

# International Prosecution and National Bureaucracy: The Contest to Define International Practices Within the Danish Prosecution Service

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*This article explores how international ideals and practices of law enforcement come into conflict with national bureaucracies. Drawing on original interviews, the investigation demonstrates how the competition to define the role of international prosecution impacted career strategies as well as the actual administration of criminal law within the Danish Prosecution Service (DPS). The analysis shows that this competition is embodied in two competing groups of prosecutors situated in a wider national bureaucracy—itsself subject to transformations that affect the very stakes of the contest to define the international. While the institutionalists build careers closely attuned to the systemic and increasingly lean-management-inspired requirements of the DPS, the dissident and consequently unsettled position of the activists leads them to craft alternative career strategies closely related to the emergence of new international fields of criminal law.*

## INTRODUCTION

The past three decades have produced new international conventions and institution building devoted to international core crimes (Hagan 2003), terrorism (Deflem 2004), drug trafficking (Friedrichs 2008), human trafficking (Atasu-Topcuoglu 2014), organized crime (Sheptycki 2000), and corruption (Nuijten and Anders 2007). Criminal law has become internationalized amid vast, concurrent forces: globalization of trade and commerce has evolved and broadened; the movement of individuals has increased (Aas 2007); in Europe the European Union has been enlarged. Closely related to these international processes and the debates they generated, new crime control narratives and practices were constructed and circulated between international, regional, and national institutions (Bigo 2010). These developments had a profound impact within individual states where law enforcement agencies and judiciaries moved into the front line of what became widely perceived as a battle against globalized forms of crime (Friman 2009). In this context, prosecution and police services developed new practices to curb the very criminal activities they were themselves active stakeholders in defining.

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This article will analyze how international innovations were imported into a specific national institution—the Danish Prosecution Service (DPS)—and thereby became the cornerstone of a professional contest to define the role and value of international practices. Inspired by the structural sociology of Pierre Bourdieu (Bourdieu and Wacquant 1992), this investigation aims to lay bare the process by which the very meaning of the international is negotiated at a local level deeply rooted within the national bureaucracy; it will also study the consequences this has for the actual prosecution of international crimes in the Danish legal bureaucracy. The composite term “international crimes” here signifies all crimes that are deemed by the DPS to have international links: namely, international core crimes prosecuted in the international criminal courts (Clapham and Gaeta 2014) as well as those crimes often referred to as treaty crimes or transnational crimes, trafficking of narcotics, corruption, organized crime, and so forth (Boister 2012).

Analytically, the focal point of the article is the contest between two separate social groups within the DPS. Both groups have actively engaged with prosecutions that transcend national borders, but their relative position within the DPS has prompted a reliance on diverging professional strategies in the contest to define the role of the international in this national context. Having provided a collective portrait of these groups, the *activists* and the *institutionalists*, the article will situate them in the larger bureaucracy in which they either reproduce or challenge established professional norms and practices. One of the article’s main findings is that even though a group of highly internationalized activists exists within the national system, DPS orthodoxy actually entails a devaluation of international work, which is perceived as having very low professional prestige. Engaging in international work is a high-risk low-reward endeavor in a system thoroughly geared to maintaining a high level of productivity. This ethos, in turn, measurably affects the daily work of the DPS in which easy national cases take precedent over those perceived as hard international ones. It might, of course, be argued that this is unsurprising since any legal bureaucracy must prioritize its resources. Yet as this article will show, the very definition of what is seen as rational and productive behavior is itself the object of competition between social groups.

In this context, DPS skepticism regarding the international is a byproduct of the internal rules of this field rather than a reflection of political priorities. This distinction is supported by the extent to which international crime has been hotly debated in Danish politics, most recently in the December 2015 national referendum, which concerned changing the Danish opt-out in the EU space of Home and Justice Affairs to an opt-in solution (Adler-Nissen 2014). During this election, all political parties voiced their support for Danish engagement in the EU judicial cooperation units for police and prosecutors, Europol and Eurojust. In other words, there is no evident lack of political prioritization that can explain the national preferences of the DPS. To understand these preferences, they must be situated within an established bureaucracy in which the tacit professional contest to define the role and value of the international has deep effects on career trajectories as well as on the way criminal law is administered and practiced.

Drawing on an original data set, this article will contribute a perspective that supplements and challenges three other forms of literature on the formal

frameworks of international prosecution of crimes, the socialization of international professionals, and the competition between professional groups. The design of the present case study enables an analysis that cuts across these existing approaches in favor of a structural perspective in which the elements of socialization, competition, and legal practices are all analyzed as constitutive parts of a professional and normative contest situated in a field of Danish bureaucracy that is itself under transformation. By studying a relatively small national system, functioning in a country usually considered an active and willing international player, the article contributes a comprehensive investigation of how one form of internationalization has played out in situ as a result of the power dynamics within a specific bureaucracy. While the results of this inquiry are not directly transferable to other national jurisdictions, the Danish contest was closely related to larger international transformations affecting the prosecution services of other countries. As such, it is hoped that the present study of the social and professional laws that regulate the DPS and its response to the international can identify dynamics also perceptible in other national jurisdictions and provide the tools to enable further critical studies of the battle to define the international in industrialized democracies. Although comprehensive analyses of other countries have not been conducted for this article, the investigation does form part of a wider project in which legal professionals from other countries were interviewed (Christensen 2015b). These interviews provide the material for a very tentative comparative perspective in the concluding remarks.

### Previous Theoretical Approaches

This article's theoretical approach has been developed to supplement and challenge three other forms of literature: legal scholarship on the formal frameworks of international prosecution of crimes; political science scholarship on the socialization of international professionals; and sociological investigations of the competition between professional groups.

The internationalization of criminal law and law enforcement has coexisted with a surge in legal scholarship. The formalist perspective on the internationalization of criminal law has focused partly on new international innovations (Cassese 2008; Schabas 2011) and partly on how national judiciaries have organized their systems to deal with international forms of crime. In this context, the legal and institutional structure of the DPS has been detailed in connection with the preparation for an EU Public Prosecutor's Office (EPPO) (Feldtmann and Reventlow 2013). Elsewhere, a large project to map the response of national systems to international core crimes initiated by the Max Planck Institute in Freiburg was abandoned before a planned volume on Scandinavia was published (Kreicker et al. 2003). Concerning core crimes, the Danish case was briefly outlined in regard to the use of universal jurisdiction (Reydams 2003). However, as Maximo Langer has pointed out, only a small minority of core crime cases investigated in national jurisdictions have led to convictions (Langer 2011). The findings of this article demonstrate how the resistance to cases involving core crimes, as well as to European

cooperation, is not merely financial or political as indicated by Langer, but is embedded in the professional power balances and systemic functionality of law enforcement and the judiciary. Thus, such resistance extends to international case work more generally. In regard to international practices related to the European Union, the Danish opt-out has not hindered the DPS and police from remaining operative participants in the EU police and judicial cooperation units (Europol and Eurojust) (Vendius 2015); but bureaucratic battles have meant that such participation has remained pragmatic rather than an indication of full integration in policy building in this wider space (Delmas-Marty et al. 1996; Mitsilegas 2009; Peers 2011).

The citations offered above are representative rather than in any way comprehensive, but legal scholarship that emerged in this vein, addressing these forms of international prosecution, is important in two ways when viewed from this article's sociological perspective. First, such scholarly inquiries were closely intertwined with the practical innovations they helped legitimize and systematize having crafted a new legal language designed to raise international criminal law on the political agenda (Rose 2015). Second, due to the role academia plays in promoting specific forms of societal responses to international crimes, the professional act of contributing to this scholarship, and thereby crafting a new national vocabulary, was used as a weapon in the competition to reorient the Danish response to international prosecution. This process demonstrates why legal scholarship must be seen as part of the empirical object of the article as well as a source of academic information.

