

The origins of banking secrecy and the founding myth

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The confidentiality of the banker towards his client is older than the Banking Act. Swiss private bankers in Geneva and Basel had practised discretion for centuries, and civil law protected it as part of the contractual duty of care owed by the bank and of the general protection of personality. What the Banking Act of 8 November 1934, in force since 1 March 1935, added was a criminal sanction: Article 47 made the breach of professional secrecy by bank employees and officers a criminal offence prosecuted by the state, independently of any complaint by the client.¹

For decades, the Swiss banks and many politicians explained the criminal protection by reference to the persecution of Jews in Nazi Germany. According to this account, the legislator of 1934 had wished to shield the assets of German Jewish clients from the agents of the Gestapo, who were said to have tried to identify their accounts in Swiss banks. The narrative gave banking secrecy a humanitarian origin and was used in public debates well into the 1990s, when the controversy over dormant assets of Holocaust victims placed the Swiss banks under intense international scrutiny.²

Historians who have examined the legislative materials have largely rejected this account. Their research suggests that the criminal protection of secrecy emerged from the banking crisis of the early 1930s and from the desire to strengthen confidence in the Swiss banks, which had suffered heavy losses on their German and Central European loans. A further factor appears to have been the affair of 1932, in which the French police searched the Paris premises of the Basler Handelsbank and found lists of French clients, among them politicians and senior officials, who held undeclared accounts in Switzerland. The affair caused a diplomatic dispute with France and seems to have convinced the banks that their foreign clients needed stronger legal protection against the tax investigations of their home states.³

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According to these historians, the Jewish protection narrative appeared only in the 1960s, when the banks needed a moral justification for a secrecy that was increasingly criticised abroad. Although the question remains debated in its details and individual cases of protection of persecuted clients certainly existed, the weight of the evidence points elsewhere. It suggests an instrument conceived to protect foreign capital against foreign tax authorities. Basel occupies a particular place in this history: the affair that seems to have triggered the reform concerned a Basel bank, and the Swiss Bankers Association, which defended banking secrecy for the following seventy-five years, had its seat in the same city.⁴

1 Notes

1. On the Federal Act on Banks and Savings Banks of 8 November 1934 (in force since 1 March 1935) and the introduction of a criminal sanction for the breach of banking secrecy in Art. 47, and on the earlier civil-law basis of the bank's duty of confidentiality, see the standard literature on Swiss banking law. To be verified. ↩
2. On the narrative that banking secrecy was introduced in 1934 to protect Jewish clients from Nazi Germany, its use in public debate and its questioning during the dormant-assets controversy of the 1990s, see the literature on the history of Swiss banking secrecy (e.g. Guex; Vogler; the reports of the Independent Commission of Experts Switzerland – Second World War). To be verified. ↩
3. On the Basler Handelsbank affair in Paris (1932), the demands of the French authorities and its possible influence on the criminal protection of banking secrecy in 1934, see the historical research (in particular Guex, "The Origins of the Swiss Banking Secrecy Law and Its Repercussions for Swiss Federal Policy", *Business History Review* 2000). To be verified. ↩
4. On the emergence of the Jewish protection narrative after the Second World War (in particular from the 1960s) and the assessment of the motives of the 1934 legislator by historians, see Guex (2000) and Vogler (2005). Status to be verified. ↩

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