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Review Article

The Politics of Financial Intransparency: The Case of Swiss Banking Secrecy

PATRICK EMMENEGGER
University of St.Gallen

Abstract: *In parallel to the growing weight of finance in the global economy, the transparency of financial flows and asset ownership has attracted increasing attention, a process further accelerated by the 2007/8 global financial crisis. Tax-starved governments want to know the assets their residents own but financial intransparency can make tax collection difficult by obscuring both the ownership of assets as well as their real size. This article reviews three interrelated strands of literature on financial intransparency with a special emphasis given to one of its most prominent examples: Swiss-style banking secrecy. First, I discuss the challenge of financial intransparency in a globalized economy and document the central role Switzerland plays as an offshore financial centre. I show that while Swiss-style banking secrecy is an important example of financial intransparency, possible tax evaders also have other instruments at their disposal. Second, a review of the literature on the origins of Swiss banking secrecy shows how struggles for interpretive dominance shape the politics of financial intransparency. Third, I discuss the literature on the first OECD campaign against tax havens and demonstrate that representatives of the Swiss political-economic system could have anticipated the shift of attention from small island states to OECD member states like Switzerland. Given the writing on the wall, it is surprising that recent developments have caught Swiss banks flat-footed.*

Introduction

Comparative political economy research has been slow to acknowledge that the 'advanced industrialized democracies' have begun to deindustrialize and might now be better described as 'post-industrial' societies (Blyth 2003). In recent years, however, much scholarly attention has been devoted to the resulting new social risks (Bonoli 2005), new political coalitions (Häusermann 2010) or the strategies rich countries use to cope with deindustrialization (Emmenegger et al. 2012). While this literature has sharpened our understanding of the political processes that characterize capitalist economies in the 21st century, it has largely neglected an important aspect of this deindustrialization process, namely the fact that in many rich societies, financial activities, rather than services in general, have become the dominant economic activities – a process often referred to as financialization (Krippner 2011).

The financialization of economies raises a series of new challenges, most of which are connected to the fact that financial activities do not stop at the borders of a country (Helleiner 1994). Probably more than any other economy activity, financial activities are organized at a global level. This has become very clear in recent years, as the U.S. subprime mortgage crisis turned via the global financial crisis into the Euro crisis that is still occupying people's minds in Europe. This global organisation of financial activities has important implications for the relationship between states and markets but also for the relationship between different states across the globe because the regulation of financial activities in one country may have relevant consequences for another country (Strange 1986). This is for instance the case for national regulations concerning financial transparency. If a country facilitates the creation of structures that allow asset holders to avoid taxation in their resident country, the effects are felt in both countries but given the sovereignty of nation states the country suffering from tax evasion has few means at its disposal to avert the negative consequences (Palan et al. 2010: 77-81).

There are numerous instruments that can be used to create financial intransparency and thereby to obfuscate the existence or, alternatively, the real ownership of financial assets. However, one instrument in particular is typically associated with Switzerland, even though similar regulations exist in many other countries: banking secrecy. Swiss bankers have become notorious for their secrecy, earning them the nickname 'Gnomes of Zurich' (Fehrenbach 1966). The secrecy of Swiss banking has also been a recurrent theme in culture, from James Bond movies to Dan Brown's 'The Da Vinci Code' and Francis Ford Coppola's 'The Godfather' (Vogler 2005: 73-74).[1]

Although banking secrecy has been the subject of international (and domestic) criticism before (cf. Fehrenbach 1966; Ziegler 1976; Faith 1982), international pressure increased once again during the debates on the dormant bank accounts of Holocaust victims in the late 1990s followed by the negotiations on the European Union Tax Savings Directive and finally the 2007/8 global financial crisis that gave new rise to demands to reduce financial intransparency. This renewed international pressure on Swiss banking secrecy produced a series of popular science books that critically examine the role Switzerland plays as an offshore financial centre (e.g. Baumann and Rutsch 2008; Parma and Vontobel 2009; Hässig 2010; Hablützel 2010; Löpfe 2010; Müller 2011). Although some of these books are of good quality, none of them has analysed the politics of banking secrecy from a more systematic and theory-guided point of view. In this article, I attempt to take the first step towards such goal by reviewing the literature on financial intransparency and in particular Swiss banking secrecy.

This review article is organized in three main sections. First, I discuss the challenge of financial intransparency in a globalized economy and document the central role Switzerland plays as an offshore financial centre. I show that while Swiss-style banking secrecy is an important example of financial intransparency, possible tax evaders also have other instruments at their disposal. Second, a review of the literature on the origins of Swiss banking secrecy shows how struggles for interpretive dominance shape the politics of financial intransparency. Third, I discuss the literature on the first OECD campaign against tax havens and demonstrate that representatives of the Swiss political-economic system could have anticipated the shift of attention from small island states to OECD member states like Switzerland. Given the writing on the wall, it is surprising that recent developments have caught Swiss banks flat-footed. I conclude with a short discussion of possible avenues for future research.

What is financial intransparency?

Financial intransparency denotes situations in which offshore financial centres do not ensure that the consequences of the structures they facilitate are reported where these

[1] In 'The Godfather III', the main character is fending off an attack by a group of criminals that include the corrupt Swiss banker Frederick Keinszig. Interestingly, the character of Keinszig is based on the Italian banker Roberto Calvi who was involved in the Banco Ambrosiano scandal and died under mysterious circumstances in 1982. For the movie, however, the authors turned the Italian banker Calvi into the fictitious Swiss banker Keinszig.

consequences arise (Murphy and Sagar 2009: 8). Offshore means that financial centres provide services to non-resident clients (in contrast to onshore financial centres). In case of financial intransparency, governments have insufficient or incomplete knowledge of their countries' residents' assets that are held abroad. As a result, owners of assets may attempt to avoid regulation and evade taxation by not disclosing their ownership of assets or their real size. Clearly, offshore financial centres may attract clients for many reasons such as the quality or cost of services[2] but in presence of financial intransparency and hence insufficient government control offshore financial centres provide ample opportunity to hide assets.