Because this article deals with two groups of prosecutors who frequently engage with the international while harboring conflicting perspectives on its role and value, its analytical perspective is related to research on how exposure to international institutions socializes nationally trained professionals. Ernst Haas's pioneering study of early European integration posited that the creation of strong EU institutions, especially in the Commission, would over time create professional identities loyal to Europe rather than to nation-states (Haas 1968, 486–527). Later investigations of professionals working in and around European institutions challenged Haas's thesis and pointed to more complex practices of "role playing" and the prevalence of other weak forms of socialization despite intense interactions with the European Union (Checkel 2005). Actors in European institutions, including the Commission (Hooghe 2005), were rarely inclined to internalize a European set of ideals and remained tied to their national context. The analysis below will point to similar dynamics, but will contribute a theoretical perspective that situates international strategies in a national space where they are socially and professionally structured by the preferences of this system, itself a historical product, and the relative position of internationalist agents within this system.

Building on the conceptual tools of Pierre Bourdieu, in particular his core notion of a "field" (Bourdieu and Wacquant 1992, 97–98), the article circumvents the binary opposition between rationalism and constructivism that formed the theoretical backbone of the special issue of *International Organization* devoted to investigating European socialization (Zürn and Checkel 2005). Two vital analytical choices separate this article's standpoint from these positions. First, the article does not study socialization as an individually identifiable variable; rather, it performs a

contextualization of social practices, thereby creating an analysis that hinges on the close relation between the strategies of the agents and the field in which they are active. In doing so, the article shows how socialization cannot be disaggregated from the social context in which it occurs, while demonstrating that it is precisely this social context that bestows meaning on what is considered international in the first place. Second, this article shows how the embodied experience of the agents, their habitus (Bourdieu and Wacquant 1992, 129–30), is simultaneously fashioned by their own career path and by its relation to the historical trajectory of the field itself. In other words, the perspective inspired by Bourdieu has constructivist as well as rationalist elements. As such, the embodied experience (the accumulated capital or habitus) of the agent is “structured” in the sense that it is shaped by a context in which certain social and conceptual schemata preexist, and “structuring” in the sense that the position of agents formats their perception and thus helps define the perceived space of individual and collective possibilities and strategies. The article identifies a group of highly internationalized prosecutors inhabiting this space and embodying distinct and converse forms of experience. Rather than merely studying the effects of international socialization on similar national actors, the article situates the trajectories of these professionals in the national field and relates the development and self-understanding of different groups to the ongoing contest to define the professional and legal norms of this space.

Since this contest between two specific groups of prosecutors is at the core of the analysis, the present article also builds on a literature concerning professional competition (Abbott 1988, 88–89). Important, here, is the task of conceptualizing this battle without becoming stuck within fixed categories of established professions, themselves subject to competition (Boltanski 1987). This is best achieved by employing the concept of the field as a relational space structured by the forces active in it. This concept takes competition as a foundational element in crafting the very perception of the international: revealing in this instance a divisive or competitive dynamic propelling what might initially appear to be a relatively homogenous group of professionals. As the analysis will show, the promotion of competing perspectives and conflicting professional activities is driven by distinct but closely related social groups within the bureaucracy, a development of contrasting perspectives not unlike those identified in Eisenstein and Jacob’s seminal text on the particular professional identities of different courtrooms. Yet while Eisenstein and Jacob’s study relates legal strategies and practices to the “ecology” in which they are situated (their position in a larger social and institutional context) (Eisenstein and Jacob 1977), the current article builds on the more structural terminology of the field. Having adopted this structural perspective, the contest to define international crimes becomes intelligible through the accumulated capital of these social groups and their relational position within the wider field. This approach does not build on a paradigm of sociological determinism; instead, the very mobilization of these forms of expertise is an important transformative factor within a field also subject to external pressure from other fields, most significantly in this case politics and the economy. This transformative dynamics helps reshape what Bourdieu would call “the rules of the game” (Bourdieu 1980, 112) or the tacit social and professional principles that determine what is seen within the Danish legal

bureaucracy as legitimate and valued prosecutorial practices. From their respective, differing positions in the bureaucratic field, one group of international prosecutors reproduces the dominant and often implicit ethos—the *doxa*—of the system, while the other mobilizes a range of legal and nonlegal capital in an attempt to promote norms and case work aimed at crafting a new international vocabulary as part of a wider competition to define the goals and practices of the DPS.

### The Article's Approach: Studying the Contest to Define the International

The translation of international crimes into a national context was not a matter of passive reception, nor was it a conflict-free process. It was integrated into the career choices and strategies of specific groups of prosecutors who became the bearers of international expertise and mobilized it to solidify or change their position in a transforming field. The data for this article were compiled through more than fifty interviews, mainly with Danish prosecutors working in the national bureaucracy. Other central stakeholders were also consulted: mainly judges, defense council, academics, and the staff NGOs. This material was supported by an additional more than sixty interviews with multinational staff in international criminal courts and European institutions. These interviews, compiled between 2007 and 2016, typically took one hour and focused on the social background and professional trajectory of the respondents as well as their perspectives on international work and collaboration. Cumulatively, these interviews form the basis for identifying the two competing groups of prosecutors within the DPS for whom specific career paths corresponded with distinct normative perspectives on the ideal prosecutor and the professional norms of the wider institution. A central finding in this context is that the trajectories and relative position of these social groups is closely related to different processes of internationalization; it was in the midst of these processes that certain professionals attempted (with varying degrees of success) to embed international practices into the professional and the legal fabric of the institution itself.

The article employs an empirical strategy centered on analyzing the professionals engaged in international work and constructs a diachronic perspective of international work in the DPS since the late 1960s. International work is understood here to signify both case work with international dimensions and more policy-oriented activities in relation to the legal diplomacy of the Council of Europe (CoE), the European Union, or other regional and international institutions and networks. In addition to drawing on Bourdieu in constructing this perspective, the article builds on the subsequent development of his structural sociology pioneered in the study of international law and governance by Yves Dezalay and Bryant Garth (Dezalay and Garth 1996). Such a perspective has also been used to investigate the European field of security (Bigo 2007) as well as innovations in human rights (Madsen 2007) and international criminal law (Hagan and Levi 2004, 2005; Christensen 2015b,a, forthcoming). These scholars have demonstrated how international strategies are closely inscribed in national socialization and in power battles. However, while this scholarship focuses mainly on national and international elites, the present article delves into the implicit and formal rules that govern the national

judiciary and as such moves closer to groups of professionals for whom the social gravity of the national field is perhaps more tangibly felt than it is for elites whose accumulation of capital and life situation allow more flexibility vis-à-vis national boundaries.

In developing this new perspective, the article will analyze professional micro practices and relate them to the meso level of organizational preferences as well as to wider macro-level transformations of international spaces of law. The division between these levels is expository rather than strictly scientific. From a structural sociological perspective, concrete practices must be situated in the larger social space: a space from which they draw their meaning and upon which they strive to impact. As such, the micro, meso, and macro levels are deeply intertwined. Nonetheless, the article will commence by investigating the historical micro practices that drove the creation of two distinct social groups and defined the structural contours of their socialization and professional career trajectories. Subsequently, the article will examine the meso level in order to situate the professionals in the two groups relationally as part of a Danish bureaucratic field itself under transformation. In turn, an analysis of the changing institutional goals related to the administration of criminal law will then form the basis of a macro level devoted to investigating how the social laws identified in the Danish case can be generalized and might possibly impact the wider space of internationalized criminal law (though the findings here are necessarily more tentative).

### **The Two Groups and Their History**

This section will investigate the changing practices of prosecutors within the DPS as related to the wider international diffusion of specific conceptions of crime. In Denmark, the proliferation of international crime and crime control models occurred in two separate waves and had profound political and institutional ramifications. These currents mirrored larger international vogues in criminal justice thinking, but took a specific path in a Danish context. The first surge of new prosecutorial practices was related to the war on drugs driven by the active export/import of new law enforcement tools and ideals in the 1960s. The second wave, after the fall of the Berlin Wall, covered a wider spectrum of crimes perceived to be closely connected to globalization (Aas 2007; Friman 2009), such as organized crime and international terrorism. In Europe, the 1990s also saw the enlargement of the European Union to include parts of Central and Eastern Europe: an expansion that sparked new law enforcement strategies within the European Union as well as in national jurisdictions (Bigo 2007).

