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Report on the dissertation of Anna Pruska "U.S. Swiss Relations in the Context of Swiss Banking Secrecy from World War II until 2016"

The thesis submitted by Anna Pruska, entitled "U.S. Swiss Relations in the Context of Swiss Banking Secrecy from World War II until 2016," is concerned with the relationship between the United States of America and Switzerland in policy areas affected by Swiss banking secrecy regulations (e.g. money laundering, tax cooperation, insider trading). The author hypothesizes that Swiss banking secrecy was a source of conflict between the U.S. and Switzerland.

The thesis is organized in five substantive chapters. Following an introduction, the author examines the origins, foundations, and legal implications of Swiss banking secrecy (Chapter 1). Subsequently, the authors analyzes the first major conflicts between the U.S. and Switzerland about banking secrecy during and in the immediate aftermath of World War II (Chapter 2) as well as the numerous disputes concerning the fight against financial crime in the Cold War period (Chapter 3). The conflict over Holocaust-related claims in the 1990s is the topic of Chapter 4, while Chapter 5 addresses the dispute over Switzerland's refusal to exchange information on tax matters following a series of tax evasion scandals. A final chapter summarizes and concludes.

The thesis is very encompassing and covers a vast amount of material. For instance, the author has unearthed a large number of sources this reader did not know (especially U.S. sources). The coverage of the literature is exhaustive; there are only few contributions that have not been covered (e.g. Maissen, Verweigerte Erinnerung). The course of events is presented in an accurate way, although the presentation of events is typically strongly influenced by the available sources. In several cases, the author documents the events at a very high level of detail. These descriptions of events are often followed by a discussion of different aspects as discussed in the relevant literature. In this context, the author succeeds in presenting the different positions in a neutral way (e.g. on the reasons for enacting the 1934 Banking Act). In addition, the author does a fine job explaining the regularly complex financial matters and how they relate to Swiss banking secrecy. The difficulty of this task should not be underestimated. Financial crime or tax matters are typically highly complex, which is one of the main reasons why they are so difficult to combat. In this context, e.g. in

the discussion of money laundering as an activity, the author demonstrates a thorough understanding of the legal aspects and their implication.

The author finds her main hypothesis (Swiss banking secrecy as a source of conflict between the U.S. and Switzerland) supported by the available evidence. The presented evidence is indeed very conclusive in this regard. In fact, as the author demonstrates, the conflict between the U.S. and Switzerland involving Swiss banking secrecy has been a driving force in the development of both domestic and international regulations. However, this aspect, the U.S.-Swiss conflict as a driving force of developments at the international level, is unfortunately not covered by this thesis.

Formally, the thesis is sound. The English is of very high quality. Apart from a few typos (e.g. "Regan" instead of "Reagan"), the thesis is very well written. The structure is logical and the referencing adequate.

Yet, the thesis by Anna Pruska is not without limitations. In the following, I will discuss these limitations in some detail. Most importantly, the thesis does not rely on a clear and consistent theoretical framework. The author mostly describes the events based on existing sources and then reviews interpretations by other authors of these events (including my own work). However, this is a problematic approach, for two reasons.

On the one hand, key theoretical concepts and mechanisms are not discussed in a thorough and systematic matter. Instead, they are included on an ad hoc basis. For instance, difficult theoretical concepts such as extraterritoriality are never introduced. Nor does the author discuss the rich American literature on how extraterritoriality has been understood and dealt with (e.g. Raustiala, Does the Constitution Follow the Flag?). As a result, the reader does not learn about conflicts in American legal doctrine on extraterritoriality. Instead, the author seems to insinuate that an extraterritorial reach of U.S. law enforcement authorities is an uncontroversial matter, when it clearly is (from the point of view of both U.S. legal doctrine as well as the objects of this extraterritorial reach). Similarly, concepts such as the sovereignty norm and how it relates to regulatory power are not discussed. Is Swiss banking secrecy not a case of sovereign mismatch (e.g. Newman and Posner, International Interdependence and Regulatory Power)? If yes, what implications does this have for the exercise of U.S. power? None of these issues are developed. The thesis thus lacks an analytical framework. One key

implication of this lack of an analytical and theoretical framework is the author's main hypothesis. Was it necessary to write 600 pages to establish that Swiss banking secrecy was a source of conflict in U.S.-Swiss relations? I guess, it might be hard to find somebody who would claim otherwise.

On the other hand, in the absence of a theoretical and analytical framework, the author has no instrument to evaluate and analyze the documented events. As mentioned, the author does a fine job recounting the events and documenting them. Yet, she does not evaluate and comment on the sources. For instance, if the U.S. sources were indeed right about the misdeeds of Swiss banks in tax matters, it should have been rather easy to hold them accountable in court (Chapter 5). However, they had to resort to economic pressure to get banks to cooperate. The author tries to resolve this apparent contradiction by pointing to lobbying and political contacts (not openly, but given the position of this section in the text, this is the only way this can be understood). Yet, this is pure speculation. In fact, no actual evidence is provided. A thorough reflection on the relationship between sovereignty, extraterritoriality, and regulatory power would have helped (e.g. Emmenegger and Eggenberger, State Sovereignty, Economic Interdependence, and US Extraterritoriality).