The problems financial intransparency can cause are obvious: Being able to access financial services without governmental control allows hiding the proceeds of criminal undertakings (e.g. corruption), financing illegal activities (e.g. terrorism), evading taxation and regulations as well as avoiding payments in case of bankruptcy, divorce, child support or the like (Palan et al. 2010). Hence, from a governments' point of view, dealing with financial intransparency is at best costly and at worst dangerous to life. What is more, financial intransparency is likely to have important distributional consequences. Relying on offshore financial centres to avoid regulation is expensive and presupposes a certain minimum amount of wealth. Hence, it is not a feasible strategy to reduce the tax load for low-wage earners. In a similar vein, financial intransparency is likely to redistribute from poor to rich countries. According to estimates by the Tax Justice Network (2012), several hundred billion US Dollars leave developing countries on a yearly basis as unrecorded cross-border private financial capital flows made possible by offshore financial centres.

There are numerous regulations that create financial intransparency. In a Swiss context, banking secrecy is certainly the most prominent one. Palan et al. (2010: 249) define banking secrecy as laws that "strengthen the normal contractual obligation of confidentiality between a bank and its customer by providing criminal penalties to prohibit banks from revealing the existence of an account or disclosing account information without the owner's consent". This definition, however, does not capture all that is commonly considered to be part of banking secrecy. It clearly refers to article 47 of the 1934 Banking Act that criminalized the breach of banking secrecy by introducing fines of up to 50'000 CHF or up to six months of prison (today 250'000 CHF and three years of prison) but imposing criminal sanctions in cases of breach of professional secrecy does not necessarily increase financial intransparency. At least as important are the rules that regulate who can legally access account information without violating banking secrecy.[3]

In fact, many commentators consider the rules regulating the access of public authorities to financial data and the ability to share these data with foreign authorities to be the 'core' of Swiss banking secrecy (cf. Fiechter 2010). For instance, Switzerland (since 1987) provides financial data to foreign authorities in case of investigations of insider trading. Hence, under certain conditions, the Swiss state can access all data on accounts in Swiss banks and possibly even share the information with other states in accordance with international conventions and treaties. However, it is exactly these comparatively restrictive regulations of access and international assistance that attract criticism.

[2] For instance, Swiss banks have, despite banking secrecy being challenged, attracted 2.2 trillion US Dollar of offshore wealth in 2012, which is almost as much as the Channel Islands, Dublin, Hong Kong and Singapore managed to attract combined (BCG 2013: 11).

[3] Interestingly, there is also no clear definition of banking secrecy in any Swiss legal text (Hirszowicz 2003: 229).

At the core of the dispute is the Swiss distinction between tax evasion and tax fraud (Hirszowicz 2003: 234; Roth 2009: 106-109). The main difference between these two offences in Swiss law concerns the extent to which documents have been purposefully altered to evade taxation. Altering documents is considered tax fraud, a criminal offence and subject to international legal assistance (if foreign legal authorities can furnish sufficient evidence to substantiate such accusations). In contrast, not declaring assets without altering documents is only considered tax evasion, an administrative offence and not subject to international legal assistance.[4] This distinction between tax fraud and tax evasion is still in effect today. In February 2013, the Swiss Government has announced its plan to allow international legal assistance in case of tax evasion. However, the reform has been stopped for now due to the considerable opposition it encountered in the preparliamentary hearings.

International legal assistance is different from international administrative assistance, that is, the exchange of information between *administrative* authorities (such as FINMA, the Swiss Financial Market Supervisory Authority) as opposed to *legal* authorities (such as the Federal Department of Justice and Police). As in the case of legal assistance, Switzerland has historically refused to provide assistance to foreign administrative authorities in case of tax evasion. However, in March 2009, under pressure from international organisations, Switzerland has agreed to accept the so-called 'OECD standard' and now offers administrative assistance also in case of tax evasion (Steinlin and Trampusch 2012). This extension of administrative assistance is however subject to the revision of existing or the conclusion of new bilateral agreements, which has not taken place for all countries yet.

The implications of this differential treatment of tax evasion and tax fraud are straightforward: By not declaring assets on Swiss bank accounts, account holders do not commit an offence that is subject to legal assistance (and until 2009 administrative assistance). As a result, account holders can put their assets out of reach of their resident countries' authorities and thereby avoid taxation (Palan et al. 2010). New developments such as the acceptance of the OECD standard mentioned above have changed this situation. Switzerland now also offers administrative assistance in case of tax evasion (if the double taxation agreements have been adapted accordingly). However, getting access to information on financial assets of residents is still rather difficult as requests for administrative assistance in case of tax evasion presuppose information about the account holder that is often simply missing. In September 2012 Switzerland has also agreed to allow group requests that do not presuppose the identification of the account holder, but the conditions under which group requests are subject to administrative assistance are still rather demanding (and thus unlikely to solve the problem of undisclosed assets that are currently on Swiss bank accounts).

Switzerland's central role in debates about financial intransparency is reflected in the financial secrecy index compiled by the Tax Justice Network (2013). This indicator combines two sorts of information: a secrecy score based on 15 secrecy indicators[5] and

[4] The reason for refusing legal assistance is the principle of 'dual criminality', which implies that Switzerland provides assistance only in cases that are also a criminal offence in Switzerland. Given that tax evasion is not a criminal offence (only an administrative offence), Switzerland refuses legal assistance.

[5] These indicators are: (1) banking secrecy, (2) trusts and foundations register, (3) recorded company ownership, (4) published company ownership, (5) published company accounts, (6) country by country reporting, (7) fit for information exchange, (8) efficiency of tax administration, (9) avoids promoting tax evasion, (10) harmful legal vehicles, (11) anti money laundering, (12) automatic information exchange, (13) bilateral treaties, (14) international transparency commitments and (15) international judicial cooperation.

