecution agencies and courts. Archival

evidence shows that the justice system had to cope with limited funds, and have every new position approved by the cantonal parliament. As a result, taxpayer's money was the main source of funding for the justice system, while economic sanctions imposed on offenders were not significant as a means to increase the capacities of the judiciary⁴³ (Ruback & Bergstrom, 2006).

Following the appointment of four new judges in September 1978, the Supreme Court also undertook an internal reorganization. Although a formal chamber specialized in economic crime was not created, 3 judges from the 1st criminal division (*1. Strafkammer*) were explicitly assigned principally for economic crime cases.⁴⁴ Even though it had no formal acknowledgement, this section of the Supreme court was unofficially called the *Wirtschaftsstrafkammer*.

In summary, the organization of the Zurich Judiciary underwent significant modifications with regard to the response to economic delinquency during the phase 1975-1979. In less than four years, important changes led to creation of specialized units at three levels.

First, at the level of investigation, a special group within the cantonal police force had been created as early as 1965 (Hauri, 1984, p. 149). First called the *Spezialabteilung 1* and part of the Criminal police, the unit included a team specialized in fraud and economic offenses. In 1976, the group was formalized and became an official service. While it consisted of only 7 police officers in 1965, the unit grew and by 1984 the staff included 18 people (director, deputy, 15 officers and 1 accountant) (Hauri, 1984, p. 150). Second, at the level of prosecution, as mentioned above, an economic crime department (*Wirtschaftsabteilung*) was created within the Office of the District attorney Zurich in 1976. Although formally hosted at the District level, the jurisdiction of the economic crime department extended to the entire canton.⁴⁵ By 1984, the department consisted of 2 state prosecutors (*Staatsanwälte*), 9 specialized district prosecutors (*Bezirksanwälte*), 1 auditor, and a suitable secretariat (Schmid, 1985, p. 179). The new organization seems led to a shortening of the duration of prosecution: in 1978 cases had an average length of investigation of 35 months, while in 1984 this figure had dropped to 17 months (Schmid, 1985, p. 162).⁴⁶ Third, at the level of court organization, an informal criminal division for economic offenses (*'Wirtschaftsstrafkammer'*) was created within the first Criminal division of the Zurich Supreme Court (*Strafkammer 1 des Obergerichtes*) in 1978 (Schmid, 1985, p. 155). It consisted of 3 judges (including one vice-president of the Supreme Court as head). During its first six years of activity (1978-1984), it passed 98 judgments against 151 defendants (Schmid, 1985, p. 157).⁴⁷

In just a few years, at three stages of judicial response – investigation, prosecution, judgment – the canton Zurich created or improved specialized units in fighting economic crime. Police officers, public prosecutors and judges were growingly assisted by business and accounting experts, and the legal proceedings were also adapted in order to make lawsuits against white-collar criminals more effective. However, international judicial cooperation with foreign judges was still complicated, essentially because of the legal obstacles that prevented Swiss prosecutors to obtain and share information with their foreign counterparts as part of a foreign investigation. The changes made in Zurich were mainly aimed at improving and speeding up legal procedures involving local fraudsters. Large international judicial investigations regarding suspicious business activities using Zurich as a playing field were still difficult to conduct.

4.2. Geneva

As seen in the previous section in the example of the poor handling of the Muñoz case by the cantonal justice (1968-1978), Geneva was also facing problems in the judicial response to white-collar crime. The regular occurrences of cases in which the suspected criminals of fraud or embezzlement escaped sentencing because the justice authorities (prosecution or judgment) were delayed or unable to provide sufficient evidence sparked public reactions.

In addition to the Muñoz case, the acquittal of Bernard Cornfeld (1927-1995) in October 1979, who was arrested in Geneva in 1973 as the main responsible for the Investor Overseas Services (IOS) collapse – a globally active fraudulent investment fund –, should be cited as an example of case that provoked public outrage (Perrenoud, 2016). IOS sold mutual funds to small investors in the 1960s, using its Geneva headquarters to provide both low-regulated and confidential business environment and a seal of financial respectability. In spring 1970, as the company was allegedly managing 2.3 billion dollars in funds, the IOS pyramid scheme collapsed. A majority of international investors (including an important share of Germans) lost their savings entirely. The inability of the Geneva justice to prosecute and sentence Bernard Cornfeld was not only a national, but mostly an international concern. In the fall of 1979, press comments on the incapacity of the justice system to go after white-collar criminals multiplied. The Geneva courts were poorly equipped to face this type of financial investigation, neither the training nor the technical abilities offered by computer science were available to judges and police (Cuénod, 1999, p. 171). The IOS-Cornfeld case showed that the deficiencies of the domestic justice system not only affected local residents, but mostly concerned deceived foreign investors. It highlighted the gap between the means and objectives of the local justice systems, who were accountable to the local citizens, and the resources and international ramifications of the judicial cases investigated.

