

3. State Sovereignty, Economic Interdependence and US Extraterritoriality: The Demise of Swiss Banking Secrecy and the Re-Embedding of International Finance

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Abstract: This article explores the tactics of an emergent extraterritoriality in international finance by examining how the US was unilaterally able to pierce Swiss banking secrecy regulations before Switzerland was forced to make similar concessions at the multilateral level. Complementing power-based approaches that emphasize control over market access, we show that for most of the conflict starting in early 2008, the key agents of change were US law enforcement authorities. By relying on legal action against Swiss banks following a large tax evasion scandal rather than engaging in a direct confrontation with the Swiss government, the US was able to avoid a politicization of the conflict, which would have raised questions of legitimacy. The US law enforcement authorities' ability to promote institutional change in Switzerland is based on three factors: the structural economic dependence of banks on access to the US market, corporate liability for legal transgressions of employees and an adversarial legal system characterized by extensive prosecutorial autonomy. More generally, we show that powerful states have the capacity to re-embed international finance by extending the boundaries of their law enforcement authorities' jurisdiction extraterritorially.