Table 1: Financial Secrecy Index

Rank	Jurisdiction	Financial secrecy index value (2013)	Secrecy score (2013)	Global scale weight (2013)	Rank (2011)	Rank (2009)	Banking secrecy (2013)
1	Switzerland	1765.2	78	4.916	1	3	0.63
2	Luxembourg	1454.4	67	12.049	3	2	0.70
3	Hong Kong	1283.4	72	4.206	4	10	0.56
4	Cayman Islands	1233.5	70	4.694	2	4	0.50
5	Singapore	1216.8	70	4.280	6	8	0.64
6	USA	1212.9	58	22.586	5	1	0.40
7	Lebanon	747.8	79	0.354	22	27	0.53
8	Germany	738.3	59	4.326	9	N.A.	0.40
9	Jersey	591.7	75	0.263	7	11	0.23
10	Japan	513.1	61	1.185	8	N.A.	0.27
11	Panama	489.6	73	0.190	14	19	0.44
12	Malaysia	471.6	80	0.082	27	23	0.37
13	Bahrain	461.1	72	0.182	10	14	0.60
14	Bermuda	432.3	80	0.061	12	7	0.47
15	Guernsey	419.3	67	0.257	21	13	0.47
16	UAE	419.0	79	0.061	18	31	0.57
17	Canada	418.5	54	2.008	24	N.A.	0.27
18	Austria	400.8	64	0.371	17	12	0.63
19	Mauritius	397.8	80	0.047	32	32	0.50
20	BVI	385.4	66	0.241	11	16	0.20
21	UK	361.3	40	18.530	13	5	0.33
22	Macao	360.4	71	0.108	23	29	0.50
33	Liechtenstein	240.9	79	0.011	34	55	0.63
34	Isle of Man	237.2	67	0.049	36	24	0.33
76	Samoa	31.0	88	0.000	68	39	0.56

Notes: Data taken from the Tax Justice Network, URL: http://www.financialsecrecyindex.com (accessed on 7 November 2013). Abbreviations: BVI… British Virgin Islands, UAE… United Arab Emirates (including Dubai), UK… United Kingdom and USA… United States of America. The country rankings are not strictly comparable over time because definitions and sources have changed in subsequent versions of the financial secrecy index.

data on the global market share in financial services exports. A country's financial secrecy index value is calculated by multiplying the cube of its secrecy score with the cube root of its global scale weight (for a detailed discussion of the methodology see Tax Justice Network 2013).[6] The resulting scores for 2013 are displayed in Table 1, which shows that Switzerland ranks first in terms of financial secrecy. This does not imply that Switzerland has, according to the Tax Justice Network, the most secretive financial sector (captured by the secrecy score). For instance, Bermuda, United Arab Emirates (including Dubai),

[6] The cube and the cube root respectively is used to compensate for the higher level of variation of the indicator capturing the global market share in financial services exports (Tax Justice Network 2013: 71-72). Using alternative ways to calculate the financial secrecy index leads to different rankings. For instance, simply multiplying the secrecy score with the global scale weight puts Switzerland in the fourth position behind the USA, Luxembourg and the UK. However, Switzerland always remains ranked among the first countries due to its comparatively high secrecy score and the large financial sector.

Liechtenstein and Malaysia achieve (slightly) higher secrecy scores. However, given the size of its financial sector (global scale weight), Switzerland is considered the most important jurisdiction that facilitates illicit financial flows worldwide.

Interestingly, Switzerland does not achieve its high secrecy score exclusively due to its banking secrecy laws. In fact, with regard to formal banking secrecy, Switzerland ranks behind countries such as Luxembourg and Singapore, which is due to the facts that Swiss banks are legally required to maintain data records sufficient for law enforcement and that Swiss authorities can access these banking data under certain circumstances. Rather, the high secrecy score of Switzerland is the result of a lack of transparency in case of ownership of companies, foundations and trusts, the regulation of corporate transparency (e.g. public company accounts and country-by-country reporting), the lack of central reporting and matching of all payments to taxpayer identifiers and the absence of a system of automatic information exchange (e.g. in the framework of the European Union Savings Tax Directive).

These findings point to the fact that there are also other forms of financial intransparency. The most prominent examples are trusts and foundations. As in the case of banking secrecy, the existence of trusts or similar legal structures is not synonymous with tax evasion. Rather, it is the fact that these legal structures do have the potential to be used to conceal assets that raises questions concerning financial intransparency.

Trusts work according to a simple logic: A "person or entity (the trustee) holds legal title to certain property (the trust property) but has a fiduciary duty to exercise legal control for the benefit of one or more individuals or organizations (the beneficiary)", thereby creating "a barrier between the legal owner of an asset and its beneficiary" (Palan et al. 2010: 92). It is easy to see how trusts can be used to conceal assets: If trusts are established offshore in places with little regulation, they can make it exceedingly difficult to identify the former owners of the assets (the settlors), while simultaneously allowing the former owners to be the beneficiaries of the trust. Hence, the original owner of the assets can continue to benefit from the assets (in his or her resident country) without being the official owner of the assets, thereby avoiding most regulation and taxation.[7]

Trusts originated in common law and are a prominent financial structure in former British colonies such as the British Virgin Island and Cayman Islands or Crown dependencies such as Jersey. However, they now also exist, albeit less prominently, in civil law countries such as Switzerland (Palan et al. 2010: 92). Foundations are related legal structures. Unlike trusts, however, they have a separate legal existence and often a non-taxable status. Given the specific national regulations, these legal structures too offer the potential to conceal assets.

Important but often overlooked sources of financial intransparency are so-called shell companies, that is, companies that are nothing but legal entities without any business activities of their own. As legal entities, shell companies can own bank accounts but if established in countries that do not require the owner of a (shell) company to be disclosed (or do not enforce compliance with such regulations), the company's bank accounts cannot be traced back to the real owner. As a result, anonymous shell companies are perfect instruments for money laundering and tax evasion. Arguably, corporate anonymity poses a bigger challenge to financial transparency than banking secrecy, as Sharman (2011a: 70) argues in his study on regulating criminal finance in a global economy, because countries

[7] As The Economist candidly remarks, "only a fool holds dirty money in his [sic] own name" ("Mistrust the Trusts", November 9, 2013).

with banking secrecy laws (including Switzerland) have amended their regulations to suspend secrecy in cases in which there is credible evidence of criminal finance such as money laundering. In contrast, the problem of anonymous shell companies has remained largely unaddressed. What is more, anonymous shell companies are not a rarity. Sharman (2011a: 71), citing a statement by U.S. Senator Carl Levin, notes that "two million companies are incorporated in the United States annually [alone], few of which can be traced back to their real owners".

The statement by Senator Levin demonstrates that anonymous shell companies are not exclusively created by 'tax havens'. In fact, as a recent series of field experiments shows, it is easier to purchase an anonymous shell company in the USA and the UK than in classic tax havens such as the Cayman Islands or often criticized offshore financial centres such as Switzerland (Sharman 2011ab; Findley et al. 2012, 2013). The field experiments followed a simple strategy: Disguised as businessmen from a small but affluent Western democracy, the researchers contacted several thousand providers of incorporation services. In their inquiries, the researchers made it quite clear that they would like to remain anonymous and their main goal is to evade taxation.[8] The researchers then analysed the responses and calculated the average probability of receiving "a non-compliant response, i.e., be offered a shell company with no need to supply any identity documents" (Findley et al. 2012: 19).

