

When a state supports crime what rights does it have?

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The [FT has reported](#):

[UBS](#) shares outperformed the Swiss market strongly on Thursday as investors digested the latest twist in the battle of wills between the US and Switzerland over **[bank secrecy](#)**.

The Miami judge presiding over a crucial court hearing next Monday has called on the US authorities to specify how far they would go to force the Swiss bank to comply, should the court rule in their favour.

Alan Gold, the US district judge presiding over the case, late on Wednesday gave the US government until midday US time on Sunday to clarify whether it might go as far as seizing assets of the bank's US operations, or forcing them into receivership, should the court rule against UBS and the bank not comply.

The move followed a deposition by the Swiss government saying it would [forbid UBS to hand over confidential client information](#) if the court ruled against it.

Bern warned on Wednesday that it might go as far as confiscating the data, should the court rule the bank was obliged to transfer the client names requested.

As the FT also notes:

Although the Swiss government is not directly involved, Bern is represented as a "friend of the court." In a filing, the government warned it would issue a blocking order and, if necessary, confiscate all relevant material, to prevent UBS from complying, should the court side with the US authorities.

"UBS is unable to comply with the summon without violating Swiss law. The government of Switzerland will use its legal authority to ensure that the bank cannot be pressured to transmit the information illegally, including if necessary by issuing an order taking effective control of the data at UBS that is the subject of the summon and

expressly prohibiting UBS from attempting to comply”, Bern said

What we have here is the inevitable culmination between a secrecy jurisdiction — perhaps the ultimate secrecy jurisdiction and the rest of the world.

Remember what an secrecy jurisdiction is — secrecy jurisdictions are places that intentionally create regulation for the primary benefit and use of those not resident in their geographical domain. That regulation is designed to undermine the legislation or regulation of another jurisdiction. To facilitate its use secrecy jurisdictions also create a deliberate, legally backed veil of secrecy that ensures that those from outside the jurisdiction making use of its regulation cannot be identified to be doing so.

Then look at what we have here — a place — Switzerland — that has deliberately passed laws that are designed to assist people from the USA to break the laws of that country behind a veil of secrecy Switzerland has created to help them do so.

There is no doubt they’ve broken the law and no doubt Switzerland helped them do so. as the FT says:

UBS has admitted that Switzerland-based bankers broke US laws when visiting clients in America. Last February, UBS agreed to pay \$780m to settle a separate, but linked, criminal action by the US authorities.

Does the US have a choice in the face of such a challenge: a challenge from another state that says it will blatantly use its laws to shield criminals? The price Switzerland has to pay is high: the loss of banking access to the US for a start, economic sanctions as another — for 12 Tax Information Exchange Agreements are meaningless in this case. Switzerland is backing organised crime — that is what secrecy jurisdictions do — and the USA has a duty to challenge that.

Like it or not — UBS assets outside Switzerland will have to be sequestered — and not just by the US I suggest — but by the UK and others too as it cannot be considered a fit and proper person to conduct financial business on this basis. That, I hope, is where this case is going.

We’ve had it said that we’ve created banks that are too big to fail — but we can’t also have banks that are too big to avoid criminal charge — and that’s what we face here. If the rule of law, and society with it, is to survive the Switzerland has to be brought to its knees on this one. I hope the US has the courage to do that. And to impose the cost of it on Switzerland — which will have to pay the most almighty penalty for its criminal activities because its conducts provides it with no defence, no rights and no appeal.