Niklaus Schmid, a legal expert on white-collar crime in Switzerland, also expressed strong criticism of the handling of economic crime by the Geneva justice. It 'has obviously fallen behind considerably in the prosecution of economic crime', as shown by other cases, such as *SOGEFIC* and private banker *Leclerc & Cie* (Schmid, 1980, p. 207). One of the main reasons for the considerable delays was the limited resources of the judiciary. As the governmental reply of April 1975 already highlighted: the number of prosecutors had not increased since 1966.⁴⁸

Archival sources confirm the gradual development of public prosecutors and judges within the Geneva judiciary between 1940 and 1986.⁴⁹ It shows that the number of magistrates of the *Pouvoir judiciaire* in Geneva is marked by a slow but steady increase during the postwar era. From a low of 25 magistrates in 1942, it reached 40 in 1968, then 56 by the end of the 1970s. However, this figure includes the judges from every jurisdiction of the cantonal judiciary (Court of justice, Court of first instance, Administrative Court, Investigation and prosecution department, juvenile Court, etc.). The share of those magistrates who were assigned to the investigation and prosecution department (*Instruction*) – the investigating judges who were actually in charge of prosecuting, among other tasks, economic crime – was much lower: it grew from 3 (1940) to 7 (1966), before reaching 12 in 1983.⁵⁰ Another reason that could explain the inefficiencies of the prosecution in Geneva is the fact that there was a high staff turnover rate. Some junior positions at the Attorney general offices (*substituts du procureur*) were typically offered to unexperienced lawyers, as their first work experience within the judiciary, who left after only a few years in office.

Despite the lack of institutional specialized sections, the Geneva authorities still reacted to the problems brought to light by economic crime cases of the 1970s.⁵¹ In April 1977, a revision of the Geneva Judicature act (*loi sur l'organisation judiciaire*), consisting in an allowed increase of the number of investigating judges from 9 to eventually 15, was adopted by the cantonal parliament.⁵² The report explicitly stated that in the Investigation Department, financial cases were 'extremely complex', required 'in-depth studies' and 'thorough examinations of extensive documentation'. The increase was further justified by an intercantonal comparison: a Geneva investigative judge was conducting as much as 100-130 investigations per year, while his colleague in Zurich was only examining 40 cases yearly.⁵³ In Geneva, the number of cases handled by the Investigation Department rose from 3760 in 1970 to 5089 in 1975, and a large share of this increase was due to economic crime cases (Schmid, 1980, p. 208).

In May 1983, the will to reform was also expressed by representatives of the judiciary. The president of the Court of 1st instance shared his concerns regarding the growth of the workload of justice authorities – coupled with the stagnation of human resources – with the head of the cantonal government.⁵⁴ While the number of cases dealt with had increased by 40% since 1977, the number of judges remained the same. The judge continued: 'In such a situation, it will not come as a surprise to you that my colleagues and I are tempted to give in to discouragement and to question ourselves about the real will of the other powers of the State to give the judiciary the means to properly exercise its powers'. He also points at 'the absence of any long-term policy in favor of ad hoc adjustments, which only rectify in hindsight situations that have become unbearable'. Those complaints point at the tensions that could arise between the judiciary and the executive with regard to the adequate judicial capacity. In the context of the rigorous budgetary policy resulting from the neoliberal orientation advocated in Switzerland during the 1980s, any budget overspending was hard to implement (Guex, 2012, pp. 1117–1124). The lack of any computer data processing system within the judiciary was also seen as a major obstacle to efficient work.

In parallel, in 1983 as well, a small informal group of judges (4, then 7) was created within the Investigation Department called the *section financière*. It specialized in financial cases and international mutual legal assistance. But this group was disbanded by its members in 1989. They considered that this structure was no longer adequate and efficient.⁵⁵

A further step was taken in the late 1980s: the hiring of accounting analysts. At first, they were appointed occasionally, were administratively employed by the Bankruptcy office and could only provide technical assistance.⁵⁶ In 1989, one permanent accounting expert position was finally budgeted. This measure was strongly advocated by the members of the *section financière* who wished to hire accounting and financial staff to remedy a series of deficiencies.⁵⁷ For example, from the judges' point of view, accounting experts could be very useful to quickly identify the perpetrators of fraudulent acts that hide behind financial entities and shell companies. Another request for improvement concerned the extension of the premises and enhance the storage of evidence; indeed, financial cases involved considerable amounts of binders and documents of all kinds.⁵⁸

In May 1989, the right-wing majority Geneva government gave a brief account of the issues that were at stake with the inefficiency of the Investigation Department:

The spectacular development of the Geneva financial center, while providing undeniable advantages to certain segments of the population, has at the same time produced perverse effects, not the least of which is a marked increase in white-collar crime. However, white-collar

crime has much more sophisticated instruments than those used by the courts to fight it. If we want to safeguard the credibility of the judiciary and, beyond that, the citizens' confidence in the authorities, it is imperative not to drift towards what would not fail to appear as a class justice, prompt to punish offenses committed by petty criminals, but unable to pursue serious economic crime, for lack of means.⁵⁹

Tensions between the success of Geneva as a financial center and what was seen as undesirable side effects of this development were surfacing. However, during a first phase (1970s-1980s), the judicial response to growing white-collar crime in Geneva was marked by a few isolated calls in parliament and requests for improvement by overwhelmed judges. Although structural deficiencies in the organization of the judiciary were identified by the justice administration during the 1980s, tangible changes were limited. A few extra investigating judges were appointed, and an accounting expert was hired in 1989.