Their findings are striking (Sharman 2011ab; Findley et al. 2012, 2013): First, they find that non-compliance is considerably more widespread in OECD countries than in countries that are typically considered tax havens. Second, the USA and the UK are among the worst offenders. In fact, it is particularly easy to purchase an anonymous shell company from an U.S. based incorporation service. Third, there are large differences within the USA with very few incorporation services in the U.S. states Delaware, Nevada and Wyoming requiring notarized identity documents. Fourth, the researchers did not find any single non-compliant provider of incorporation services in well-known tax havens such as the Cayman Islands (secrecy score 70, see Table 1), Bermuda (80) and Jersey (75). The researchers were more successful in Switzerland (78), but the non-compliance rate of Swiss providers of incorporation services was lower than 5 per cent, while the non-compliance rate of U.S. firms specializing in incorporation services was approaching 50 per cent (Findley et al. 2012: 25). These findings point to the important role of the implementation of transparency regulations.

In sum, Switzerland plays an important role as offshore financial centre both due to its secrecy provisions as well as its market share in financial services exports. Switzerland is famous for its banking secrecy provisions, but it also knows other regulations that can contribute to financial intransparency such as trusts or shell companies. Recent developments have somewhat reduced the scope of banking secrecy in Switzerland by changing the regulations concerning international administrative assistance. Since 2009 Switzerland is offering administrative assistance also in case of tax evasion and since 2012 allows group

[8] Here is a typical example of the contact letter the researchers used, including spelling errors to credibly convey that the author is not a native English speaker (line breaks have been removed): "Dear Rapid Filing Inc.: I am a consultant in need of an international corporation. I am a Sweden resident and I operate my business here with two associate. I have contacted you because I have several international clients in your region. Recently, our business has grown and tax have become more burdensome. Also I hope to limit my liability, and I think that incorporation is the best solution. I am eager to maintain business confidentiality and to keep the process as discrete as possible. I would specifically like to know what identifying documents you will require and what the costs will be. Due to a heavy upcoming travel schedule, the best way to reach me will be via email. I look forward to hearing from you. Lennart Andersson" (Findley et al. 2012: 12).

requests. Switzerland, however, is not the only offshore financial centre contributing to financial intransparency. The available evidence suggests that – next to classic tax havens – also countries like the USA, the UK and even France[9] play major roles as offshore financial centres that facilitate the avoiding of regulations and taxation, hence the accusations of hypocrisy on the part of Swiss commentators responding to international criticism (e.g. Braillard and Schwamm 2006).

Struggle for interpretive dominance: The debate about the origins of Swiss banking secrecy

Researchers interested in the politics of Swiss banking secrecy will be disappointed to learn that – despite the often-professed importance of banking secrecy in public debates – little is known about the political processes that govern it. Broadly speaking, there are three separate literatures that deal with banking secrecy, none of which is primarily concerned with the *politics* of Swiss banking secrecy: First, there are contributions by lawyers and economists that discuss the way banking secrecy works (e.g. Hirszowicz 2003; Roth 2009; Fiechter 2010; Gärtner 2012). In this group, there are also contributions that provide detailed legal advice on how to best use offshore financial centres to avoid regulation and taxation (e.g. Finkelstein 1999; Hadnum 2013). Second, there are contributions by researchers and journalists critical of financial intransparency (e.g. Missbach 2009; Palan et al. 2010; Shaxson 2011), including some contributions that are rather polemic (e.g. Fehrenbach 1966; Parma and Vontobel 2009). These contributions share with the first group the emphasis on the legal regulation and the economic effects of financial intransparency in the present, while there is little focus on political processes. Third, there is a renewed interest in the origins of Swiss banking secrecy (e.g. Guex 2000; Hug 2000; Vogler 2001, 2005). Following accusations concerning dormant bank accounts of Holocaust victims in Swiss banks, several researchers began investigating the role of Swiss banks in the years around the Second World War, including the passage of the 1934 Swiss Banking Act that legally codified banking secrecy. These contributions deal with political questions. Their focus, however, is restricted to the first decades of its existence.[10]

Nevertheless, the literature on the origins of Swiss banking secrecy is important for two reasons: First, there is an understandable interest in getting to know the origins of a law that was passed in exceptional circumstances, is still in use today and often the subject of controversy. Second, the origins of Swiss banking secrecy are today often used to 'prove' its alleged main purpose, which is to help wealthy individuals and companies evade taxes in their resident countries (cf. Palan et al. 2010: 119-122). This new and more critical interpretation of the origins of Swiss banking secrecy, which is based on research by historians

[9] In his analysis of money laundering, Sharman (2011a: 40) writes that "the evidence suggests that even the most blatant third-world kleptocrats can easily place and enjoy their stolen wealth in rich countries such as the United States and, especially, France".

[10] These contributions, however, are exclusively concerned with the legal codification of criminal sanctions in case of breaching banking secrecy in the 1934 Banking Act. They do not deal with the introduction of the distinction between tax fraud and tax evasion, which defined tax evasion as an administrative (as opposed to criminal) offence. This distinction was in fact introduced by the Federal Council using its emergency power in 1940 (*Bundesbeschluss über die Erhebung einer Wehrsteuer*) and is still regulated by the Swiss federal law on direct taxation. Although little is known about the origins of this distinction, the limited available evidence does not point to a deliberate strategy by the government aimed at strengthening the Swiss financial sector (Straumann 2006: 148).

such as Guex (2000) and Hug (2000), stands in stark contrast to previous interpretations of the origins of Swiss banking secrecy that explained its existence by pointing to economic espionage and the rise of political insecurity in Western Europe in the 1930s.

Bänziger (1985, 1986) has provided the first detailed analysis of the origins of Swiss banking secrecy. In his PhD thesis, Bänziger (1986) is primarily concerned with the public supervision of banks that was established by the 1934 Banking Act after several years of intense political discussion. This act, however, also contains the famous stipulations that introduced criminal penalties to prohibit banks (and bank employees) from disclosing any information about accounts without the owner's consent. Hence, the banking secrecy provisions are not his main interest. Nevertheless, Bänziger (1986: 114-118) briefly discusses how these secrecy stipulations ended up in the 1934 Banking Act that was primarily concerned with the public supervision of banks and the protection of savings in case of banking crises.

