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Series: The banks and the "Too Big to Jail" doctrine
(Part 7)

The Big Banks Organise Massive Tax Evasion on an International Scale

- Features -

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Another example of the “Too Big to Jail” doctrine: International tax evasion and fraud organised by UBS, Switzerland’s biggest bank.

UBS, which had to be saved from failure in October 2008 by massive injections of Swiss public money, was involved in the LIBOR manipulation scandal, the currency markets manipulation scandal (UBS is the subject of several inquiries by controlling authorities in Hong Kong, US, the UK, and in Switzerland) and the abusive sale of structured Mortgage-Backed Securities on the US market. UBS, just like its banking colleagues, HSBC and Cr dit Suisse [1] in particular, became specialized in large-scale tax evasion networking for the big fortunes in the US, Europe and elsewhere. [2]

“About 120 Swiss representatives are secretly canvassing big fortunes in France, which is strictly prohibited by law, but done, according to Antoine Peillon, with the Swiss bank’s full knowledge. Each representative possesses a ‘Manual of Private Banking’, a veritable handbook of tax evasion”. [3] The testimony of a former employee confirms the accusations made by Antoine Peillon. “The testimony filed by a former Swiss bank employee and collected by Le Parisien-Aujourd’hui in France shows that the largest Helvetian banks, which have been under criminal investigation in France since 2012, have established a well-oiled tax evasion machine to encourage the French to defraud. Guillaume Da eff and Serge Tournaire, Parisian financial judges handling the case, suspect the Union Bank of Switzerland (UBS) of having established an extensive system aimed at illicitly soliciting French clients and encouraging them to open undeclared accounts in Switzerland in the 2000s”. [4]

A few weeks later, in February 2014, another accusation against UBS appeared in book form, written by a former UBS employee in France responsible for organising high-profile distractions to entice customers. “The idea was to put UBS representatives into contact with prospective clients, preferably the richest, valued at more than  50 million. Millionaires are not attracted by just a cup of coffee; the events had to be sumptuous – golf competitions, regattas, opera evenings followed by dinner at the table of a renowned chef. Nothing was too good for the guests. (...) Each time, there were a large number of Swiss bank representatives present. They came from Basel, Geneva, Lausanne, Zurich; their mission was to get the millionaires, whom we had pre-selected as targets, to deposit their fortune with them. Each year, the Zurich head office wanted a report: How many new clients? How much fresh money? The rule was that an event had to make a profit”. [5] Due to the scandal these repeated revelations have produced and the legal actions started by France, UBS has prohibited some of its representatives from visiting France as of April 2014. [6]

Whereas French justice is slow and hesitant and nothing is happening in Belgium, where UBS ran the same scheme as in France, UBS is close to reaching an agreement with the German authorities on the amount of the fine it will pay [7] to avoid a condemnation for enticing German taxpayers to evade taxes. The sum of  200 million has been mentioned. The Swiss bank was accused of helping its German clients hide their fortunes through networks of foundations and trusts in Liechtenstein. According to the high court prosecutor of Bochum, in charge of the inquiry, and who directed several raids on UBS branches in Germany, the affair concerns around  20 billion. If the fine imposed is  200 million, that will be just 1% of the volume of the frauds. UBS is the third Swiss bank fined by German authorities. The Julius B r and Cr dit Suisse banks, respectively, had to pay  50 million and  149 million. In all three cases, the banks avoid real condemnations by paying only a paltry fine and undergoing a slight besmirching of their images in brushed-over scandals. They must also change their financial strategy; but they can carry on in their old sweet way without the least menace to their freedom to practice banking activities.

Events in the US confirm the “Too Big to Jail” doctrine. This affair goes back to 2008 when US authorities started proceedings against UBS, whom they accused of organizing a tax evasion network in their country. UBS managed the fortunes of about 5 000 US and Canadian citizens, helping them avoid paying taxes. Their fortunes were stashed in Switzerland (after having transited in some cases through several tax havens to cover their traces). In the process

of their inquiry, US authorities were able to consult information passed to them, in 2007, by Bradley Birkenfeld, ex-specialist in tax evasion at UBS.

Bradley Birkenfeld: Whistleblower or bounty hunter?

Bradley Birkenfeld is a US citizen. He started his career in banking in Boston, at the State Street (the 13-largest US bank). [8] Before quitting this job he made contact with the FBI in 1994 to denounce the wrongdoings that he had found, but the bank was not prosecuted. In 1996, he was taken on by Cr dit Suisse (the 2nd ranking Swiss bank) in the US as Wealth Manager. Then in 1998 he moved to Barclays (Britain's 2nd largest bank). In 2001 he moved to UBS, in Geneva, taking wealthy clients' accounts with him.