The popular election of a new Attorney general (*procureur général*) in the spring of 1990 created the conditions for a decisive step in the fight against economic crime. Following a proper electoral campaign, the socialist candidate Bernard Bertossa (1942-) was elected by Geneva citizens, with 54% of the votes, versus 46% for his christian-democrat competitor, Jean Maye (1929-2011).⁶⁰

This election was a local specificity and a rare moment for two reasons. First, because the position of *Attorney general* is a unique feature of the Geneva justice organization. He performs his duty with complete independence and does not receive instructions from the executive branch; his competence is not limited to penal law, he is allowed to intervene before every jurisdiction; he is able to shape the criminal policy by establishing priorities.⁶¹ Second, the Attorney general is by constitution elected by the citizens every six years (since 1904). In actual fact, the organization of an electoral poll was rather rare, because the election was tacit: an inter-party committee negotiated and agreed on the candidates for the various judges' positions, in proportion to the parties' electoral representation in the cantonal parliament (Marti, 2012, pp. 289–308). A popular election was only organized if the political parties could not reach an agreement on the candidates and two competitors competed for a position. In 1985, when the incumbent Attorney General Raymond Foex resigned because of illness, his successor Bernard Corboz did not wish to assume the function in the long term. He resigned in 1989, and the position was vacant for the 1990 general elections. The socialist party decided to have a counter-candidate running, in order to break the right-wing parties' hegemony over the Attorney general position (Bertossa, 2009, p. 47).

During the electoral campaign, Bernard Bertossa argued in favor of an improved response to white-collar crime under the slogan 'for equal justice for all' (*pour une justice égale pour tous*). He promised a criminal policy consisting in a strict enforcement of the law, including economic offenses, that had been neglected by the justice in his view. Bertossa wanted to break the vicious circle that led to impunity in economic crime, particularly fraudulent bankruptcies that remained unprosecuted and thus unpunished.⁶² His election promises during the campaign focused on improving the means needed to fight the crime of the powerful, i.e. financial crime (Bertossa, 2009, p. 50). A whole chapter of his program was about the need to strengthen international mutual assistance.

The fact that Bertossa had been elected by the people on those promises, rather than tacitly elected by a committee, gave him and his actions a greater legitimacy. In the years following his election, some reforms were undertaken in the organization of the Judiciary.

In the spring 1990, the number of investigating judges (*juges d'instruction*) had increased from 12 to 15.⁶³ Furthermore, the *collège des juges d'instruction* had been reorganized, with the setting up of a department for complex cases (*section des affaires complexes*), consisting of 4 specialized judges, to whom are assigned complex cases of economic nature.⁶⁴ Within the police force, a 'dirty money' unit, attached to Financial Brigade had also been created in 1988 and strengthened in the following years in the field of money laundering and organized crime.⁶⁵ In May 1991, in a revision of the Judicature Act, two new positions of prosecutors, directly attached to the Attorney general offices were created.⁶⁶ Those prosecutors were explicitly appointed to specialize in 'complex', economic or financial crime cases. Unlike the deputies to the Attorney general (*substituts*) who usually spent only a few months in office before finding a more senior position – which meant that the magistrate who opened an investigation was rarely the one who conducted prosecutions before the Court, leading to inefficient handling of the cases–, the new prosecutors were expected to provide permanent and specialized support to the Attorney general. Finally, reforms were taken in order to facilitate the employment of financial experts. By 1996, 3 accounting analysts had been hired by the Investigation Department of the Geneva Judiciary.⁶⁷ In addition to those experts employed as permanent staff, Bertossa also fostered the introduction of a network of external experts from the banking sector.⁶⁸ In that sense, the socialist Attorney general could count on the partial support of some important actors of the Geneva financial center, who welcomed the steps he had taken. The worldwide reputation of Geneva as a global financial center was at stake, and the law-abiding bankers were willing to give the justice the means to clean up the financial sector (Bertossa, 2009, p. 54). Corporate reputation of international financial firms was important enough to business leaders to provide some assistance to the newly elected left-wing Attorney general. It should be noted here that corporate reputation gradually became an essential issue in modern business as a means of insuring responsible behavior.⁶⁹ This is particularly true in the financial sector, which historically relied on trust and the perception of reliability of the counterparties involved. The banking sector is highly vulnerable to reputational damage, as it is linked to perceived (or proven) impairment of the financial soundness (Harvey & Lau, 2009). In this context, protecting the corporate reputation of Swiss banking, by slightly improving the capacity of the justice system in economic criminality, was seen as beneficial in the long run.

Beyond these organizational and institutional reforms, the election of Bernard Bertossa at the head of the Geneva justice administration marked a shift in the criminal policy. In accordance with his electoral program, he implemented a more rigorous approach in response to white-collar crime. He embodied a stronger political will to open more criminal investigations and carry out more prosecutions of economic crime cases. His office fostered vocations, and the newly appointed prosecutors formed a team which targeted financial crime cases. In particular, the Geneva Judiciary became more prone to actively execute international mutual legal assistance and to foster international judicial cooperation (Cuénod, 1999).