According to Bänziger (1986: 115), the main reason for introducing criminal penalties can be found in the increasing prevalence of economic espionage after 1931, especially by German authorities. Economic espionage increased after the rise of the NSDAP to power in 1933 and the passage of the *Gesetz über die Einziehung volks- und staatsfeindlicher Vermögen* on July 14, 1933. Increasingly, the German authorities forced citizens to sign documents that would allow the authorities to access information about these citizens' accounts in Swiss banks (Bänziger 1986: 117). Swiss authorities forbade banks to provide information. However, the lack of legal regulations that would allow Swiss authorities to impose sanctions on defiant banks and persecute economic espionage by German representatives tied the authorities' hands. To address this problem, the Swiss parliament added the secrecy provisions to the 1934 Banking Act, whose main purpose was not banking secrecy but the public supervision of banks and which had already been in the making for several years.

Bänziger (1985, 1986) was the first historian to analyse the origins of Swiss banking secrecy. However, he was of course not the first person to write about its origins. Strikingly, earlier (non-scientific) accounts tended to highlight the same factors – economic espionage and the rise of Nazi Germany – but they tended to present the origins of banking secrecy in a rather different light. In these accounts, banking secrecy was deliberately created in order to protect German Jews from persecution and espionage in Nazi Germany. According to Hug (2000: 281-282), Fehrenbach (1966: 67-82) was the first to introduce the 'myth' of the anti-Nazi origins of Swiss banking secrecy. In his otherwise critical analysis of Swiss banking secrecy, Fehrenbach tells the story of a Gestapo agent that travelled through Switzerland to detect bank accounts held by German citizens, in particular Jews, and ultimately concludes that "banking secrecy was codified because of Nazi pressures" (Fehrenbach 1966: 77).

In the same year, the Schweizerische Kreditanstalt (SKA, predecessor of Credit Suisse) published a bulletin that professed to explain the origins of Swiss banking secrecy (SKA 1966). Like Fehrenbach (1966), the anonymous author in the SKA publication argued that it was the Nazi persecution of Jews that prompted Switzerland to introduce banking secrecy, a decision that ultimately saved the fortunes of thousands of people (for a detailed discussion see Hug 2000: 270-271). This claim was subsequently picked up by several other publications (e.g. Hauser 1971; de Weck 1978, 1992) – despite a glaring lack of evidence to support this statement.

The myth of the Nazi origins of Swiss banking secrecy was popularized during a period of international pressure. Swiss banking secrecy had been the subject of international criticism since its codification in 1934. However, international criticism began to increase once again in the late 1950s following the *Interhandel* affair and a new debate about dormant bank accounts of Holocaust victims.[11] In 1962, the Swiss Federal Council acknowledged that banking secrecy – "without a doubt" – promotes tax offences, but the Federal Council also emphasized that banking secrecy was crucial in protecting legitimate interests against the omnipotence of totalitarian states and their dictatorial despotism (Bundesblatt 1962: 1078, own translation).[12] Some bank representatives – but also some of their critics (e.g. Fehrenbach 1966) – subsequently pushed this line of argument even further by arguing that Swiss banking secrecy was not only introduced to protect (legitimate) Swiss interests against invasions by authoritarian foreign powers. Instead, the main reason for its creation was the ambition to protect *foreign victims* of these authoritarian regimes, in particular German Jews, by providing refuge for their financial assets. Given these humanitarian origins of Swiss banking secrecy, who could criticize it for some of its possibly negative side effects?

These humanitarian arguments backfired in the 1990s when a renewed debate about dormant bank accounts of Holocaust victims triggered new historical research about the origins of Swiss banking secrecy. Researchers such as Guex (2000) and Hug (2000) tell a rather different story about the origins of Swiss banking secrecy. In their accounts, the Swiss banking community was very well aware that foreign clients used Swiss bank accounts to avoid regulation and evade taxation in their resident countries. However, government crackdowns on tax evasion following the economic crisis in the 1930s began to endanger this lucrative business. What is more, some bank representatives were caught red-handed as they were supporting wealthy foreign clients in their illegal activities. In particular, the criminal investigations by French authorities against the Basler Handelsbank (1932-1933) led to intensive discussions in Switzerland (Guex 2000: 248-250; Hug 2000: 289-230) and (ultimately successful) calls for the legal codification of banking secrecy in the 1934 Banking Act.

These new arguments about the origins of Swiss banking secrecy were quickly picked up in the international media, probably because they demonstrated what others had suspected long ago, namely that the sole purpose of banking secrecy is and has always been tax evasion and that bank representatives would stop at nothing to protect it. However, this interpretation might also be too one-sided. Vogler (2001, 2005) argues that recent findings have created two new myths about the politics of banking secrecy: First, recent findings incorrectly claim that banking secrecy was legally codified first and foremost to protect the lucrative business of helping wealthy foreigners evade taxation in their resident countries, thereby downplaying other, equally important reasons for its codification (as discussed in Bänziger 1986). Second, Vogler (2001, 2005) accuses recent contributions to insinuate that bank representatives started a media campaign to deliberately spread the myth about the anti-Nazi origins of Swiss banking secrecy.[13]

[11] Interhandel was an affiliated company of I.G. Farben in Switzerland, which following World War 2 was subject to an international dispute with regard to the beneficial ownership of the firm.

[12] The Federal Council noted: "Ohne Zweifel wird die Steuerdefraudation durch das Bankgeheimnis wesentlich begünstigt, und die Aufhebung dieses Geheimnisses könnte an sich eines der Mittel darstellen, um das Übel an seiner Wurzel zu fassen. Das Bankgeheimnis hat aber nicht nur negative, sondern auch positive Seiten; es hat beispielsweise die Wahrung legitimer Interessen gegenüber der Allmacht totalitärer Staaten in Zeiten ermöglicht, wo diese Interessen sonst durch diktatoriale oder andere Willkür in einer für unsere öffentliche Ordnung kaum tragbaren Weise verletzt worden wären" (Bundesblatt 1962: 1078).

[13] For instance, Hug (2000: 281) uses the term "PR-Kampagne", while Guex (2000: 266) writes about "propaganda efforts".

