

## Accountability without Election

The Attribution of Responsibility in the Financial Crisis 2007-2010

von  
Nicole Greuter

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Nicole Greuter

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Nicole Greuter

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in the Financial Crisis 2007–2010**



**Nomos**

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## List of Abbreviations

BAFIN	Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority)
BAKred	Bundesaufsichtsamt für das Kreditwesen (Federal Banking Supervisory Office)
BAV	Bundesaufsichtsamt für das Versicherungswesen (German Federal Supervisory Office for Insurance)
BAWe	Bundesaufsichtsamt für den Wertpapierhandel (German Federal Supervisory Office for Securities Trading)
BB	Deutsche Bundesbank (German Federal Bank)
BBC	British Broadcasting Corporation
BFM	Bundesministerium der Finanzen (Federal Ministry of Finance)
BoE	Bank of England
BPV	Bundesamt für Privatversicherungen (Federal Office of Private Insurance)
CEBS	Committee on European Banking Supervision
CH	Switzerland
DPA	Deutsche Presse-Agentur (German Press Agency)
EBA	European Banking Authority
EBK	Eidgenössische Bankenkommission (Swiss Federal Banking Commission)
ECB	European Central Bank
EFD	Eidgenössisches Finanzdepartement (Federal Department of Finance)
EU	European Union
FAZ	Frankfurter Allgemeine Zeitung
FINMA	Eidgenössische Finanzmarktaufsicht (Swiss Financial Market Supervisory Authority)
FINMAG	Finanzmarktaufsichtsgesetz (Federal Act on the Swiss Financial Market Supervisory Authority)
FSA	Financial Services Authority
FSB	Financial Stability Board
GER	Germany
HMT	Her Majesty's Treasury

*List of Abbreviations*

IRA	Independent Regulatory Agency
ITV	British TV Network
Kst GwG	Kontrollstelle für Geldwäscherei (Anti-Money Laundering Control Authority)
LibDem	The Liberal Democrats
NBG	Nationalbankgesetz (National Bank Law)
NZZ	Neue Zürcher Zeitung
PA	Press Association
SDA	Schweizerische Depechen Agentur ( <i>Swiss National News Agency</i> )
SNB	Schweizerische Nationalbank (Swiss National Bank)
SRF	Schweizer Radio und Fernsehen ( <i>Swiss Public Broadcaster</i> )
SSR SRG	Schweizerische Radio- und Fernsehgesellschaft ( <i>Swiss Public Broadcasting Company</i> )
SVP	Schweizerische Volkspartei (Swiss Peoples Party)
SZ	Süddeutsche Zeitung
TA	Tages-Anzeiger
TDT	The Daily Telegraph
TG	The Guardian
UK	The United Kingdom
USA	United States of America

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## 1. Introduction

### 1.1. The Financial Sector and the Media

„We reach our decisions independently of government and parliament but within the legal framework given to us by parliament. However, FINMA is dependent on neither the spirit nor the politics of the day. This functional independence was not always the case in every previous authority. It is, however, vitally important for a supervisory authority which undertakes serious work that no-one has specific power over it.“

Anne Héritier Lachat, Director of the FINMA, 27.3.2012, [www.finma.ch](http://www.finma.ch), translated by the author.

Financial market regulation is driven by financial crises. In the aftermath of a financial crisis sets of regulations are discussed and political reforms are initiated at national and international levels to prevent future crises (Nobel, Zimmermann 2005: 56). The authorities that supervise the financial system play a crucial role in this reform process. In general, the national supervisory architecture includes the Ministry of Finance which delegates power to the supervisory agency which supervises the individual financial market participants and the central bank which is responsible for the stability of the financial system. This governance structure is an expression of the rise of the regulatory state where elected policy actors delegate power to regulatory agencies that are independent of representative institutions (Majone 1994, Gilardi 2005b). Contemporary policy-making is increasingly embedded more in governance structures than in the realm of representative institutions. Yet, the link between new forms of governance and representative institutions causes problems for the legitimacy of political systems (Papadopoulos 2010, Papadopoulos 2003, Strömbäck 2009, Thesen 2011, Lundby 2009). In my thesis, I focus on the sideways shift of policy-making capacity, i.e. the delegation of authority from elected policy actors to non-elected policy actors such as the supervisory agencies and the central banks. The policy field under scrutiny is the financial sector.