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It was here that he took part in establishing, under the responsibility of Raoul Weil, one of the UBS bosses, a network for evasion of US taxes. Birkenfeld left UBS in 2005 after he realised, so he says, the seriousness of the activities he was taking part in. It is to be noted, however, that these activities were not illegal under Swiss law. In 2007 he decided to contact the US Justice Department in order to denounce the illegal activities of UBS under cover of a 2006 law that protects and rewards whistleblowers who expose tax fraud. [9] An IRS (Internal Revenue Service) Whistleblower Office has in fact been created. The home page of the official site says, "The IRS Whistleblower Office pays money to people who blow the whistle on persons who fail to pay the tax that they owe. [10] If the IRS uses information provided by the whistleblower, it can award the whistleblower up to 30 percent of the additional tax, penalty and other amounts it collects". [11]

Information that Bradley Birkenfeld communicated to the IRS and to the Justice Department has allowed the two organizations to build a solid case against UBS. The seriousness of UBS's illegal activities under US law should have meant the withdrawal of their banking licence, but as happened later with HSBC and other big banks, the authorities in Washington merely settled for the payment of fines (\$780 million in February 2009 plus \$200 million later). The United States also obliged the bank to notify them of US citizens who had stashed their wealth in Switzerland with the help of UBS (a list of 4 450 names). To achieve this, Washington at times, used strong-arm tactics: The threat of withdrawing the bank's licence and the temporary arrest of bank executives, such as Raoul Weil, who appeared in court in 2014. [12]

Meanwhile, whistleblower Bradley Birkenfeld at first paid a heavy price for collaborating with US authorities. Arrested in May 2008 and brought to trial in August 2009, he was sentenced to 40 months in prison for his illegal activities at UBS. During his plea against Birkenfeld, the prosecutor recognised that without his collaboration, the department of Justice and the IRS would not have been able to gather all the information that permitted them to nab UBS. Birkenfeld started his prison sentence in January 2010. He appealed to President Barack Obama. He also requested a revision of his trial from Attorney General Eric Holder and was finally released in early 2012, after serving 31 months. But what the international press highlighted was what happened to him after his release – the IRS paid him a \$104 million reward for reporting UBS's illegal activities. The IRS concluded that Birkenfeld was entitled to a percentage of the taxes and fines that were collected from rich tax evaders thanks to his information. [13]

It is not possible to go into the analysis of the exact motivations of Bradley Birkenfeld here. Is he a white knight, a whistleblower, or simply an informer and bounty hunter? What is important is to make the following observation: The bank that takes part in serious illegal activities and its directors – those who manage and plan the misdeeds – enjoy impunity. At most the bank is condemned to say a penance (sorry, pay a fine)...

But those who denounce the illegal activities of a bank do so at their own risk. In the case of UBS, Cr dit Suisse, HSBC Switzerland, etc., they are guilty (see the case of Herv  Falciani in the UBS Switzerland case) in the eyes of Swiss law. The Swiss authorities did not refrain from unleashing the severity of the law against them. In the case of

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the United States, the situation is more complex. In some cases, they can get a reward but still face jail. Since the UBS/ Bradley Birkenfeld affair, it seems that the bankers have convinced the US government not to encourage would-be whistleblowers. A matter to be followed up...

Conclusion

Banking secrecy must end. Banks must furnish all necessary information about their directors, subsidiaries, branches, customers, activities, and the business they handle for themselves and for their customers. Their accounts must be transparent and coherent. The lifting of bank secrecy must become a minimal democratic imperative in all countries. To that effect, banks must provide fiscal authorities with the following information on request:

- lists of persons who earn interest, dividends and capital gains, or other financial revenues;
- details of the opening, closing, and modification of accounts in order to establish national registers of bank accounts;
- details of all inward and outward capital flows, with identification of the beneficiary.

All transactions with tax shelters must be prohibited. The penalty for violating this restriction should be very heavy – revocation of the banking license and heavy fines (equal to the amount of the transactions in question). The legal authorities and ministers must be publicly pressured to systematically prosecute bank directors who are accused of financial crimes and wrongdoing. The banking licences of institutions that try to override restrictions and misappropriate funds should be cancelled.

Capitalists have repeatedly shown the crimes they are capable of perpetrating and the risks they are ready to take just to increase their profits, without ever facing the consequences. Their irresponsible behaviour regularly results in placing a heavy burden on society. The society we want to build together must be geared to the common good, social justice, and the restoration of fair relationships among humans and between humans and nature. The whole banking sector must be socialized. What we are trying to achieve is a “complete de-privatisation of the banking sector.” [14]

Translation : Mike Krolkowski and Snake Arbusto

[15]

<http://cadtm.org/The-Big-Banks-Orga...>

[1] *Financial Times*, “Crédit Suisse tax probe deepens”, 16 April 2014. See also: “Crédit Suisse may pay US\$1.6b in tax probe”, 6 May 2014.

