

**THE COMPARISON OF PROSECUTORIAL FUNCTIONS IN THE U.S.A.
AND IN TAIWAN**

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ABSTRACT:

The justice administered by the prosecutor in a criminal system is essential to the system's success. This study's objective is to search for a way to improve the effectiveness and efficiency of criminal justice administered by the prosecutor in Taiwan. It compares the Taiwanese prosecutorial system with its American counterpart to get some useful concepts that work well in America. It discusses the prosecutor's organizational structure and major functions in the phases of investigation, charging, and trial of criminal cases in both countries and examines each system's merits and demerits. This paper argues that because the current Taiwanese criminal justice system gives too much responsibility for criminal investigation but too little charging discretion to the prosecutor, her inactive role at trials has become an inevitable and striking problem. It proposes that Taiwan keep its centralized and examination-selected prosecutorial system but establish a disciplinary mechanism to assure that the prosecutor maintains high standards of responsibility. As for criminal investigation, this paper explains that the prosecutor is not fit to lead investigation while the police-led investigation is often biased against the defendant. To achieve a fair and efficient investigation, it suggests the Taiwanese prosecutor in principle relinquish the primary investigative responsibility but remain her supervisory power over police investigation. At the phase of making charging decisions, this paper explains that the penal order in Taiwan cannot be equated to plea bargaining in America. It argues that the American prosecutor's discretion is broad and not effectively checked while the Taiwanese prosecutor's discretion is so limited that she expends too much time investigating phony crimes and explaining her prosecution and declination decisions. This paper recommends Taiwanese effective controls on prosecutorial charging decisions but suggests that the prosecutor be given

the discretion to reject investigation of phony crimes and that prosecution letters and non-prosecution letters be simplified to a large extent. Finally, at the trial stage, this paper asserts that the quality of fact-finding at a Taiwanese trial generally is below American levels. However, the American adversarial trial system is so expensive that it can offer to only a small portion of cases. This paper argues that the best way for Taiwan to combine the benefits of the two systems is to incorporate some adversarial components into its original non-adversarial system, and analyzes what components it should import from America.

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