It seems that justice authorities in Geneva and Zurich had diverging views on what the expression 'economic crime' should include. In Zurich, in the late 1970s and early 1980s, *Wirtschaftskriminalität* was mainly seen as a local phenomenon, consisting in fraudulent activities, such as the establishment of numerous bogus companies in order to attract creditors assets. The justice administration had a rather restrictive definition of what kind of criminality the specialized units they had set up should tackle. In Geneva,

in the early 1990s, the fight against 'serious crime' (*grande criminalité*), financial and economic crime, had a more international dimension. Geneva justice administration became an active and vital link in the international efforts against money laundering, organized crime, international corruption. The *Appel de Genève* in 1996, supported by Bertossa, is an example of this globally oriented concern (Paris, 2006). Signed by 7 European lawyers, this declaration was aimed at alerting governments and public opinions to the archaism of European judicial organizations and to denounce financial fraud and tax havens.

Furthermore, there were institutional differences between Zurich and Geneva. Facing similar problems, both cantons took different approaches in the fight against economic crime. In Zurich, the issue was tackled earlier and with an emphasis on specialized investigation, prosecution and judgment authorities. In the course of four years in the late 1970s, such specialized units were set up at three different levels. Those changes were also made under the pressure from civil society, as the 1976 popular referendum shows. However, it seemed that Zurich justice authorities considered the phenomenon of economic crime as a mainly local issue, and that they were less willing to open and conduct large international investigations, or to actively support requests for mutual international legal assistance. In Geneva, in a first phase, economic crime was dealt with intermittently and without formalized specialization. It was only after a change at the head of the Judiciary in 1990 that a strong-willed criminal policy against economic crime was adopted. The team put together was determined to follow an active prosecution policy against financial crime and its international ramifications.

In summary, Geneva reacted later and took slower steps in the reorganization of the prosecution and judgment authorities, but on the other hand, there was a clearer will to contain the growing international financial crime, by destabilizing the financial circuits quietly used by dirty money (Bertossa, 2009, p. 51). This tougher stance, compared to the situation of Zurich in the late 1970s, was also made possible by the evolution on the legislative level: the first anti-money laundering regulations came into force in the early 1990s, giving the justice additional capacity to fight financial crime.

The comparison between Zurich and Geneva finally shows that institutional inertia and political factors play a decisive part in the way authorities responded to white-collar crime. The original impetus for the reforms of both justice system was given by the strong sense of impunity deriving from the poor outcome of various economic crime cases which received a lot of media and justice attention. Yet, in a context of strong federalism and direct democracy, the concerns were addressed reflecting the specificities of local administrative complexity. Also, the response to economic crime in both cantons was shaped by the use of direct democracy instruments. In that respect, I identify a Swiss specificity in the handling of white-collar crime: a highly technical process of justice administration becomes a political discussion among citizens. Calling voters to the polls to approve a referendum on white-collar crime (as in Zurich) or to elect an attorney general campaigning on similar issues (as in Geneva) highlights how the justice administration system is a direct social and political concern.

4. Conclusion

During the 1970s, a period marked by the end of the postwar economic boom and widespread prosperity, white-collar crime became a social and political issue in Switzerland, as

in other developed countries. Drawing on prior experiences made in West Germany, Swiss legal experts and policy-makers engaged in discussions on how to reform the legal framework, and, more importantly, how to improve the investigation, prosecution and judgment of economic offenses. More broadly, the difficulties of criminal justice intervention against economic crime were perceived as one of the main shortcomings of liberal capitalism, undermining it from within.⁷⁰ Lawyers and litigants shared a feeling of embarrassment, either because victims were unaware of the crime committed, or because the damages stroke victims who had no interest in going to court for fear that their own irregularities and greed for profit would be unveiled. Judicial authorities also felt powerless, because borders had opened up to individuals, that is to say also to delinquents, whereas they remained often closed to police and judges. The fact that economic offenses – for various reasons – are more difficult to detect and to sanction, was one of the main triggers that led Swiss authorities to bring about a change in the judicial response to white-collar crime.

Why did Swiss judicial and political authorities proceed with the administrative reform of the legal fight against economic crime? The immediate causes lay in the growing awareness that the existing institutional setting of the judiciary was inadequate to grasp white-collar criminality. As the Swiss Minister of Justice put it, it was appalling that a bicycle thief was easily caught, sentenced and sometimes even expelled from the country, whereas a fraudster who committed much more serious crimes on an international scale was able to walk free.⁷¹

Yet, in addition to those immediate causes, the administrative changes occurred under the influence of underlying and structural factors. The judicial reforms in Switzerland during the 1970s should be seen in a broader context. On the one hand, the transformations represented a zeitgeist of the time. More globally, white-collar crime became a scholarly researched criminological field and was also widely discussed in multilateral arenas such as the Council of Europe. On the other hand, the response of Swiss authorities to the challenges of economic crime was profoundly shaped by the specific position and the important international role of Swiss finance within the world economy.