The DPS currently employs around 700 prosecutors who have a collective case load of some 140,000 cases annually, including the 96,000 criminal indictments brought before the Danish courts (Anklagemyndigheden 2012). In this context, one individual case may include one or more criminal indictments. In an institution where each prosecutor brings about 140 criminal indictments of all sorts before the Danish courts each year, this professional system encourages and rewards prosecutors who are efficient as well as legally adept in their case work. Accordingly, the system

operates via two different institutional languages: the language of law and the language of productivity, both inscribed in the Administration of Justice Bill (*Retsplejeloven*) § 96. This central paragraph states that the prosecution must bring criminal cases to trial in accordance with the law and must do so as quickly as the given case permits.

Organizationally, the DPS is divided into twelve police districts in which prosecutors are embedded. Unlike most other national systems, the Danish police and prosecution service are not separated, and prosecutors oversee the work of both branches. In addition to the districts, two Regional Prosecutor Generals handle complicated cases brought before the two regional High Courts, and the Public Prosecutor for Serious Economic Crime and International Crime (SØIK) is responsible for the prosecution of these specific crimes (i.e., genocide, crimes against humanity, and war crimes committed abroad by individuals residing in Denmark). International core crimes and economic crimes were organized in two separate units until a 2013 reform: a transition that played an important role in the most recent skirmish between the institutionalists and the activists analyzed in the third section of this article.

In the larger setting of the DPS, international case work and cooperation is placed in the hands of a very small group of prosecutors who have developed specialized practices within the field of legal bureaucracy. In total, approximately fifty prosecutors, many of whom were interviewed for this project, are routinely involved in international prosecution. They are employed primarily in the Public Prosecutor for Serious Economic Crime and International Crime (SØIK), in the central international office of the Director of Public Prosecution (DPP) based in Copenhagen, and in the specialist units of the police district of Copenhagen, which is by far the largest in the country. Although numerically a small group, the prosecutors employed in these units hold key positions in this national institution. They possess practical expertise in handling legal tools such as the European Arrest Warrant (EAW), letters rogatory, or various other forms of international assistance; they are also deployed on international missions, travel to international conferences, and represent Denmark in international working groups in the EU system, helped negotiate the Rome Statute, and are active in policy building elsewhere.

### ***The Institutionalists***

The sociogenesis of the *institutionalists* was tied to a strategic appropriation of very specific crimes: a strategy that enabled this group of professionals to profit consistently from international work. Though engagement with different crime areas persisted, the emergence of the institutionalist group and its professional trajectory was inextricably linked to the wider international circulation of norms and ideals related to what became known as an international war on drugs. As a result of this war, new specialized units emerged throughout Europe (and most of the world) (Sheptycki 1996; Friedrichs 2008) based on the repressive elements and expansion of police powers tied to what Packer called the crime control model (Packer 1964). In Denmark, the use of drugs moved into political discourse in the late 1960s, and in 1969 the Copenhagen Police formed a specialist unit for the investigation and



prosecution of trade in illegal narcotics and new laws were passed to aid the police in its prosecution of this trade (Winsløw 1984, 102–29). The success of this unit grew based on its social constitution and also because of a particular perspective on international case work that enabled its professionals to construct a position for themselves close to the core of the bureaucratic field.

In the late 1960s, the DPS was a highly decentralized organization organized into seventy-two different districts subject to only weak national coordination (Christensen 2008). At the height of the development of the welfare state, the police and DPS were an ingrained part of a bureaucratic field whose professional architecture was characterized by strong unionization and a fairly strict division of labor between legally trained personnel on one hand and police-educated detectives and the uniformed rank-and-file on the other. The institutional goals of the DPS were closely linked to wider ideals of effectively providing service to the citizens of the welfare state (Christensen 2012, 155–74). The DPS was governed at the national level by a Director of Public Prosecutions (DPP) whose competences were purely administrative, operative powers being the prerogative of local management. It was in this wider context of fairly entrenched professional positions that a specialized branch for narcotics was founded in Copenhagen driven by an elite of legally trained staff that appropriated new crimes as a means to rise above the decentralized hierarchy of the system and wider bureaucratic field. This strategy built on establishing a symbolic and narrative link between what happened on the streets of Copenhagen and the wider war on drugs, and on crafting a new type of unit in which the prosecutors and police officers worked closely together. This form of collective, problem-oriented policing was groundbreaking at a time when most work in the organization was subject to much more rigid lines of professional division.

The new unit was led by prosecutor Volmer Nissen, whose trajectory was emblematic of a broader ethos that came to characterize the unit. Nissen was pivotal in defining the unit's role in the broader legal bureaucracy: using the decentralization of power to take control of the area of drug cases. Having risen to prominence during World War II as a figure responsible for authorizing assassinations of suspected Nazi collaborators based on information in police files—serving, to use his own words, as an “assassin from a distance” (Knudsen 2008, 296)—Nissen remained the uncontested leader of the police's constantly expanding antidrug effort until his retirement in 1988. Utilizing this position, and investing his symbolic capital from the resistance movement, Nissen's experience with prosecutorial practices carried out in the borderland of illegality proved essential for the innovative practices of the drug unit. Under Nissen, a proactive practice of extralegal activities became the driving force behind the recruitment of prosecutors who were expected to be “creative” in their use of national legislation—if not encouraged to squarely ignore the law.<sup>1</sup> This creativity was facilitated by the lack of relevant specific rules and hierarchical judicial control in Danish law at this time (Andersen 1986). No clear rules existed, for instance, regarding the use of agent provocateurs. Operating

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1. Interview with Danish civil servant A, January 15, 2013.

in this vacuum, large sums of cash were borrowed in US dollars from the US Drug Enforcement Administration (DEA) to fund large sting operations to catch those who were deemed to be the most important players in the Danish market.<sup>2</sup> Officially, the DEA helped only with the training of Danish officers, but off the books it participated actively in the work of the Danish police. This partly covert and partly promoted international alliance had a dual effect. It lent illegal operative support to Nissen and his unit while simultaneously functioning as a symbolic guarantor of the tough stance on drugs that soon became naturalized within the DPS as well as in the police. Through this process, the drug squad became the most well-known unit in the country and its leadership accumulated professional capital that extended far beyond the streets of Copenhagen.

This capital was invested directly toward crafting new forms of law. Nissen's fight to combat those seen as the "kingpins" (*bagmændene*) was solidified legally with paragraph 191 in the Criminal Code (1969), which targeted the prosecution of high-scale sellers and manufacturers. This was a legal innovation for which Nissen actively and publicly lobbied. Cultivating political contacts was also a priority, and Nissen simultaneously built an unspoken but highly effective alliance with tabloid newspaper B.T that helped fan the flames of a political anxiety that drugs threatened the younger generations of the welfare state. However, research soon proved that the actual use of the new law did not result in the prosecution of anything resembling the kingpins targeted by the new law. The introduction of a new provision on drug crimes into the criminal code was used almost exclusively to bring to trial small-scale sellers (often users themselves), resulting in an explosive rise in drug cases (Brydensholt 1971; Wilhjelm 1991). What would seem to be a legislative failure, paradoxically, became the cornerstone of the institutional success of the drug unit as it allowed the unit to vernacularize its practices and fold them into the day-to-day case flow of the DPS, thus lifting a highly problematic case area with frequent international links out of the normal system. As a result of routinizing the approach to the many drug cases, the unit remained (and remains) acceptable from the perspective of the DPS bureaucracy.

Building on a global diffusion of policing ideas, innovative crime control measures were established as essential to curbing drug trafficking in Denmark and were inscribed into the professional DNA of the national law enforcement system. The cornerstone of this success was having created a new form of unit that challenged established hierarchies, but positioned itself as a highly productive subgroup within the system. For this group of professionals (a group born amid an organizational imperative to handle many small cases) international work was an important tool if, and only if, it could help carry the weight of cases in the DPS. Never promoting the international as a value in itself, the original institutionalists used acquired international techniques as part of a wider career strategy. The essence of the strategy was to adhere to the norms of the wider system but also invoke a capacity to rise above it as the principal local law enforcement practitioners in the global effort to prosecute drug offenses.

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2. Interview with Danish civil servant B, August 5, 2007.