There are indeed a few reasons that speak against the allegation of a deliberate media campaign by Swiss banks: First, the myth about the anti-Nazi origins was simultaneously spread by bank representatives (e.g. SKA 1966; de Weck 1978), the government (e.g Bundesblatt 1970: 1175, cited in Guex 2000: 265-266) as well as critics of Swiss banking secrecy such as Fehrenbach (1966) and Jean Ziegler (AStB 1970: 750, cited in Vogler 2005: 97-98). Second, until now researchers have discovered only few official publications by Swiss banks that in fact spread the myth about the anti-Nazi origins of Swiss banking secrecy. The 1966 SKA bulletin remains the main example to document the alleged media campaign. Finally, the myth was already exposed in the 1980s: The British journalist Faith (1982: 47-56) already demonstrated that claims about the anti-Nazi origins of Swiss banking secrecy were incorrect. More importantly, Bänziger (1985: 76, 1986: 118) also rejected the myth of the anti-Nazi origins, noting that German economic espionage in the years 1931 to 1933 was the main reason to codify secrecy provisions, while "protection of Jewish refugees' assets played a minor role".[14] Interestingly, Bänziger's first paper was part of an edited volume celebrating 50 years of public supervision of banks in Switzerland (Zulauf 1985) – an institution that was introduced by the 1934 Banking Act, just like the legal codification of banking secrecy.

The debate about the origins of Swiss banking secrecy demonstrates in exemplary fashion how the struggle for interpretive dominance shapes the politics of financial intransparency. The myth about the humanitarian origins of banking secrecy helped protect banking secrecy against international criticism (e.g. in the 1960s and 1970s), while the exposure of the myth and subsequent accusations against Swiss banks of purposefully creating the myth further increased international pressure (after 2000). Such struggles, however, do not only take place over the interpretation of historical events. Rather, as the next section on the first OECD campaign against tax havens shows, these struggles for interpretive dominance also shape contemporary reform debates.

The politics of reform: The first OECD campaign against tax havens

The first OECD campaign against tax havens started in 1996 after calls for action by the European Commission and the G7 heads at the 1996 summit in Lyon. In April 1998 the OECD published the report 'Harmful Tax Competition – An Emerging Global Issue' (OECD 1998). In this report, the OECD called for coordinated action against tax havens, which it defined as jurisdictions that impose no or only nominal taxes, have laws or administrative practices that prevent the effective exchange of relevant information with other governments, lack transparency and are characterized by the absence of a requirement that the economic activity be substantial (OECD 1998: 22-23). Importantly, Luxembourg and Switzerland did not support this OECD initiative. In two dissenting votes that were attached to the report, Luxembourg and Switzerland publicly criticized the campaign and refused to be bound by its provisions (OECD 1998: 73-78).

The report received considerable media attention but did not lead to any significant reaction by tax havens (Shaxson 2011: 193-194). Hence, in 1999 the OECD began to compile a list of states to be named as tax havens, a process now typically referred to as

[14] In German: "Der Schutz jüdischer Flüchtlingsvermögen spielte bei der Verankerung des Bankgeheimnisses im Bankengesetz eine untergeordnete Rolle" (Bänziger 1986: 118, see also Bänziger 1985: 76). Hug (2000: 286) also cites this passage but puts it in a rather different context. In particular, Hug (2000: 286) uses Bänziger's statement to document the continued attempts to keep alive the myth about the anti-Nazi origins of Swiss banking secrecy.

'blacklisting'. Crucially, the OECD openly discussed the possibility of 'coordinated defensive measures' to be applied to those jurisdictions that were on this list. The official report, published in 2000, contained the names of 35 countries, which were given one year to comply with the OECD recommendations before economic sanctions were applied (OECD 2000: 17). As Sharman (2006: 15) notes, the threat of being blacklisted had immediate effect. Already before the publication of the list, six jurisdictions, including the well-known tax haven Cayman Islands, agreed to reform their regulations in order to avoid being blacklisted. Further commitments to reform were made after the publication of the list. Importantly, Luxembourg and Switzerland were at no point in time listed as tax havens.

The OECD's 'naming and shaming' strategy tried to endanger tax havens' reputation as stable and secure destination for foreign assets. A good reputation is crucial in the tax haven business. As Sharman (2006: 102) notes, "a reputation as a safe and well-regulated destination for investors' funds is the single most important factor in attracting outside investment". However, the OECD's blacklists were now endangering these carefully cultivated reputations as 'safe havens'. As a result, the identified tax havens responded rapidly and decisively. Soon, most blacklisted tax havens had made enough concessions to be removed from the list.

Nevertheless, the OECD campaign against tax havens must be considered at least a partial failure. Most importantly, the concessions made by the listed tax havens were only rarely substantial and mostly tied to conditions that still have not materialized until today.

What is more, the tax havens launched a rhetorical counter attack that aimed at undermining the OECD's reputation as an impartial, expert, rational-legal bureaucracy (Marcussen 2004: 15-21; Sharman 2006: 10). In particular, the tax havens highlighted two crucial inconsistencies in the OECD's claims. First, the tax havens emphasized that while the OECD strictly favours competition in general, it seems to oppose competition in areas in which OECD members are disadvantaged against small island states, in particular in the field of taxation. Second, the tax havens pointed to the hypocrisy of blacklisting small island states as tax havens while leaving OECD member states such as Luxembourg and Switzerland off the list. Indeed, the omission of Switzerland from the list is surprising. For instance, in his 'Tax Haven Guide Book', Finkelstein (1999: 6) calls Switzerland the "old grand-daddy of tax havens" and devotes a whole chapter to Swiss-style banking secrecy. Nevertheless, Switzerland somehow managed to remain off the list. Next to highlighting these inconsistencies, the tax havens also publicly wondered what right the OECD had to position itself as the supreme arbiter to decide who was a tax haven and who was not, thereby also drawing links to the power asymmetries between the OECD world and the tax havens as well as the colonial past of many of the OECD member states.