Financial sector politics is traditionally characterized as an area of “low” politics (Nelkin 1992: 59). Technicality limits the scope of politicisation (Gormley 1983), and only a few actor groups are therefore involved in the political decision-making process. This especially applies to the area of financial sector politics under scrutiny, i.e. the supervision and regulation of

*1. Introduction*

the financial sector. However, in times of a substantial financial crisis, society as a whole is affected. Regulatory policy can turn into redistributive policy if government assistance comes into play (Birchler, inaugural lecture, University of Zurich, 10<sup>th</sup> April 2010). Moreover, in times of crisis, the search for the causes of political failure starts immediately and established authorities are questioned. Contemporary societies are characterized as audience democracies, and the political debate is therefore increasingly transferred from the parliamentary arena to the public sphere (Kriesi 2004: 184-185). Consequently, negotiation of responsibilities is accompanied by a media discourse: who is to blame for failures in financial sector: the banks, the financial supervision institutions, the financial minister, the government or the reckless use of subprime mortgages? For a democracy, crisis management is an essential process. It is the time when a democratic system has to demonstrate the robustness of its institutions and its policy actors (Boin 2008: 2). Thus, the policy actors have an incentive to pass the test in order to gain and maintain legitimacy. The thesis focuses on the role and the evaluation of the policy actors involved in this discourse about responsibilities. The analysis is guided by the research question: *Is the attribution of responsibility in the media affected by institutional factors?* The policy field of financial sector supervision offers an interesting institutional setting. In this policy field the power is dispersed, the responsibilities are complex and it is not immediately obvious who is obliged to take actions, especially not to the public at large. Therefore, it is assumed that the media plays an essential part in clarifying the responsibilities. Existing literature assumes that the media has a crucial role in a political crisis. The media acts as information provider and public opinion former, particularly in controversial debates (Berkel 2008: 245). The media not only monitors political processes, but also constructs a political problem in a certain way that affects the citizens' perception of who is to blame and who should take responsibilities. Furthermore, by detecting reasons for a political problem, the media influences the political problem-solving process and the scope of problem solving strategies (Gerhards et al. 2007: 106). Consequently, the authority that is legally accountable does not necessarily correspond to the one that is blamed by the media. But for political authorities, being legally accountable or held accountable by the public for failures is a minor distinction; public perception can have a substantial impact on their legitimacy. Jones (2009) notes on the legitimacy of the European Central Bank during the recent financial crisis: *"...sometimes it is not enough to do a good job, you also have to be perceived to do a good job"* (p. 1087).

*1.1. The Financial Sector and the Media*

Responsibility is assumed to be the key concept for analyzing the public perception of an actor's legitimacy. The attribution of responsibility influences the legitimacy of political actors, if they are repeatedly blamed for failures, the actors are perceived as having less legitimacy by the public at large (Gerhards 2009: 529). Furthermore, responsibility connects actors to events and attributing responsibility is the mechanism through which individuals hold political actors accountable; detecting the attributed responsibilities of policy actors is therefore a prerequisite in accountability mechanisms in a political system (Schlenker 1994: 634-636, Rudolph 2003: 700).

From the blamed authority's perspective, a crisis creates a moment of catharsis: if failures occur, giving account to the public is an opportunity for justification, excuses and penitence (Bovens 2007: 464). Public blame results in a decrease in legitimacy whilst simultaneously providing the opportunity to increase public acceptance and redress reputational loss.