### *The Activists*

In the mid-1990s, a new social group became visible in the DPS. The social genetics and relative position of this group in the DPS and in the wider bureaucratic field was very different from that of the institutionalists. The growing prominence of the activists was exemplified in a small group of professionals deeply involved in the wider space of international core crimes and European cooperation. The impetus for their career strategies came from criminal law innovations that gathered speed at the international level in this period. Such innovations were characterized by large-scale international institution building (Alter 2014) that included the ad hoc tribunals for the former Yugoslavia (ICTY), Rwanda (ICTR) (Hagan 2003; Christensen 2015b), and the permanent International Criminal Court (ICC) (Glasius 2006), as well as the EU creations of Eurojust (Megie 2007), Euro-pol (Bigo 2007), and the European Judicial Network (EJN).

In addition to these developments, the welfare state itself was undergoing important transformation during the 1990s, which, in turn, spurred significant reforms of the Danish police and the DPS (Christensen 2012, 155–245). Utilizing these processes, in which they were themselves active agents, a small group of *activists*<sup>3</sup> developed their presence in the DPS. The emergence of this group benefited from the strategies of a select number of influential and well-established prosecutors who reinvested substantial national expertise as well as, crucially, political and academic capital in international cooperation and used this experience to promote international perspectives in the national context.<sup>4</sup> Adopting and importing a perspective on prosecution developed in international networks, the activists' practices were established in direct opposition to the general ethos of the system at large. Where the institutionalists handled many small cases, the activists' practices were forged in an environment that prioritized a small number of large cases.

The collective trajectory of the activists was closely intertwined with the changing international and national power balances in the fields of law and politics. After the fall of the Berlin Wall, the theories of total defense on which the Danish military had been building became largely superfluous. The government coalition consisting of the Social Democrats and the Social Liberals, who held power between 1993 and 2001, sought to find a new role for the military by crafting a new foreign policy that was reoriented toward more "activism" (Pedersen 2012), which included seconding more staff to international missions. These deployments were visible in military staff postings as well as in the careers of police and prosecutors. In this space characterized by national and international reconfigurations, former Director of Public Prosecutions (DPP) Henning Fode was a driving force in

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3. In the present context, the term *activist* does not imply that these professionals were the first or most important agents in the development of new forms of internationalized prosecution, or even among the most innovative; rather, it denotes that the *habitus* and resulting strategies of these professionals resulted in career trajectories that actively used and nurtured the international as part of a national career.

4. The first activists were mid-career professionals who had accumulated a high degree of capital within the system, while later activists have typically been younger professionals. In terms of gender, the initial group of activists was mainly male. The latter group is closer to gender parity although men still outnumber women.

creating institutional space, symbolically and professionally, for international prosecutorial cooperation and case work while also leading the DPS through a large 2007 reform that reorganized the system in order to orient it toward more problem-based solutions instead of entrenched professional divisions (Visionsudvalget 2005). Fode himself had risen through the ranks under the wing of the influential Niels Madsen, former Permanent Secretary of the Ministry of Justice (MoJ), perhaps the last leader of the MoJ able to set the tone for the entire public bureaucracy as the balance between ministries was recalibrated by public-sector reforms during the 1990s. Fode had also previously served as the director general of the secret intelligence branch of the police (PET).

Under Fode's leadership, the first international office was formed at the headquarters of the DPS to coordinate international cooperation and represent the DPS in various international contexts. During the previous year, in 2002, a special unit tasked with international crimes had been implemented as the result of a concrete case involving a former Iraqi army commander who resided in Denmark and was being investigated by the Supreme Iraqi Criminal Tribunal (formerly the Iraqi High Tribunal). This was a highly charged case politically since Denmark was part of the coalition in Iraq as a result of an activist foreign policy. The new unit was created and staffed with professionals close to Fode and was tasked with investigating and prosecuting core crimes. These institutional innovations helped construct an international expertise that could be invested in transnational cooperation, and later reinvested in the effort to promote international work in the DPS. Using his access to the government, Fode also convinced the Minister of Justice at this time, Social Democrat Frank Jensen, to sponsor the nascent International Association of Prosecutors (IAP), an organization in which he became an active member and European Vice-President. The Association was used to demonstrate the value of the international in a Danish context.<sup>5</sup>

The innovations of the 1990s and early 2000s were inscribed into the careers of a number of activist prosecutors who climbed the career ladder to mid-level management and mobilized around the internationalization encouraged and actively driven by Fode. Their careers were characterized by strong legal credentials and well-established networks and they also enjoyed a good relationship with the MoJ. However, many of them were also considered difficult to place within the system due to career profiles that built on forms of expertise that were not directly translatable into the forms of case work favored by the system. Examined in hindsight, such career paths clearly contradict some of the orthodoxies supposed to apply to the socialization of professionals within the European Union. The activists exhibit a strong desire to work internationally and a marked adherence to international norms that they feel is lacking in the domestic context where the typical prosecutors, according to them, "do not know what is going on internationally."<sup>6</sup> Yet strikingly, the strong international perspective of the activists is driven by relatively short international deployments often crafted so as not to upset the national system.

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5. Interview with Danish civil servant C, February 21, 2011; interview with Danish civil servant D, December 6, 2013.

6. Interview with Danish civil servant E, November 23, 2012.

Needing to avoid pushback from leadership, many activists have used leaves of absence or extended vacations to create space for moving into the international.<sup>7</sup>

Under pressure of this nature from the dominant perspective of the system, some activists cultivate an identity based on opposition and tied to a specific historical conjuncture in which new international courts and rule of law missions opened new international opportunities. On these contrary terms, leaving the domestic context for longer periods is seen as a social and professional value. Typically, “having been out”<sup>8</sup> for more than six months—as part of an international institution such as the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) or rule of law missions such as that of the European Union in Kosovo (EULEX)—is seen as a mark of distinction that separates the capital of this group from the expertise of the institutionalists. International investment is attributed value in this group only if it comes at the professional risk of being away from the system for a longer period. For such activists, international collaboration is more than a technique. It is a professional identity formed in opposition to the orthodoxy of the system.

### The Position and Careers of the Competing Social Groups in the Larger Field

The converse and competing professional perspectives of the activists and the institutionalists are evident in the professional norms inscribed in their collective trajectories partly as a result of their distinct historical geneses. This section of the article will situate the competing professional strategies of the two groups in a wider institutional context—the meso level—in which a specific professional tradition tied to the bureaucratic field is dominant and reproduced in the orthodoxy of the institutionalists as well as in the heterodox strategies of the activists. From the perspective of the institutionalists, the activists’ preference for international cases, often more complex and time consuming than normal cases, means that they are perceived as not pulling their weight in terms of case work in the system. The institutionalists’ stock complaint, which recurs in many different iterations, is that the activists “have never set foot in a court room.”<sup>9</sup> In countering this, the activists scold the institutionalists and the system they represent for being ignorant of the monumental developments taking place internationally, which, as they see it, are bound to eventually transform the DPS whether this bureaucracy is willing to change or not. In the eyes of the activists, the rest of the system has neither the linguistic skill nor the legal expertise necessary to be able to curb international crime.<sup>10</sup> Since both groups are subject to the exigencies and transformations of a bureaucratic field of practices in which international work is not valued, critique of the other group is a way to solidify a distinction between different forms of international engagement and professional capital.

7. Interview with Danish civil servant F, November 19, 2012.

8. Interview with Danish civil servant G, November 23, 2012.

9. Interview with Danish civil servant H, January 28, 2013.

10. Interview with Danish civil servant I, November 23, 2012.

## The Institutionalists' Career Investments

For the institutionalists, adherence to the engrained norms of the legal bureaucracy is the ticket to successful careers in the DPS. The rules of the game in the legal sector of the bureaucratic field have a long historical trajectory constructed through the historical and organizational proximity to the Ministry of Justice (MoJ) and the DPS. The construction of categories of thought common to this legal bureaucratic subfield began formally in 1821 when a monopoly was established for legal professionals in the leadership of the courts, police, and prosecution (Tamm 1994, 20–21). As part of creating a state bureaucracy, legal professionals became central in staffing some of the most important positions in the state system, reflecting the dominant position of the MoJ in the field of public administration at this time. As a consequence of this position as a specialized ministry that also supplied lawyers to the entire public system, the professional culture of the legal system was designed around the preferences of the MoJ in which the rotation of the “generalist” lawyer was seen as pivotal. This professional preference allowed the MoJ to staff other parts of the administration and place its professionals in key societal positions. In turn, this ability to act as gatekeeper made this ministry the most prestigious in the public sector. Today, while private law firms compete for the attention of law graduates and are able to attract some of the best students (Madsen 2008), the MoJ is still widely regarded as the best point of entry for lawyers joining the public bureaucracy and the most successful prosecutors usually have close links to this ministry. The legal staff of the ministry are often referred to as the “lawyers of the crown” (*kronjurister*) and the legal opinions produced in this ministry are generally regarded as of an extremely high quality and validity.