Instead, the author often simply presents the different positions without any attempt at evaluating these (sometimes openly conflicting) positions (e.g. consider the discussion about the reasons for passing the 1934 Banking Act). Possibly, the author wanted to recount the events and their interpretation in a neutral manner (along the lines suggested by Leopold von Ranke). Yet, this is not possible, as we know from discussions in the social science methodology literature. In addition, in many cases, U.S. sources dominate the narrative and provide a rather one-sided picture. Consider the discussion of the sovereignty implications of FATCA, which is based on the writings of only two authors. Should we really rely on Carl Levin (given his political positions) and Richard Harvey (the developer of FATCA) to assess the sovereignty implications of FATCA on countries such as Switzerland? I do not think so. A clear analytical and theoretical framework (what are the relevant institutions, norms, interests, and actors, and how do they relate to each other?) would have allowed the author to identify and deal with such challenges.

It is important to emphasize that this criticism does not question the main conclusion of the thesis. Swiss banking secrecy was a constant source of tension in the U.S.-Swiss relationship.

Swiss banking secrecy has clearly facilitated highly problematic activities. The U.S. was right to be concerned about the effects of Swiss banking secrecy. In turn, Switzerland often showed little willingness to cooperate with the United States of America. These conflicts sooner or later turned ugly, creating a situation in which U.S. power and Swiss sovereignty clashed. The author is also right in pointing out that there is a healthy dose of hypocrisy on the part of the United States of America. Nevertheless, these conflicts circling around cooperation in tax matters or money laundering have typically led to progress in our ability to combat financial crime and embed international finance. The author provides a thorough and detailed documentation of these conflicts and the way they unfolded (and were resolved). Yet, we learn rather little about the complexities of international politics, the difficulty to combat white-collar crime, the contested nature of sovereignty, or the legitimacy concerns in case of coercive measures (e.g. Bourdieu). Similarly, the author offers no new interpretations of these events. In many ways, then, this thesis is characterized by an accurate (and very detailed) description of the long history of U.S.-Swiss conflicts over Swiss banking secrecy, without offering, however, any new insights that go beyond the existing literature.

The author justifies her focus by pointing to the fact that this topic has "not been a subject of research in the Polish scientific literature to date" (p. 14). Yet, this is a weak argument. If there is a particular Polish way of looking at these events or if there is a particular Polish relevance, this has not been made transparent. I struggle to see why we need a treatment of these matters in the Polish scientific literature. This is not to say that contributions from Polish scholars are not welcome. Quite the contrary, the topic of this thesis is of extraordinary importance and new perspectives and analyses are highly welcome. Yet, the author might have better focused on specific conflicts, possibly understudied ones such as the development of anti-money laundering strategies at the bilateral and multilateral level. However, by focusing on the *complete* history of U.S.-Swiss relations involving Swiss banking secrecy, the author has instead opted for a strategy that does not put her in a position to make important contributions in the framework of a single thesis (even if the thesis covers 600 pages). Too often, then, the reader is faced with situations in which questions must be asked about the selectivity of sources (Luskin, History, Historiography, and Political Science), in particular when sources are clearly partisan, unscientific, or even polemic, the lack of analytical depth (e.g. the many grey zones in white-collar crimes), or premature conclusions (e.g. the diplomatic gaffes by the Swiss in the context of the Holocaust-related claims).

Finally, there are also several methodological concerns. Most importantly, the restriction of the focus on Switzerland and the United States of America as well as on financial crime and tax matters risks obscuring important developments in other relationships. While some conflicts involving Swiss banking secrecy were indeed primarily a bilateral matter (e.g. the Interhandel Affair), other conflicts were clearly of a multilateral nature (e.g. money laundering). While there can be no doubt that the United States of America and Switzerland were two key players in these developments, it is a massive simplification to reduce these debates to these two actors. Similarly, the U.S.-Swiss relation also involves matters other than Swiss banking secrecy. In many other policy areas, Switzerland and the United States of America are partners, which explains why there might be a certain reluctance to resort to open conflict on the part of the United States of America. The methodological choice to focus exclusively on this dyad (U.S. – Switzerland) and issues involving banking secrecy thus comes at a certain cost. Finally, the author does not offer any reflections as to how her approach would allow her to establish causality. As mentioned above, it seems as if the author wants to let the sources speak for themselves, but if the sources are from one side of the conflict only (as, for instance, in large sections of Chapter 3), there is reason to doubt their ability to present the full picture (next to general concerns about this methodological approach). Once again, I cannot help but think that a stronger focus on a specific aspect, aided by a well-developed analytical and theoretical framework, would have helped the author to write a stronger thesis.

However, no thesis is without weaknesses. Overall, Anna Pruska's thesis offers helpful insights and is a very welcome addition to the literature on Swiss banking secrecy and U.S.-Swiss relations. Hence, despite my reservations mentioned above, I recommend accepting this thesis for the degree of Doctor of Philosophy.

Yours Sincerely,



Prof. Dr. Patrick Emmenegger