Yet, it is assumed that the structural position of a policy actor in the political system defines who is part of this attribution of responsibilities at times of crisis and who makes use of the moment of catharsis (Gerhards 2009: 554). As expressed in the statement by Anne Héritier Lachat, director of the Swiss supervisory agency FINMA, at the beginning of this section, independent regulatory agencies (IRAs) like the FINMA apparently see themselves as independent of every day politics and the zeitgeist. Yet, the question arises if this is feasible in a society with the omnipresence of public opinion and the pressure on policy actors to respond in an adequate manner (Esser 2013: 155; Kriesi 2004: 184-185). Thus nowadays, the agencies face the challenge of media exposure. The story of Philipp Hildebrand, the former director of the SNB, is a perfect example of this challenge. The director was blamed in the media in December 2011 for insider trading. Even though the audit company KPMG did not find any non-compliance with the SNB rules for the own business of SNB members, Philipp Hildebrand resigned in January 2012 due to the ongoing public debate (Neue Zürcher Zeitung, 9<sup>th</sup> January 2012). I will pursue this puzzle in my thesis by exploring the concept of mediatization. According to Strömbäck (2009) mediatization can be defined as the growing intrusion of the media logic as an institutional rule into fields where other rules of defining appropriate behaviour prevailed. Mediatization of politics is an ongoing process of interaction between the mass media and politics; it refers to whether political change is due to the media logic or the political logic. It is assumed that this is not a trade-off, it is rather seen as an extension of the influence of mass media on politics. Mediatization claims that politicians need to build their trustworthiness through media by

*1. Introduction*

using media norms. Politicians are not “victims” of mediatization; often they use the media to their own ends, they adapt to the media logic: “...media logic can be understood as a particular way of seeing, covering, and interpreting social, cultural and political phenomena.” (p. 212). Thus, the mass media covers and interprets a political problem according to its own logic and this affects citizens’ perception of who should be held accountable. At the same time, by defining the possible reasons that caused the problem, the media influences the political problem-solving process (Gerhards et al. 2007: 106). A central issue in media research is the mutual dependence of media and governmental institutions. The government provides information to the media and at the same time depends on the media’s power to highlight particular facts of a policy issue (Gurevitch, Blumler 1990: 272). This thesis is a part of this ongoing debate about the changing relationship of media and politics (Walgrave, Van Aelst 2006, Voltmer 2007). For some time, the media is no longer considered as the “fourth estate”, but findings from numerous empirical studies are contradictory and the unsolved question of if and how the media determines the political agenda remains. However, scholars of media and political science claim rather to develop theoretical specification than making either/or conclusions. A common ground of theoretical suggestions is the inclusion of an institutional dimension in the analysis. There is a need to elaborate the conditions under which the media influences the politics (Marcinkowski 2005: 364; Esser 2013: 165-166). The recent financial crisis offers an optimum starting point from which to analyse the interaction of media and politics and to focus on specific institutional factors. In the first instance, the national supervisory architecture and its members are examined. In recent years, institutional reforms of the supervisory architecture led to a variety of governance arrangements because the nature of financial systems and its operations changed profoundly in the last two decades. The different agencies involved in financial sector supervision were often merged to form a single supervisory authority. Besides creating these umbrella institutions, consumer concerns were integrated in financial sector supervision and the collaboration with the central bank was rearranged in several countries (Masciandaro 2005: 112-113; Masciandaro 2011: 454-455). In the present study, the national constellation of regulators in Germany, Switzerland and the United Kingdom are examined. Although, in all countries the supervisory architecture is an umbrella institution that collaborates with the central bank, the allocation of competences differs across the three countries. Secondly, these regulatory constellations do not operate in a vacuum, therefore institutional factors on the system level are taken into

*1.2. State of the Art*

account. Characteristics of the media and the political system that are assumed to influence the agencies' role in the media discourse on responsibilities are examined as well as the extent to which they use the crisis as a moment of catharsis. Across these institutional factors, the involvement of the non-elected policy actors in the media discourse is compared to that of elected policy actors.

The existing literature gives no answers as to how a constellation of regulators is perceived by the public at large and how this constellation of regulators reacts to public blaming if a crisis occurs in their field of competence. This thesis aims to fill that gap. The goal of my thesis is twofold: first, a contribution to the IRA literature by examining the role of the agencies in the media discourse on responsibilities and how these agencies react to a crisis; do they use the moment of catharsis and how? Second, a contribution to the mediatization literature through analysis of the intrusion of the media into the field of non-elected policy actors.