[2] See especially, the excellent book by Antoine Peillon, “Ces 600 milliards qui manquent À la France (The 600 billion that France is short of)”, Le Seuil, 2012, 187 pages. See the review in *Alternatives économiques*: “Ces 600 milliards qui manquent À la France. Enquête au cœur de l'évasion fiscale (The 600 billion that France is short of. Getting to the Heart of Tax Evasion)”, http://www.alternatives-economiques.fr/ces-600-milliards-qui-manquent-a-la-france%E2%82AC82%80enquete-au-coeur-de-l-evasion-fiscale_fr_art_1143_58595.html (all sources in French only)

[3] *Alternatives économiques*, idem (in French only)

[4] *Le Monde*, “Des conseillers d'UBS faisaient la mule entre la France et la Suisse (“UBS representatives act as money mules between France

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and Switzerland.”) (in French only)”, 21 January 2014,

http://www.lemonde.fr/Économie/article/2014/01/21/des-conseillers-d-ubs-faisaient-la-mule-en-transportant-eux-memes-ces-sommes-de-l-autre-cote-des-alpes_4351540_3234.html

[5] Excerpt from an interview published in *Le Parisien*, 6 February 2014,

<http://www.leparisien.fr/espace-premium/actu/le-livre-qui-derange-les-banquiers-suisse-06-02-2014-3563661.php> See the book by Stéphanie Gibaud, *La femme qui en savait vraiment trop* (The Woman Who Really Knew Too Much), le Cherche-Midi, 221 pages, à,–17. In the interview already mentioned, she says: “In the small world of private banking I am blacklisted. My job applications go straight into the waste paper basket. I have started legal proceedings against UBS for harassment and I expect the justice system to bring out the truth. I hope my book will enlighten the judges and help me to rebuild my life.”

[6] *Le Parisien*, “Évasion fiscale : la banque UBS interdit À ses employés d’aller en France” (“Tax evasion: UBS prohibits its employees from going to France”), 1 May 2014,

<http://www.leparisien.fr/economie/evasion-fiscale-la-banque-ubs-interdit-a-ses-employes-d-aller-en-france-01-05-2014-3808011.php> (In French only)

[7] *Tribune de Genève*, “UBS négocie son amende avec le fisc allemand” (“UBS negotiates its fine with German fiscal authorities”), 25 February 2014, <http://www.tdg.ch/Économie/ubs-negocie-amende-allemand/story/26256689>. The title itself already speaks volumes. (In French only)

[8] Two fairly complete biographical sources: Bradley Birkenfeld on Wikipedia: http://en.wikipedia.org/wiki/Bradley_Birkenfeld (consulted 3 March 2004) and David Voreacos, “Banker Who Blew Whistle Over Tax Cheats Seeks Pardon”, Bloomberg, 24 June 2010, <http://www.bloomberg.com/news/2010-06-24/ubs-banker-who-blew-whistle-on-swiss-secrecy-over-tax-cheats-seeks-pardon.html>

[9] He also made contact with the Senate subcommittee on banking activities chaired by Carl Levin, where he testified in 2007. This is the same subcommittee that investigated HSBC. See the official subcommittee Website: <http://www.hsqac.senate.gov/subcommittees/investigations>

[10] In this case it could be called an “informers” office.

[11] “IRS Whistleblower Office”. See official Web site: <http://www.irs.gov/uac/Whistleblower-Informant-Award>, consulted 3 March 2014.

[12] Zachary Fagenson and Reuters, “Ex-UBS bank executive pleads not guilty in tax fraud case”, 7 January 2014, http://articles.chicagotribune.com/2014-01-07/business/sns-rt-us-ubs-tax-banker-20140106_1_bradley-birkenfeld-tax-fraud-conspiracy-u-s-clients

[13] See the decision of the IRS Whistleblower Office on the Website of the Geneva daily *Le Temps*:

http://www.letemps.ch/rw/Le_Temps/Quotidien/2012/09/11/Économie/ImagesWeb/birkenfeld-determination-letter.pdf

[14] Frédéric Lordon, “L’effarante passivité de la re-régulation financière (“Shocking Passivity in Financial Re-regulation)”, in *Changer d’économie* (*Changing the economy*), *les économistes atterrés*, ed. Les liens qui libèrent, 2011, p. 242 (in French only).

[15] Other parts of this series can be found at [Banks and the New “Too Big to Jail” Doctrine](#), [Bank abuses in the real estate sector and illegal foreclosures in the United States](#), [Drug and Bank Lords](#), [HSBC: the bank with a shameful past and scandalous present](#), [Big banks’ tampering with interest rates](#), [Complicity of Dexia in very serious Human Rights violations in the Israeli occupied territories](#) and [The Impunity Enjoyed by the Banks must Stop](#). Part 6 only exists in French: here <http://cadtm.org/L-Etat-au-service-...>