The career strategies of the institutionalists are finely attuned to the ideal of a prosecutor who is able to solve whatever case lands on his or her desk in an effective and efficient manner. As such, the inner workings of the DPS are characterized by a local variant of the standardized and formalized practices identified by Weber in his famous investigation of bureaucracy (Weber 2007, 323–24), developed historically within the Danish system mainly through the central position of the MoJ. In the DPS system, individual prosecutors become subject to and bearers of what is often an unspoken but highly collectivized socialization reproduced in the format of the generalist able to rotate both horizontally and, importantly for the individual professional, vertically within the system. The careers of the institutionalists are closely aligned with these requirements, which are commensurable with the very categories of thought that guide professional behavior in this system. Institutionalists typically rotate within the legal bureaucracy before moving into positions offering a more international or specialist profile. Here, they strive to maintain the high productivity deemed pivotal by this group. Drug cases, for instance, remain quite numerous throughout the DPS. Out of a total of 177,814 indictments produced by the DPS in 2014, 25,710 involved a drug charge (Anklagemyndigheden 2015). Due to the prevalence of these cases, the experience of working in a unit exclusively focused on drug trafficking is transferable into other positions that value limited experience with more complex cases. It is an acquired technique that can be part of

a wider professional strategy as long as it is closely linked to accepted institutional categories of thought.

The career of a former head of prosecutions in the organized crime branch of the Copenhagen Police, who was employed by Volmer Nissen personally, is emblematic of how specialized prosecution has been used to strengthen a generalist profile. Tasked with prosecuting international drug trafficking and related crimes, he gained significant international experience and became a widely respected in-house specialist on legal requests to and from other nations (letters rogatory). He traveled most of the world as part of formal and informal collaborations within his field and became absolutely central as a national expert and contact point for the European Judicial Network (EJN). He also taught at the University of Copenhagen in subjects very close to his practical experience and served as chairman of the Union of Public Prosecutors. Significantly, his successful career at the core of the institution was premised on crafting specialized expertise embedded in the daily case flow of the system as a supplement to extensive courtroom experience. Remaining within the system throughout his career, leaving only on official business, taking the cases that landed on his desk, and never becoming too restricted by his specialization, he followed a trajectory that was acceptable to the system at large.

The institutionalists embody the values of the system. Since they can frequently gauge, like finely tuned barometers, what is professionally profitable and what is not, their approach to the international is strictly pragmatic. As a result, they refrain from becoming involved in any practices that might diverge too obviously from the often informal and tacit social rules on what is considered valuable, strategic behavior. A measured, controlled engagement with complex problem cases with international dimensions can helpfully demonstrate analytical capabilities that can be beneficial in crafting a career as a generalist: a rite of passage for a figure who can also handle complex cases and consequently often become the hub for international contacts in the relevant local district or office.<sup>11</sup> Positions in the specialized prosecutorial division working with economic crimes and international crimes are used strategically as a carefully balanced element in wider career strategies. To maximize potential return on professional investment in a system based on rotation, specialization must form only a small part of a career portfolio. This also translates into a need to refrain from actively seeking out problematic cases, following instead the case flow of the national system as evidenced in the historical trajectory and current activities of the drug unit. Specialists who work on specific cases for years on end, frequently economic cases or cases involving international core crimes, are seen by the institutionalists as the “nerds” of the DPS.<sup>12</sup> This is not considered a term of endearment, but reflects the heterodox nature of international work. Constantly catering to the gravitational demands of the field of legal bureaucracy, the institutionalists remain skeptical regarding international work performed with reference to international ideals rather than because of national necessity.

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11. Interview with Danish civil servant H, January 28, 2013.

12. Interview with Danish civil servant J, February 22, 2013.

### *The Activists' Career Investments*

In their attempt to convert international experience that does not fit into the ethos or promotional tradition of the national system, the activists engage in alternative career practices that seek to promote their oppositional perspective on the international. As a means to challenging the orthodoxy of the DPS without disqualifying themselves too blatantly in the eyes of this system, the activists rely on a double strategy of extracurricular international activity and scholarly investment. Despite the investments of Fode and the political interest in international cooperation characteristic of the 1990s and 2000s, the activists have not been able to embed their practices into the vernacular of the DPS. Rather, they occupy a peripheral place in the field and craft career strategies aimed at securing higher dividends for their alternative trajectories by transforming the institutional goals of the DPS itself.

Since their accumulation of international expertise is ignored in the system, the activists rarely see the international as a long-term strategy. Instead, they use international mobilization to secure access to networks and resources of knowledge that can later be activated as part of gaining traction and exposure for certain types of crime in the national context. Other activists, typically younger than the original group that formed around Fode, might opt to leave the national system altogether after spending longer periods in, for instance, the ad hoc tribunals or European institutions. Having been away for extended periods, they find it difficult to return to a national system in which their specialized expertise does not fit in and is not valued: "I cannot imagine that anyone would hire me at home,"<sup>13</sup> as one highly experienced international prosecutor put it. While international spouses and established families also feature in the narratives about why returning home is difficult, it is the poor conversion rate of international experience that most frequently deters and limits the return of expat prosecutors. Frequently, international experience is not counted in the promotional system and activists face forfeiting years of seniority to return home; on these terms they are unable to translate their significant international experience into national positions that are financially and professionally at the same level. Hence, these professionals join a larger group of multiple nationalities who see themselves as "international animals."<sup>14</sup> Another activist career strategy builds on returning from the international market to start small, privately driven law firms with the aim of accumulating enough expertise to move back into, for instance, the ICC while remaining realistic that landing a good job in the shrinking market of ICL (Christensen 2015b) is like "making it in Hollywood."<sup>15</sup>

The activists who do return to the Danish market and to positions in the DPS—having been away long enough to be internationally credible but not nationally unacceptable—engage in career strategies that seek to improve the conversion rate for their international expertise. Their perspectives on the ideal role of the

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13. Interview with civil servant in international institution A, October 30, 2013.

14. Interview with civil servant in international institution B, May 22, 2013.

15. Interview with Danish private practitioner A, July 13, 2015.



Danish prosecutors are inscribed in their relative position in this social space that does not pay dividends for the full spectrum of their capital. Perceived shortcomings in securing generalist capital are not at issue; rather, this is related to the activists' trajectory in the system where they have often taken alternative routes and engaged themselves in case work and forms of international cooperation seen to be outlandish from the dominant point of view. As such, their promotion of an alternative perspective on prosecution is linked not only to them being bearers of international expertise, but also to occupying a dominated position in the national field of legal bureaucracy in which the invocation of internationalism becomes a defensive counterstrategy aimed at transforming the legal vocabulary of crime control in the Danish context. An additional goal of this counterstrategy is to fashion new prosecutorial practices in the process. The practices of the activists are aimed at constructing a market for their own services where there is none.