The 1970s represent a pivotal moment in the larger history of modern global finance. Paradoxically, the world witnessed on the one hand, two energy crises (1973 and 1979) as well as a series of monetary crises that put an end to the Bretton Woods system (Altamura, 2017). On the other hand, those years were marked by the beginning of financial capitalism and saw the re-emergence of international banking, with private commercial banks replacing public institutions in the financial circuit. This global shift towards financialisation was accompanied by a deregulation of financial markets (Helleiner, 1994, pp. 123–168). The rise of offshore finance was a key component of those trends. And Switzerland, as a pioneering territory, was facing new competition from more recent tax havens, jurisdictions such as Bahrain, the Cayman Islands, Delaware, Hong Kong, Lebanon, Malta, the Netherlands Antilles, Panama and Singapore (Ogle, 2017). The Swiss financial center was running a risk, as explicitly asserted by a senior banking supervisor, of ‘placing [its] excellent reputation on the line [...] and being put on an equal footing with Liberia, Panama, the Bahamas or former Tangier’.⁷² Meeting competition from emerging offshore havens, Swiss bankers and authorities aimed to sustain a global reputation. Criminal or fraudulent behavior, which could be facilitated by the nondisclosure environment distinctive of Swiss banking, represented a serious reputational risk. The administrative reforms in the judiciary framed under the catchphrase ‘fight against economic crime’ contributed to this effort.

The shift from inadequate prosecution of financial crime to a more institutionalized judicial response resulted from a combination of domestic and international factors. On the domestic front, public authorities strove to address the growing concerns of local citizens and judiciary about the inefficiency of the justice system in white-collar criminality. Yet, at the same time, they were also indirectly producing a response to international criticism of the wrongful business practices hosted and facilitated in Switzerland.

The specific position of the Swiss financial center as a turntable for international capital made the issue of economic and financial crime even more relevant to both public authorities and business circles. Fraudulent acts involving Swiss financial institutions almost systematically had an international dimension. Either the offender(s), the victim(s) or the assets involved international stakeholders. Swiss magistrates often received requests for mutual legal assistance from foreign judges, for example in order to seize assets of a foreign citizen suspected of illegal behavior. The cooperative or uncooperative attitude of Swiss judges not only influenced the efficiency of the fight against local white-collar criminals, but also affected the ability to resolve international investigations.

In that sense, Swiss financial circles were torn between two conflicting interests with regard to the fight against economic crime. On the one hand, since a large part of their international activities relied on maintaining a business environment preserving strict confidentiality, legal and judicial reforms aimed at strengthening the power of prosecutors and judges, or at facilitating international legal assistance, were not welcomed. On the other hand, the influx of foreign capital into Switzerland also relied on the global reputation of its financial center, seen as particularly solid, stable and trustworthy. An outbreak of white-collar crime would have represented a major threat to this good reputation.⁷³ In that respect, financial institutions also favored measures that would help judicial authorities to clean up the financial center from unlawful competitors. The willingness of financial circles to support, tolerate or oppose steps taken by public authorities to improve the fight against white-collar crime depended on their weigh-up between those two conflicting interests. Further research on the watershed moment of the 1970s and 1980s might shed some light on the close and ambiguous links between the evolution of the judicial setting and the development of the financial sector.

Notes

1. Eighth Conference of European Ministers of Justice, Lidingö (Sweden), 14-15 June 1973, Conclusion of the Conference, p. 8-10.
2. The few countries mentioned in this paragraph (Germany, Sweden, United Kingdom) do not represent an exhaustive list of European cases, but merely offer examples of institutionalization of the judiciary targeting white-collar crime.
3. Council of Europe, Committee of Ministers, *Recommendation no. R (81) 12 of the Committee of Ministers to Member States on Economic Crime* (Adopted by the Committee of Ministers on 25 June 1981 at the 335th meeting of the Ministers' Deputies).
4. The conference was headed by Prof. Dr. Heinz Langen, German auditor and tax adviser. The conference title was "Wirtschaftskriminalität" in German, and, interestingly, "la fraude commerciale" in French. Prof. Dr. Armand Mergen, or Swiss experts Niklaus Schmid and Willi Ulrich were among the presenters. A conference report was published in 1972: Baer and Gottlieb-Duttweiler-Institut für Wirtschaftliche und Soziale Studien, *Wirtschaftskriminalität*.
5. Swiss National Bank, *Das Schweizerische Bankwesen im Jahre*, corresponding years.
6. In addition to Zurich and Geneva, the analysis of the evolution of the judiciary in the Italian-speaking canton of Ticino would be worthwhile. Starting in the 1950s, Ticino (and mainly