Being rhetorically entrapped and having its impartiality questioned, the OECD quickly abandoned its confrontational strategy (Sharman 2006: 127-148).[15] What is more, in 2002, the OECD dropped its focus on 'harmful tax competition'. Instead, the OECD restricted its demands to increasing transparency and the exchange of information between jurisdictions in case of tax evasion and fraud. However, the OECD also failed with its more reduced aim. Although the OECD managed to get most tax havens to commit to information exchange, they did so only subject to one important condition: that all OECD member states including Luxembourg and Switzerland as well as important third countries such as Singapore and Dubai would also commit to information exchange. This so-called 'Isle-of-Man' clause, first negotiated by the Isle of Man but subsequently adopted by most

[15] See Schimmelfennig (2001) for a discussion of the concept of 'rhetorical entrapment'.

blacklisted tax havens, sounded the death knell for the OECD initiative because, as Sharman (2006: 153) notes, tax havens could safely rely on "Swiss intransigence" to accept any information exchange agreement. In the words of Grinberg (2012: 315), these tax havens "felt comfortable following the lead of Switzerland and the other OECD bank secrecy jurisdictions".

The first OECD campaign against tax havens had several important implications for future developments. First, the campaign demonstrated that blacklisting – for the first time used by the OECD in 2000 (see Sharman 2009: 589) – is a viable strategy to coerce smaller countries to adapt their regulations. Its usefulness, however, is more limited in case of bigger countries that have the necessary political clout to influence the conditions that determine who is getting blacklisted.

Second, the campaign also demonstrated the limits of multilateral action. In particular, the tax havens were successful in exposing the campaign's inconsistencies that were ultimately the result of collective action problems on the part of the OECD countries. As a result, the end of the first OECD campaign against tax havens gave rise to a new series of bilateral agreements.[16]

Finally and most importantly in the context of this review article, the campaign shifted international attention to Switzerland and other offshore financial centres among the OECD member states. It did so in three ways: First, the OECD's blacklisting strategy was successful insofar as it induced the listed tax havens to make concessions. However, these concessions were conditional on all OECD member states and important third countries to commit to similar standards. Hence, these concessions were rather 'cheap' because the tax havens knew they could rely on "Swiss intransigence" (Sharman 2006: 153). Second, in the course of the campaign, the OECD abandoned its focus on low nominal taxes and absence of economic activity (harmful tax competition), areas in which it had lost the rhetorical contest with the tax havens, and instead focused on the two elements of its original tax haven definition that had been less challenged: lack of transparency and absence of effective exchange of relevant information. It is in these areas in which the tax havens had made concessions, but as mentioned above, these concessions were conditional on Swiss participation, among others, and turned the spotlight to banking secrecy.[17] Third, Switzerland constantly 'sabotaged' the OECD campaign. Switzerland publicly criticized the campaign from the beginning, its absence from the black list gave tax havens the possibility to accuse the OECD of hypocrisy and Switzerland's refusal to exchange information with the European Union in the framework of the EU Tax Savings Directive (Brouwer and Kinnegim 2003: 10) exactly at the time the (listed) tax havens made their conditional concessions caused "severe embarrassment for the OECD" (Sharman 2006: 31) because it showed in the clearest possible way that OECD member states were not willing to commit to standards that the OECD tried to impose on the listed tax havens. Clearly, the OECD

[16] For instance, in a new bilateral 'interpretative mutual agreement' from 2003, Switzerland and the United States of America clarified the conditions under which Switzerland would provide administrative assistance even in case of tax evasion.

[17] Changes in US politics also played an important role in the reorientation of international efforts. First, U.S. support for the OECD campaign decreased after the election of George W. Bush in 2000. In May 2001, the new Treasury Secretary Paul O'Neill publicly criticized the campaign, leading the OECD to quietly drop its July 2001 deadline for sanctions. Second, following the terrorist attacks on September 11, 2001 and the passage of the Patriot Act in October 2001, US attention increasingly centred on terrorist financing and in particular the secrecy structures that allowed these groups to hide their financial assets from US authorities (Sharman 2006: 17, 36; Sithian 2011: 724-725).

would first have to deal with Switzerland before it could revive its campaign against non-OECD tax havens.

As is well-known by now, the next OECD campaign, including a new list of uncooperative financial centres published in April 2009, did not spare Switzerland (Steinlin and Trampusch 2012).[18] What is more, the 'blacklisting' strategy turned out to be once again rather successful. To increase pressure on intransigent countries, the OECD floated a draft 'black list' on March 5, 2009, classifying Switzerland as an uncooperative financial centre. Switzerland responded immediately and dropped the distinction between tax fraud and tax evasion in case of international administrative assistance (on March 13, 2009). As a consequence, the new draft 'black list', disseminated on March 14, 2009, classified Switzerland no longer as uncooperative financial centre. On the official black list, published during the G20 meeting in London on April 2, 2009, Switzerland was part of the 'grey list' because it had officially committed to the OECD standard for administrative assistance but not yet signed a sufficient number of double taxation agreements that contained these new regulations concerning the international administrative assistance in case of tax evasion. After having signed twelve such new agreements, Switzerland was removed from the 'grey list' in September 2009.[19]

The new OECD campaign is different from the previous one in the sense that it does not spare OECD members and emphasizes information exchange (as opposed to harmful tax competition). Hence, the OECD has dropped its emphasis on consensus among its members (Marcussen 2004; Sharman 2006) in order to regain its capacity to act. Not surprisingly, Swiss authorities reacted irritated. In a public statement, Swiss President Hans-Rudolf Merz questioned the criteria used for being included on the list and noted that "the fact that Switzerland as a founding member of the OECD was never included in the discussions on drawing up lists is particularly strange" (The Daily Telegraph, "G20: Swiss attack inclusion on tax haven 'grey list'", April 3, 2009).

Certainly, politics played an important role in deciding who ended up on the list of tax havens and uncooperative financial centres. Without recourse to politics, it is difficult to explain how the country ranked no. 1 in the 2009 edition of the financial secrecy index (see Table 1), the USA, remained off the 2009 black list,[20] as did Macau and Hong Kong, which were kept off the list by Chinese lobbying (The Daily Telegraph, "G20: Swiss attack inclusion on tax haven 'grey list'", April 3, 2009).

Of course, the fundamental problem is that there is no clear definition of what a tax haven is. In fact, the criteria for inclusion on the list of tax havens were already opaque during the first OECD campaign against tax havens. In an early report, the OECD noted that "attempts to provide a single definition of a 'tax haven' are bound to be unsuccessful. [...] It can be argued that the 'tax haven' concept is such a relative one that it would serve no useful purpose to make further attempts to define it" (OECD 1989: 20-21, cited in Sharman 2006: 104). In the 1998 report, the OECD offered a definition of tax havens (mentioned above), but it is also noted that "the fact that a country offers itself as a place,

[18] Strictly speaking, the OECD has not started a new campaign because it never completely abandoned its activities in the field of financial transparency. However, the OECD's activities considerably accelerated in fall 2008 after it had been called to action by powerful OECD member states such as France and Germany.