While colleagues may work briskly through matters such as drug-related crimes, lifting a large number of cases out of the normal case flow of the police districts, the ethos of the activists remains constructed around large cases seen to be of international as well as of symbolic importance. These cases are typically referred to as "initiative cases,"<sup>16</sup> meaning that they are actively sought out by the prosecutors or police officers and do not simply land in the system. Using the terminology of Sarat and Scheingold, the activists can be said to engage in practices of "cause lawyering" (Sarat 1998a), aiming thereby to nurture cases that will be widely deemed important and will consequently be able to garner political interest in the work of this group. As with other types of cause lawyering, often seen as "a deviant strain within the legal profession" (Sarat 1998a, 2), the avowed ideals of the activists' practices are embedded in the legal profession; yet practices are turned against the system at large, in this case by insisting on prosecuting all cases fairly and evenly including the most difficult international cases. However, unlike private lawyers, activist practices of cause prosecution are significantly limited by the bureaucracy in which they are employed and to which they are contractually obliged to remain loyal. Engaging in international prosecution, the activists are sidelined in terms of promotions and institutional valuation of their work. One prosecutor summarized the informal rules of this game by quoting "Sir Joseph Porter's Song" from the Gilbert and Sullivan opera, *HMS Pinafore*: "Stick close to your desks and never go to sea."<sup>17</sup> Going to sea in this context includes seeking out trouble cases as well as spending time in international institutions.

To engage in cause lawyering without becoming exposed to professional sanctions, the activists use international networks, for instance, the Genocide Network tied to Eurojust,<sup>18</sup> in order to identify relevant cases and informally test their potential before bringing them into the Danish system. Through these networks, activists attempt to build case work as a professional strategy based on what the DPS more generally sees as "trouble cases" (Sarat 1998b)—cases that demand not only more institutional resources than ordinary national crimes, but also require professional

16. Interview with Danish civil servant K, September 2, 2015.

17. Interview with Danish civil servant E, November 23, 2012.

18. Interview with civil servant in international institution C, September 22, 2013.

expertise beyond that of the average Danish prosecutor. Because such cases are deemed problematic, the cause lawyering of the activists must constantly accommodate the wider pressures of the system that criticizes them for not bringing enough cases and simultaneously restricts the allocation of resources to avoid them bringing too many expensive cases.

This double-bind dynamic finds expression in the case portfolio of the unit responsible for international core crimes since 2003. In the period since its creation, this unit has been involved in approximately twenty-five cases annually, maintaining a certain activity without going too far in the eyes of the system. However, only two of these cases were brought before the Danish courts (Justitsministeriet 2010, 153–54). The activists have unsuccessfully pursued other cases using international networks. The two cases brought before the courts in the lifespan of the unit are routinely mentioned as a standard joke among institutionalists for whom the lack of productivity proves the irrelevance of the unit and its staff.<sup>19</sup> As a result of their exposed position within the system, the activists have attempted to relegitimize their role with reference to other practices other than the prosecution of concrete cases: most significantly, the practice of screening immigrants. This is a narrative that attempts to latch onto what is seen in scholarship to be a wider transformation in the role of universal jurisdiction from being based on proactive prosecutions to now being used to ensure that countries do not become a safe haven for international criminals (Langer 2015). In the concrete context of the DPS, the reference to the screening of cases is a defensive strategy homologous to the weak position of the activists. The screening of foreigners has served as a platform for building institutional legitimacy for the activists while providing input for potential prosecutions.

Due to the low success rate associated with international cases, as well as their potential professional costs, cause lawyering initiatives are supplemented with what could appropriately be called “cause scholarship.” As a supplement to their legal expertise, teaching and publications have served as an important platform for crafting a new language of international crimes and, in the process, for defining the contours of emerging legal subfields by investing international expertise into scholarly innovations (Hjortenberg 1995; Plum 1997a, 1997b; Vestergaard 2012). In sharp contrast to the rest of the DPS, the activist group has substantial academic capital that includes PhDs who have earned degrees from foreign universities. Investing this capital in combination with the expertise acquired through international deployments, the activists have not only been practically engaged in the few Danish cases using universal jurisdiction, but have also been central in the academic discussion of its ideal role in a Danish context (Laursen 2006), particularly in a collective volume on the prosecution of core crimes that was fittingly entitled *The Duty of Any State* (Laursen and Plum 2007). The legitimating role of this scholarship is clear from the contributions of the activists to closely related policy initiatives tied to NGOs such as the Danish Institute for Human Rights and Amnesty International (Laursen 2011, 18). Unlike the situation in other countries, these NGOs do not seem to have been directly active in nurturing cases for the Danish activists, but

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19. Interview with Danish civil servant I, November 23, 2013.

they have been crucial for the exchange of information nationally and via the Genocide Network in which they participate. Their main role has revolved around the attempt to establish core crimes as a political and prosecutorial priority. One particularly prominent initiative that endeavored to set a new national agenda for core crimes prosecutions involved the Danish Red Cross, which spearheaded an influential public international law committee populated with prominent members of academia and agents from the activist group of prosecutors (Dansk Røde Kors 1997, 2004, 2007). These scholarly pursuits at the border between academia and human rights activism urge others to acknowledge the necessity of pursuing the “trouble cases” that these agents see as central tasks of the DPS; such pursuits also seek to increase the value of international capital in the DPS. This strategy is aimed at stakeholders outside the system and at crafting a vernacular of international crimes as an external impetus that could challenge the national orthodoxy of the system.

So far, this effort has not been successful and the practices of the activists have not been embedded into the ideals of the DPS. Neither cause lawyering nor cause scholarship have created impetus for an organizational reform or a transformation of the perceived value of international work. On the contrary, reforms of the public sector have recently pushed the activists into an even more peripheral position. In principle, they are free to leave this position and enter into rotation in the wider system. However, they can do this only if they abandon the international expertise and identity built since the early 2000s.

### **The Impact of New Management Norms on DPS Case Handling**

The domestic ethos of the DPS not only has consequences in relation to the career possibilities within the institution and the strategies of the institutionalists and the activists, it also has a concrete effect on the way actual criminal cases are handled and how the law is understood and administered. The low prestige of international engagement is discernible in the governance of DPS case flow, something that has recently become inscribed in a new case management system introduced in the aftermath of a large reform of the police and the DPS initiated in 2007. This reform followed a larger structural power struggle between economic and legal expertise in the bureaucratic field that saw norms generated in the field of economics spread through the entire public administration. Focusing on the meso level of institutional structures and reconfigurations, this section of the article will investigate precisely how the concrete case-handling regime of the DPS limits international work within the national system. It will also relate this practice to a larger professional contest within the Danish bureaucracy dominated by a quantification of prosecutorial work in which international cases (and the activists behind them) have been pushed even further into the periphery. The meso-level analysis of the role of international case work in the wider system of the DPS will contribute a more systemic explanation regarding the reproduction of a generalist ethos and it will point to why international cases continue to be deemed trouble cases within this system.

### *Bureaucratic Palace Struggles and a New Management System*

In 2016, under the present Danish system, when a case lands on the desk of an individual prosecutor it has already been registered in a case-handling system designed partly to divide the large number of cases among relevant staff and partly to enable DPS leadership to legitimize their actions to decision makers at the political level. This system was created as part of a contest between economic and legal expertise within the bureaucracy. Such changes reflected a more dominant role played by the Ministry of Finance (MoF) and they were an institutional crystallization of a much deeper reshuffling—a professional changing of the guard throughout the Danish public administration—that had expanded the reach of economic capital and perceptive schemas. The changed demography and division of labor in the field of bureaucracy was related to the massive expansion of the higher education system after 1968. In 1960, 3,900 students were admitted to Danish universities; by comparison, 13,800 began studies in 1975 (Kjærgaard and Kristensen 2003, 130). In particular, social sciences expanded in this period and economists and political scientists educated in the 1970s slowly came to dominate the most privileged positions in the public system. By the 1990s, these professional groups had moved to the top of the bureaucracy, often at the expense of legal professionals who had traditionally held a central position in public governance (Bertilsson 1995; Christensen 2012). Thus, in context, the more local DPS contests were intimately related to a number of these reforms of the public sector that began in the 1990s (Jensen 2003), but overt structural transformation of the DPS did not occur until a large reform in 2007.

In the wake of this 2007 reform, a power struggle occurred: professionals historically tied to the MoJ pitted values of legality against ideals of efficiency spearheaded in Danish public administration by the increasingly dominant position of the MoF. Over time, those loyal to these new norms of efficiency have managed to excel at the numbers game: while 60 percent of top leaders in the Danish administration were trained lawyers in 1993, this number had shrunk to 25 percent in 2014. This occurred despite a more than 50 percent increase in the total number of positions. New positions have largely been filled by economists and political scientists, who collectively occupy the 60 percent previously held by lawyers (Mose and Hegelund 2015).