- Lugano) became an important financial hub, marked by massive influx of Italian (mostly undeclared) capital.
7. Joseph Voyame, direktor der Justizabteilung, *Protokolle der Konferenz der kantonalen Justiz- und Polizeidirektoren*, 06-07.11.1975, pp. 17-18. All the quotations are translated from German or French by the author.
 8. The failure of the Kredit- und Verwaltungsbank Zug, and the flaws in the supervision by the Federal Banking Commission it revealed, are analyzed in Giddey, *Histoire de la régulation des banques en Suisse (1914-1972)*, (2019) 359–70.
 9. Swiss Federal Archives, E 6250(A), 1000/1059, vol. 11, Minutes of the Federal Banking Commission, 29.07.1957, p. 108.
 10. « Switzerland. Banking Scandal », *Time Magazine*, 11.06.1965. See also Giddey, (2019) *Histoire de la régulation des banques en Suisse (1914-1972)*, 423–41.
 11. To make things worse, Julio Muñoz, mainly active in the textile industry, was also known as the wealth manager of former Dominican dictator, Rafael Trujillo. But his trouble with the Swiss law was not linked to this questionable business relationship.
 12. FA, E 6250(A), 1983/39, vol. 18, Minutes of the Federal Banking Commission, 12.08.1974, p. 240.
 13. *Mémorial du Grand Conseil*, Genève, Réponse du Conseil d'Etat à la question Jean Vincent du 23 janvier 1975 « Suites judiciaires de la débâcle de deux banques dont une genevoise », 18.04.1975, p. 1167-1169.
 14. *Idem*, p. 1168.
 15. "Krach de la BGCC. 3 millions versés : affaire classée », *Journal de Genève*, 16.12.1978
 16. In an interesting paper, legal scholar Martin Schubarth pointed in 1974 to other weaknesses of economic crime prosecution in Switzerland, for example decentralization at the cantonal level. Schubarth, 'Sind die sogenannten Wirtschaftsdelikte wirklich ein Problem?', 396–406.
 17. FA, Berne, E4322#1991/156#215* Wirtschaftskriminalität, Letter from the Bezirksanwaltschaft Zürich to the Polizeikommando Zürich, 15.11.1968.
 18. FA, Berne, E4110B#1988/166#148* Bekämpfung der Wirtschaftskriminalität, Note relative à la lutte contre la criminalité économique, de P-H Bolle à Kurt Furgler, 16.04.1975.
 19. Zürich, *Kantonsratsprotokolle*, 13.12.1971, p. 1249: Regierungsrat H. Künzi: "Bund und Kantone arbeiten auch in der Bekämpfung der Wirtschaftskriminalität eng zusammen. Der grösste Teil der Fragen, die in der Diskussion angeschnitten worden sind, müssen eidgenössisch geregelt werden."
 20. Staatsarchiv ZH, *Amtsblatt des Kantons Zürich*, 02.09.1971, 4850 (Polizeikommando).
 21. Moreover, in Switzerland, accounting professionals and auditing companies had traditionally close ties to the large commercial banks. Lemmenmeier and Straumann, *Vertrauen Als Mehrwert - 100 Jahre EY Schweiz*.
 22. The issue of the relevance of press conferences organized by the District attorney was also raised in a Zurich political intervention in 1965. *Grossratsprotokolle*, 13.12.1965, Interpellation Hans Frick, p. 2835-2839.
 23. *Amtsblatt des Kantons Zürich*, Interpellation Erwin A. Lang vom 30. August 1971 über Massnahmen zur Bekämpfung der Wirtschaftskriminalität, 09.12.1971, p. 1244-1249. On the *Schweizerischer Creditorenverband* and the *Zentrum Bank* cases, see also, Schmid, *Banken zwischen Legalität und Kriminalität*, (1980) 130–31, 139-140 respectively.
 24. *Kantonsratsprotokolle*, Beschluss des Kantonsrates betreffend die Erhöhung der Zahl der ordentlichen Bezirksanwälte der Bezirke Zürich und Uster, 23.11.1970, p. 5326-5329.
 25. *Kantonsratsprotokolle*, Interpellation Prof. Dr. Hans Oester - Zürich vom 25. November 1974 über eine Verstärkung der Massnahmen zur Bekämpfung der Wirtschaftskriminalität, 10.03.1975, p. 9471-9472. Two years later, in May 1972, a permanent position for a commercial expert at the District attorney offices, in order to assist the investigating officers in accounting and bookkeeping issues, was opened and filled.
 26. *Kantonsratsprotokolle*, Interpellation Prof. Dr. Hans Oester - Zürich vom 25. November 1974 über eine Verstärkung der Massnahmen zur Bekämpfung der Wirtschaftskriminalität , 10.03.1975, p. 9469-9483.
 27. *Amtsblatt des Kantons Zürich*, 1976, *Textteil*, 18.08.1976, p. 1343.