[19] The 2009 'black list' was not the last one of its kind. The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes listed Switzerland in June 2011 as a jurisdiction "needing improvement" to advance to the second round of the peer-review process (OECD 2011: 36).

[20] See also The Economist, "The G20 and Tax: Haven Hypocrisy" (March 26, 2009).

or is perceived to be a place, to be used by nonresidents to escape tax in their country of residence may be sufficient to classify that jurisdiction as a tax haven" (OECD 1998: 21, emphasis added).[21]

Hence, reputation, defined as "the shared totality of thoughts and associations that actors hold for one another" (Sharman 2006: 6), is crucial to understand the politics of financial intransparency. And so is the power to shape a country's reputation and to compete in a rhetorical contest. Countries are being blacklisted because they have the reputation of being a tax haven (e.g. Switzerland).[22] Other countries can avoid being blacklisted because they lack such a reputation and have the necessary political clout to influence the list-making process. In this political conflict, Switzerland is in a rather weak position. Not only does Switzerland have the reputation of being a tax haven (a reputation constantly nurtured by movies and books) and cannot count on much sympathy among OECD officials given its role in the first OECD campaign against tax havens, its position is further weakened by the fact that the two scandals that gave rise to renewed efforts to fight tax evasion were both linked to Switzerland.[23] Being caught red-handed, Switzerland was in a difficult spot from the beginning in this political struggle over reputation (see Emmenegger 2014).[24]

Possible avenues for research

There is astonishing discrepancy between the importance of Swiss banking secrecy in political debates and its absence in academic research. In this last section, I briefly sketch possible avenues for future research that could help improve our understanding of the politics of banking secrecy.

Although recent historical research has addressed the origins of the 1934 Banking Act, several open questions remain. In particular, the relative importance of the government crackdowns on tax evasion in particular in France as compared to the fight against economic espionage is still hotly debated (cf. Bänziger 1986; Guex 2000; Hug 2000; Vogler 2001, 2005). Little is known about the 1940 act that introduced the distinction between tax fraud and tax evasion (Straumann 2006). Furthermore, it is unclear to what extent bank representatives have launched a deliberate campaign to misinform the public about the origins of banking secrecy in the 1960s (as claimed by Hug 2000). Finally, what role did banking secrecy play in turning Switzerland in a major financial centre (cf. Hug 2000; Vogler 2005; Cassis 2006; Straumann 2006)?

[21] The IRS Gordon Report (1981: 26, cited in Sharman 2006: 105) provides the following definition of tax havens: "The term 'tax haven' may also be defined by a 'smell' or reputation test: a country is a tax haven if it looks like one and if it is considered by those who care."

[22] Hence, the struggle for interpretive dominance in case of the debate about the origins of Swiss banking secrecy has an importance that goes beyond national and historical debates by further tarnishing Switzerland's reputation as an offshore financial centre.

[23] The UBS scandal has obvious links to Switzerland, while the LGT scandal is linked to Switzerland insofar as Swiss financial actors are very active in Liechtenstein (Kuenzler 2007; Levin and Coleman 2008).

[24] These political struggles about the definition of tax havens and the listing of jurisdictions also limit the information value of the financial secrecy index because the index mostly relies on data and lists that are provided by international organizations such as the OECD, the Financial Action Task Force and the Financial Stability Board, which all suffer from the problem of political interference. The political character of defining and listing can explain why Sharman (2011) and Shaxson (2011) identify the USA and the UK as major tax havens, while in the financial secrecy index (see Table 1) the USA's and the UK's secrecy score are comparatively low (their high ranking is primarily the result of their global scale weight).

Swiss banking secrecy has been under international pressure from the beginning (cf. Fehrenbach 1966; Faith 1982; Hug 2000). However, it managed to survive for a very long period despite glaring power asymmetries between Switzerland and its main critics. How did Switzerland accomplish this (Steinlin and Trampusch 2012)? After 2008, Switzerland was forced to make major concessions despite the president of the Swiss Banking Association proclaiming in 2005 that recent negotiations with EU "secured banking secrecy for at least the next 15 years" (Mazbouri et al. 2012: 506). What were the reasons for this rapid turn of events (Emmenegger 2014)? How was it possible that the Swiss political and financial establishment was caught so flat-footed? What role did the debate on the dormant bank accounts of Holocaust victims play in drawing attention to Swiss banks? How good was the crisis management of the Swiss government and how did recent changes in the relationship between the Swiss government, the employers' associations and the Swiss Banking Association as well as the major Swiss banks affect Switzerland's reaction to international pressure on its banking secrecy (Steinlin and Trampusch 2012; Emmenegger 2014)?

To what extent do economic interests and the competition between major financial centres such as London, Manhattan and Zurich shape the politics of banking secrecy (Cassis 2006; Palan et al. 2010; Shaxson 2011)? What role does political power play in shaping the strategies of the OECD and related actors such as the Financial Action Task Force (Sharman 2006, 2011; Emmenegger 2014)? What factors determine whether a country is *perceived* to be a tax haven (Sharman 2006)? What role does the portrayal of Swiss banking secrecy in the media, movies and literature play in shaping these perceptions (Vogler 2005)?

These are just some of the questions that might help improve our understanding of the politics of financial intransparency and in particular Swiss banking secrecy. There is thus plenty of work to do.

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Patrick Emmenegger is professor of comparative political economy and public policy at the University of St.Gallen. He is the author of "The Power to Dismiss: Trade Unions and the Regulation of Job Security in Western Europe" (Oxford University Press, forthcoming) and co-editor of " The Age of Dualization: The Changing Face of Inequality in Deindustrializing Societies" (Oxford University Press, 2012). His work has been published, amongst others, with Comparative Political Studies, European Journal of Political Research, Journal of European Social Policy, Politics & Society and Socio-Economic Review. *Address for correspondence:* University of St.Gallen, Department of Political Science, Rosenbergstrasse 51, CH-9000 St.Gallen. Phone: +41 71 224 2332; Email: patrick.emmenegger@unisg.ch