A convergence of professional pressure and widespread public criticism of the 2007 reform (Degnegaard 2010) led DPS leadership to initiate new strategies designed to keep other professionals out of their domain. This was envisaged as an effort to avoid further distortion of the social and professional gravity of the legal bureaucracy. To confront the risk of having the MoF define the benchmarks by which the DPS would eventually be measured, the leadership of the police and the DPS began employing a new type of professional. Those hired had expertise in financial management systems, and some had previously been employed in the MoF itself. These professionals, typically with degrees in organizational management and economics, were tasked with creating and implementing a new case-handling system. By appropriating economic expertise but keeping it in house, DPS leadership

aimed to authoritatively “construct the bottom line”<sup>20</sup>—the way in which the institution measures performance—thereby giving legal leadership an autonomous language with which to legitimize its choices when faced with externally driven, often economic, narratives. The implementation of this system, with its focus on efficiency rather than legal goals, led to the further marginalization of international work within the DPS.

The core of the new management approach was the LEAN system. It was implemented in the DPS from 2008 in order to codify and measure all work performed in the institution as well as the personal and financial resources tied to different tasks. The LEAN system draws its data from POLSAS, which is a case-handling system used by both police and the DPS. This system is used to divide cases between individual prosecutors and to plan the work of specific units and districts. Since the cases prosecuted in the system are very different, LEAN recodes the activities in POLSAS to ensure comparability between resources allocated to various crimes. In this context, a § 244 case about simple violence was used as the standard case and counts for 1.0 case unit, while a drug case counts for 0.56 and a homicide in the first degree 1.74. These numbers are crafted as a function of time spent per case and the number of cases within a given area: namely, the crimes listed in the Danish Criminal Code. Cases only count in the system at the moment they lead to an actual indictment. All other activities are excluded and are, in terms of measurable productivity, a waste of time. This numbers game serves as a comparative mechanism used to govern all levels of work within the DPS and to measure the productivity of the system. For instance, it would provoke concern and prompt professional intervention if national oversight revealed that § 244 cases cost 1.50 on average in a specific district or that the drug cases of a specific prosecutor cost 1.0.

Due to the relative autonomy of the individual districts, the implementation of LEAN management has taken different local forms. To measure the human resource cost of specific tasks, performance charts are used to socialize young professionals into the system by showing them, weekly or monthly, how they have performed. Some districts use color coding as part of the management of the daily case flow. In these districts, a white board dominates central meeting areas. The white board contains the names of the individual prosecutors and the days of the week. Small colored magnets mark the current activities of the prosecutors, signifying whether they are in court, preparing for court, writing up an indictment, or assigned to other activities. As such, the board is a physical manifestation of the LEAN system that makes the productivity of the individual prosecutor common knowledge within the institution. A separate white board is used to keep track of the collective endeavor by detailing incoming and pending cases, linking such cases to the individual prosecutors to show the total cases each is currently undertaking. While this system is relatively new, it is in many ways a digitization of an older variant. Still used in some offices around the country, this more tactile method involved simply placing cases physically on the desk of the responsible prosecutor, allowing them to be removed when they have been tried in court. In contrast to this practice, the

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20. Interview with Danish civil servant K, September 2, 2015.

LEAN system digitizes the focus on productivity and creates a new management technology that has internal and external use for DPS management. The system measures a very particular form of local legal capital as a formal classification of the social rules that permeate the field: generalist expertise tied to the handling of many different cases is socialized into young prosecutors as being the currency that matters in the system.

In contrast, international work is not registered. The practices of requesting legal aid and other typical elements of an international prosecution are not codified in the system. This has two obvious consequences. First, it does not allow prosecutors with international expertise to make their work explicit in the system. Their main practices disappear, which leaves them vulnerable to criticism. Second, and closely related, it provides further incentives for not pursuing international cases and for trimming down the ones that do land on one's desk so that the costs of pursuing international links are minimized. Thus, the traditional skepticism toward international case work has been codified in the LEAN system, which exacerbates the trouble-case status assigned to international cases since it does not count the extra work these cases must presumably entail. Consequently, minor cases with international links have even at times been "solved by the windowsill,"<sup>21</sup> remaining in piles until they were no longer relevant.

As a function of the larger management system, preferred cases for individual prosecutors range from "off the rack cases,"<sup>22</sup> such as a bar room brawl with lots of witnesses and nonconflicting statements, to things that are a bit more complex and challenging, such as a murder case that raises principal legal questions or requires extra effort in securing forensic evidence but is not complex enough to clog up the system and put the individual prosecutor at risk of falling behind in terms of productivity. At a meso level, the combination of a strong professional ethos and the detailed management of legal performance have coalesced in refocusing the societal legitimacy of the DPS and in altering its contribution to a wider regime characterized by the crime control model. Although due process expectations remain inscribed in the legal code of the DPS, the focus on efficient case handling aims to quantify units by which the DPS can promote its contribution to society: a computation of how many cases they solve and how many criminals they put away. This effort is aimed at a national public audience and specifically at political stakeholders for whom the reference to economically measurable performance has increasingly become a vernacular applied across the entire bureaucratic field in which the MoF has taken over the dominant position previously occupied by the MoJ. In this new system, the institutionalists have fallen directly into line by remaining productive and flexible.

### *The Fall of the Trouble-Case Activists*

The social pervasiveness of the bureaucratic crime control model—based on the generalist prosecutor working national cases—has persistently put pressure on

21. Interview with Danish civil servant L, March 5, 2013.

22. Interview with Danish civil servant K, September 2, 2015.

the activists and weakened their position. As demonstrated earlier when analyzing the career strategies of the activists, any attempt to transform the outlook of the system builds on the mobilization of legal, scholarly, and policy capital. Through the combination of these forms of expertise, the activists have worked to strengthen the local discourse on international crimes, to increase the conversion rate of such work, and to profit through participating in working groups and negotiations in the European Union and CoE, as well as the Rome Statute that set up the ICC. This effort was partly successful as evidenced by the emergence of new specialist positions in the units created in the 2000s. However, at the meso level, the success of these practices hinges on the power balances within DPS leadership as well as on the result of palace struggles in the wider field of legal bureaucracy.

The main legal practices developed by the activists were tied to the creation of two international units created in the early 2000s. These built on a wider international transformation of the role of criminal law and on a groundswell of political commitment for increased Danish activism in international affairs. Yet, in contrast to drug crimes and economic crimes, the prosecution of international trouble cases and the pursuit of international cooperation was never successfully embedded in the DPS and was unable to challenge the dominant doxa of the system. Activists were unable to craft a semiautonomous space for international practices and the innovations of the 2000s have proven to be fragile. When Fode stepped down as DPP in 2008 to become Legal Secretary to the Queen, his resignation coincided with the effort to establish the LEAN system. The spread of new governance norms within the DPS, originally designed to keep economists and political scientists at bay, has come to serve as an additional way to denaturalize the perspective of the activists. Left outside POLSAS, international case work and cooperation is also largely absent from the benchmarks that leadership set for the institution in 2016 (Anklagemyndigheden and Justitsministeriet 2015).

For the activists, significant consequences have flowed from their organization's battle to set the agenda regarding economic expertise and from changes in leadership that have installed DPPs decidedly less interested in international cooperation.<sup>23</sup> As part of a reform of the institutional level of prosecutor generals in 2013, the formerly independent specialized office for international core crimes was merged with the much larger special office for economic crimes. The report on which this reform was based explicitly stipulated that the international cases were not to "drown" in the new system (Justitsministeriet 2010, 158). However, since economic management has become pervasive in the institution, this caveat has not been heeded and a more aggressive institutional perspective has trumped the older previous balance wherein activists could be tolerated if not accepted. The latest contract concerning results between the DPS and the MoJ stipulates that the effective and efficient handling of economic cases counts for 20 percent of the overall performance review of the DPS (Anklagemyndigheden and Justitsministeriet 2015, 5–6)—a review that incidentally also forms the basis of determining the annual bonus of DPS leadership. Using economic governance as a platform, the DPS leadership expanded the institutional norms founded on the figure of the generalist to

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23. Interview with Danish civil servant I, January 26, 2015.

conquer former pockets of resistance. On this basis, the activists previously engaged in international core crimes, in some cases having taught, published, and cooperated in international networks for more than a decade, were assigned to new types of cases related to economic crime, their positions being filled by prosecutors without prior experience with core crimes. The small group of activists involved in international core crimes was disbanded as the irregularities of the system were ironed out and these professionals were forced to rotate back into other positions. By forcefully including the activists in the generalist rotation of the system, the system reaffirmed the perceived irrelevance of international expertise.