28. Established in 1967, the *Züri Leu* was the first free newspaper in Switzerland, consisting of and funded by advertisement, and owned by media company Jean Frey AG. It was published twice a week. It was taken over in 1982 by the *Tages-Anzeiger* daily.
29. Archiv für Zeitgeschichte, IB wf-Archiv II / 9623-9624 (Züri-Leu Initiative).
30. The text of the initiative was published in the newspaper who supported it (*Züri Leu*, 22.04.1976) and also on the Zurich official journal: *Amtsblatt des Kantons Zürich, 1976, Textteil, "Beschluss des Regierungsrates über die Veröffentlichung der Volksinitiative für eine besserer Verfolgung der Wirtschaftskriminalität"*, 30.06.1976, pp. 925-928.
31. The full list of the 18 initiative committee members is the following: Jack Bolli (1923-2003), tourism company CEO; Gion Condrau (1919-2006), CVP National Council member (=NC); Beat Curti (1937-), wholesale company CEO, also Züri Leu owner; Paul Eisenring (1924-2016), CVP NC; Walter Frey (1943-), car sales company CEO; Hans Ulrich Graf (1922-2010) Republican movement NC; Othmar Hüsey (1917-1997), FDP City Council (=CC); Hedi Lang (1931-2004), SP NC; Werner Leutenegger (1918-1977), SVP NC; Emilie Lieberherr (1924-2011) SP CC; Richard Lienhard (1919-2014), SP ; Hans Georg Lüchinger (1927-2009), FDP Canton Council; Werner Müller; Hans Oester (1931-), Evangelical Party, Canton Council; Jürg Ramspeck (1936-2017), Züri Leu editor; Heinrich Schalcher (1917-2006), Evangelical Party NC; Werner Schollenberger (Züri Leu editor); Sigmund Widmer (1919-2003), Alliance of Independants NC.
32. «Gegen die Wirtschaftskriminalität. Publizität mit einer Initiative», *Neue Zürcher Zeitung*, 23.04.1976.
33. «'Züri Leu' gegen Wirtschaftverbrecher», *Basler Nachrichten*, 23.04.1976.
34. «'Leerlauf der Demokratie'. Der Justizdirektor zur 'Züri-Leu'-initiative», *Neue Zürcher Zeitung*, 24-25.04.1976.
35. The new department was planned to eventually include 2 state prosecutors, 10 district attorneys, 2 auditors and 1 accountant.
36. *Amtsblatt des Kantons Zürich, 1976, Textteil*, 24.09.1976, p. 1337-1356. The Supreme Court (Obergericht), rather than the usual District Court (Bezirksgericht) was seen as the adequate judicial institution, because allocating competence to the District Court would have actually slowed down even more the trials, rather than accelerating them.
37. *Rechenschaftsbericht des Obergerichtes und des Kassationsgerichtes des Kantons Zürich über das Jahr 1976*, p. 43.
38. The social-democratic minority, although supporting the bill as did all the political parties, pointed at the contradiction between creating a new judicial department and maintaining a drastic hiring freeze of cantonal civil servants. *Kantonsratsprotokolle*, «I: Verfassungsgesetz über die Änderung von Art. 57 der Staatsverfassung; II. Gesetz über die Änderung des Gerichtsverfassungsgesetzes und der Strafprozessordnung; III. Volksinitiative für eine bessere Verfolgung der Wirtschaftskriminalität», p. 5458. The final adoption of the bill took place on 13th June 1977.
39. The constitutional amendment obtained 234 669 "yes" versus 51 053 "no"; the change in the Judicature Act obtained 289 855 "yes" ballots versus 27 860 "no". Participation: 51.5%. *Amtsblatt des Kantons Zürich, 1977*, p. 1233-1234.
40. «Für eine wirksame Bekämpfung der Wirtschaftskriminalität», *Neue Zürcher Zeitung*, n° 225, 26.09.1977.
41. *Amtsblatt des Kantons Zürich, Textteil, 1978*, Beschluss des Kantonsrates über die Zahl der Mitglieder des Obergerichtes, 06.03.1978, p. 527-528. *Rechenschaftsbericht des Obergerichtes und des Kassationsgerichtes des Kantons Zürich über das Jahr 1978*, p. 49-50.
42. The number of Supreme court judges evolved as follows: 1945: 22, 1946: 23, 1947: 24, 1948: 26, 1951: 27, 1965: 31. *Kantonsratsprotokolle*, Beschluss des Kantonsrates über die Zahl der Mitglieder des Obergerichter, 06.03.1978, p. 8581.
43. In this respect, the Swiss system differed considerably from the U.S. use of justice fees and fines.
44. *Rechenschaftsbericht des Obergerichtes und des Kassationsgerichtes des Kantons Zürich über das Jahr 1978*, p. 223. Ernst Bösiger (1921-2019), Heinz Aeppli (1925-) and Niklaus Schmid (1936-) were designated as economic crime judges.

45. *Regierungsratsbeschluss*, 05.05.1976, Bezirksanwaltschaft Zürich (Schaffung einer Wirtschaftsabteilung), p. 1002-1004.
46. For a total number of cases of 25 for each year. Schmid, 162.
47. Based on this statistic, about 10% of serious crimes was made of economic crime in the canton Zurich during this period.
48. *Mémorial du Grand Conseil*, Genève, Réponse du Conseil d'Etat à la question Jean Vincent du 23 janvier 1975 « Suites judiciaires de la débâcle de deux banques dont une genevoise », 18.04.1975.
49. Archives du Pouvoir judiciaire de Genève, CH-AEG, 2010va044, n° 3, « Magistrat du SG II- 90-91 = I-II – 91-93 = I », Doc. « Nombre des magistrats de carrière (plus de cour de cassation) du pouvoir judiciaire de Genève », 03.01.1987
50. One of the main difficulties for historians trying to assess the Geneva efforts to fight white-collar crime is that a formally distinct unit responsible for economic delinquency was not created in Geneva. In stark contrast with the situation in Zurich, in Geneva the problems were in a first phase not addressed by setting up specialized units within the judiciary. This means that scholars need to look at the general jurisdictions of the judiciary, such as the Attorney General Offices, the Investigation Department or the Court of Justice, and identify within those general departments which judges or civil servants dealt with economic crime cases. Those institutional differences make a quantitative comparison of resource allocation all the more difficult.
51. Such specialized units did not exist within judicial authorities (prosecution and judgment). However, it must be acknowledged that a financial brigade (*Brigade financière*) was created within the cantonal police force in 1966. It did not include staff with business or accounting knowledge.
52. *Mémorial du Grand Conseil*, Genève, 22.04.1977, « Rapport de la commission judiciaire sur le projet de loi modifiant diverses lois d'organisation judiciaire (augmentation du nombre de magistrats, Cour de cassation et divers (projet 4665) », p. 1573-1579.
53. *Ibid.*, p. 1575.
54. Archives du Pouvoir judiciaire de Genève, CH-AEG, 2012va050, n° 33-34, Letter from Bernard Bertossa (President of court of first instance) to Pierre Wellhauser (President of Council of State), 11.05.1983.
55. *Mémorial du Grand Conseil*, Genève, 11.05.1989, « Motions et projets de loi : fonctionnement de la justice », p. 2442.
56. Staatsarchiv Thurgau, KKJPD, 8'100'53, 4/45.1 Wirtschaftskriminalität, 1975.11.06 - 1981.10, Enquête Fontanet sur la situation existant dans les cantons en matière de lutte contre la criminalité économique, 26.10.1977, p. 15.
57. Archives du Pouvoir judiciaire de Genève, PV de la Commission administrative du pouvoir judiciaire, Séance n° 87 du 17.03.1988, « Note relative à l'engagement de collaborateurs comptables et financiers », 6 pages, signée Paul Perraudin, 29.02.1988.
58. Archives du Pouvoir judiciaire de Genève, Dossier Instruction du SG 1991-1993 (1), Letter from R. Mahler to B. Ziegler, 24.11.1992.
59. *Mémorial du Grand Conseil*, Genève, 11.05.1989, « Motions et projets de loi : fonctionnement de la justice », p. 2456.
60. Sylvie Arsever, « Elections judiciaires. Bernard Bertossa procureur général », *Journal de Genève*, 14.05.1990, p. 15. 13 714 votes vs. 11 831 votes for Jean Maye. The voter turnout was rather low: 13.05%, but still higher than the last time a judiciary election took place (1971, turnout: 8%).
61. On the specificities of the Geneva Attorney general, see *Mémorial du Grand Conseil*, Genève, 03.05.1991, Projets de loi: organization judiciaire, p. 1737-1742.
62. Sylvie Arsever, « Elections judiciaire. Choisissez le prochain procureur général », *Journal de Genève*, 03.05.1990, p. 21.
63. *Mémorial du Grand Conseil*, Genève, 26.01.1990, p. 443 et ss.
64. The specialized department was created on 24th March 1990. Cf. *Mémorial du Grand Conseil*, Genève, 05.11.1993, Rapport du Conseil d'Etat au Grand Conseil sur la motion de Mme et MM. Jacqueline Damien, John Dupraz, Robert Cramer et Michel Urben concernant les moyens destinés à lutter contre la criminalité économique. (-) M589.

65. *Mémorial du Grand Conseil*, Genève, 25.03.1994, Rapport de la commission judiciaire chargée d'étudier la pétition «Pour une justice démocratique et efficace». (-) P850.
66. *Mémorial du Grand Conseil*, Genève, 03.05.1991, « Projets de loi : organisation judiciaire», p. 1726-1761.
67. Archives du Pouvoir judiciaire de Genève, CH-AEG, 2012va050, n° 1, Organigramme de l'instruction au 01.12.1996.
68. Archives du Pouvoir judiciaire de Genève, Archives PG (Bertossa), Classeur Juridictions Palais 1990-1991. Between December 1990 and June 1991, he made contact with leading personalities from the financial sector, such as Charles Pictet (1945-), partner of the private bank Pictet & Cie. As a result, a list of 13 former bank executives willing to accept expert assignments by the justice was made.
69. For a literature review and discussion of this concept in historical perspective, see Kobrak, 2013 'The Concept of Reputation in Business History'; Olegario and McKenna, 2013 'Introduction: Corporate Reputation in Historical Perspective'.
70. Staatsarchiv Thurgau, KKJPD, 8'100'53, 4/45.1 Wirtschaftskriminalität, 1975.11.06 - 1981.10, Pierre-Henri Bolle to Joseph Voyame, Rapport sur la XIIe conférence des Directeurs d'Instituts de Recherches Criminologiques, Strasbourg, 15 au 18 novembre 1976, 01.12.1976, p. 3.
71. Amtliches Bulletin der Bundesversammlung, Nationalrat, Motion Schalcher. Wirtschaftskriminalität, 08.06.1976, p. 437.
72. FA, E6100(B-001), 1980/49, vol. 61, Procès-verbal de la séance de la commission du Conseil des Etats concernant l'Arrêté fédéral urgent instituant le régime du permis pour les banques en mains étrangères, 27.11.1968, p. 14.
73. This quote by the deputy CEO of one of the largest banks (Hans Hartung, stellvertretender Generaldirektor der Schweizerische Kreditanstalt) confirms this point of view: "Over centuries of persistent work, Switzerland has earned itself the reputation of being a reliable, trustworthy and liberal small state. In particular, it has developed into an international financial center that today offers employment directly to around 200,000 employees. This important sector of the economy is threatened by white-collar criminals, who are gradually damaging Switzerland's reputation and destroying the foundations on which our good relations with foreign countries and our prosperity are based." Cited in *Züri Leu*, 21.05.1976, p. 25.

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