This development was initiated by the leadership of the merged unit soon after the reform of 2013. This is visible in particular with regard to the screening practices of the unit. The Danish Aliens Act (*Udlændingeloven*) § 45(c)(2–3) provides the DPS with the option of soliciting case files directly from the immigration service. The Act was previously used to screen foreigners entering the country and provided the activists with an important alternative parallel legitimacy: a role they assumed once the self-reporting from other authorities dried up. The narrative of being able to screen immigrants for unwanted elements was one thing that tied activist practices to the general crime control focus of the wider system. The last screening was initiated in 2012, and this process was terminated almost immediately after the 2013 reform<sup>24</sup> took effect, much to the dismay of the activists who saw this as a blatant disregard for the professional expertise and knowhow built since 2002. Fact-finding missions have also been terminated since 2013 and, as a result, the formerly quasi-independent unit has not been able to initiate new cases.

Whereas the activists were relatively successful in the early 2000s, transformations in the field of bureaucracy provided new legitimacy for the institutionalist perspective. This provided methodical ammunition for one side in an internal contest that was used to enforce the dominance of the institutional perspective. The accumulated expertise of the activists in the field of international core crimes has been erased from the institution. The activists themselves are still employed, but their ability to seek out cases via cause lawyering, their opportunities to engage in international networks, and their freedom to partake in other professional practices aimed at expanding the role of international work in the DPS are outlets that have been seriously impeded.

## CONCLUDING REMARKS

Within the DPS, two oppositional perspectives have been contesting the value of international work for decades. These perspectives are social and professional products of the history of the bureaucracy in which the relative position and position-taking activities of the competing groups were crafted in parallel to the transformation of the field itself. In contrast to previous studies on international socialization, this analysis demonstrated that a highly internationalized social group existed within the Danish system, but that the impact of this group must be

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24. This is evidenced in correspondence between SØIK and immigration authorities obtained through the Danish access to information act (*Offentlighedsloven*).



analyzed in relation to the specific field of practice that structures the meaning and relative value of international work and practices within it. The professional perspective of the activists was built through participation in international institutions and networks inscribed in their trajectories. But despite a period in which leadership actively invested in internationalization, the activists remained a dominated group in a prosecution service characterized by a strong institutional ethos. The bureaucratic pressure to produce and handle large numbers of national cases restricted the number of activists by maintaining a low conversion rate for international experience and reproducing a generalist doxa in which international case work was seen as a problematic impediment in the system.

Due to these institutional pressures, members of the activist group crafted heterodox practices and invested their accumulated capital toward establishing new rationales and ideals of prosecutorial work. Occupying the periphery of the field, this perspective was formed in explicit opposition to the dominant orthodoxy of the system. Such an orthodoxy was built on a long institutional and professional tradition and was reproduced within the DPS system, which ensured that the institutionalists moved more effortlessly between positions, never becoming trapped by the international technologies they mastered and by no means going so far as to promote this international capital as a specific value in itself. The structural balance between these groups testifies to the outlook of the DPS and it has a direct impact on the way cases are handled and on which activities are seen as redundant.

With suitable caution, these findings will now be used to investigate the possible macro-level impact of the social laws identified in the Danish context. How do the dynamics identified affect the state of international prosecution as a wider phenomenon? Immediately, it must be underlined that the DPS represents only a small corner of the larger space in which new professional practices have been constructed around international prosecution as a technique and criminal law has been internationalized as a wider phenomenon.

Nonetheless, when interviewing professionals in the wider international space of criminal law, in particular staff of the international criminal courts and European institutions such as Eurojust and DG Justice, the social dynamics identified in the Danish case seem to resonate with the trajectories of other nationals in two interrelated ways. First, most internationally experienced prosecutors report that while expertise gathered beyond the state can sometimes be invested back into the national context, longer deployments are rarely an advantage and come at a significant professional cost.<sup>25</sup> At a certain point, long-term professional investors in international prosecution begin to see themselves as catering to an international market of criminal law, itself emergent and highly unsettled, because their capital becomes so specific and consequently difficult to exchange into any nationally recognized professional currency. To avoid this unfavorable conversion rate, international animals have moved into academia,<sup>26</sup> think tanks,<sup>27</sup> or NGOs<sup>28</sup> that work

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25. Interview with civil servant in international institution A, October 29, 2013.

26. Interview with academic A, June 5, 2015.

27. Interview with staff in international NGO A, November 10, 2014.

28. Interview with staff in international NGO B, December 10, 2013.

with questions relating to international criminal justice,<sup>29</sup> while others have found employment in international organizations such as the United Nations or international law firms.<sup>30</sup> Second, interviews with professionals working with international core crimes in Canada, the Netherlands, and Belgium point to the existence of similar bureaucratic contests to define the necessity and value of performing international work. War crimes units in these countries are also expected to bring cases to legitimize their position and outlook, while not bringing so many cases as to burden the system. In addition, some of these units are also involved in the screening of immigrants to provide alternative legitimacy.

Despite the particular power balances of this specific field of bureaucracy, the Danish case seems a fairly typical exponent of institutionally embedded demands for productivity and efficiency in which trouble cases threaten to undermine an expedient flow of cases through the system. Interviews with national staff from the jurisdictions of other industrialized democracies offer testimony that in such environments the routinized handling of core tasks is pivotal for the functionality and legitimacy of public administration (recalling Weber's famous analysis of the emergence of bureaucracies as linked to their standardized and formalized practices). In the Danish context, this bureaucratic preference is epitomized in the figure of the generalist: a figure able to circulate within the system as a bearer of its doxa; a pragmatist devoted to national, "off the rack" cases. This focus on efficient productivity seems to be a general trait of bureaucracies rather than a specific characteristic of the DPS.

These admittedly very preliminary results point to a structural dis-appreciation of international work within national bureaucracies. This potentially has deep structuring effects on international fields of criminal law that depend on recruitment of nationally trained professionals and on the cooperation of state institutions. For instance, in the context of the Rome Statute, the issue of complementarity has been widely discussed (Mégret 2005; Heller 2012) and it hinges, practically speaking, on the active role of national prosecutors. Yet if this activity is in fact embodied in a very small and peripheral subgroup within national bureaucracies systemically disinclined to supply resources to such groups, do these national systems qualify as "unwilling and unable genuinely to carry out investigations and prosecutions" as per the wording of the Rome Statute, Article 17, 1(a), which defines a pivotal requirement of admissibility to the ICC? Similar dynamics are visible within the European Union where even supranational criminal law institutions such as the EPPO will remain highly dependent on the support of national judiciaries and prosecution services that see international cooperation as a professional irritant when it is not directly translatable into national prosecutions.

The internationalization of criminal law has produced strong narratives supported by legal scholarship about the important supplementary role played by these international systems (Delmas-Marty 2002; Cassese 2008); they stand legitimized as institutions created to support the national judiciaries that they rely on to prosecute and adjudicate crimes. However, the evidence of this article points to these systems

29. Interview with staff in international NGO C, November 15, 2014.

30. Interview with civil servant in international institution D, November 14, 2014.

being in fact structurally uncoupled from national judiciaries. Remaining distinct from national fields of criminal law in terms of professional ideals, social ecologies, and legal practices, they are singular creatures fenced off by the limits of their own isolated legal categories and self-perpetuating mythologies. As a result, internationalized criminal law remains highly susceptible to criticism from the very national systems its institutions purport to build on. Beyond these isolated international institutions, the contest to define the reach and value of the legal practices they represent is being fought every day within national bureaucracies. The endgame of this contest is the very existence and functionality of internationalized criminal law.

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