1.2. State of the Art

The overall premise of my thesis is to provide empirical evidence about the interaction of the IRAs and the media; I therefore combine literature on IRAs with literature on political communication.

Since the mid-1980s, the regulatory state has replaced the interventionist state. The main institutional feature of the regulatory state is that IRAs take an active part in policy-making and fulfil public functions. The striking characteristic of an IRA is the agency's independence from representative political institutions. This independence is therefore one of the main topics addressed by the IRA literature. Several empirical studies examine the de jure independence of IRAs (Cukierman et al. 1992, Gilardi 2002, Polillo, Guillén 2005). Scholars argue that independence per se legitimates an IRA, but it also affects the output-legitimacy of an IRA. An IRA must be independent in order to provide efficient and effective regulatory outputs. One branch of the IRA literature is searching for explanatory factors for the variation of the level of independence of IRAs across the globe and studies, for example, the relationship between the independence of the agencies and elements of the national political system. Further, the literature distinguishes between de jure and de facto independence. Both terms imply a lack of regulatory and political capture. Maggetti (2007) investigates the de facto independence of IRAs and concludes that de jure independence can only

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partially legitimate regulatory policy-making. Formal independence does not guarantee that an agency is in fact independent of political decision-makers as written in the statute. Quintyn (2009) also proposes that independence should be seen as only one element of the governance arrangements of an IRA. Independence is a pillar of regulatory governance, but not an end in itself. The author views the existing literature critically for an independence-bias (p. 272). Authors such as Kaltenthaler et al. (2010), Jones (2009) or Deacon and Monk (2001) also point out that non-elected policy actors such as IRAs are not entirely isolated from the public opinion and, moreover, that the public perception has an influence on an agency's legitimacy. Maggetti (2011) provides empirical evidence that the agencies are indeed part of the media discourse, thus agencies are drawn to public attention. Hence, regulatory governance should not be reduced to the formal independence in an agency's statute.

In addition to the question of how independent an agency actually is, the IRA literature also addresses the democratic short-comings that arise from the delegation of power to agencies that are non-majoritarian and thus detached from representative institutions (Majone 1999, Gilardi 2008). The literature that is concerned with these legitimacy problems is of specific interest in this thesis. A strand of research within the IRA literature explores whether the independence of an agency is compatible with accountability mechanisms and how these governance arrangements should be conceptualized (Majone 1996, Thatcher 2002, Levy 1996, Bovens 2007, Masciandaro 2008, Masciandaro 2007, Hüpkes 2005). The scholars explore a variety of theoretical concepts to increase the lack of legitimacy of policy-making in the regulatory state, especially for political institutions on the EU-level. The existing literature assumes that the lack of legitimacy can be redressed by enhancing output- and throughput-legitimacy by means of accountability mechanisms (Maggetti 2009, Maggetti 2011).

Puppis et al. (2012) outline that the research on regulatory communication can be divided in two different lines of approach: The conventional view represented by authors like Majone sees the agencies as technocratic institutions that are not affected by the public sphere and communicate only with the regulated industries. In contrast, a more recent strand of research argues that the regulators actively use their communication to foster their legitimacy (p.5-6). Yeung (2009) concludes in her case studies that the agencies try to increase their legitimacy by communicating with the media; Maggetti and Puppis (2012) and Black (2008) argue that communication has the potential to increase the legitimacy of regulatory agencies. Meyer 1999 speaks of a



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*meritocratic legitimacy*: A policy actor can earn legitimacy by communicating in an appropriate way. Yet, Lilleker (2009) points out that the communication of a policy actor might draw the attention of the public, but not necessarily increase their legitimacy (p. 103). Jones (2009) also notes in his case study on the European Central Bank that public attention does not per se imply a higher public acceptance.

Theoretical knowledge regarding *how* the agencies frame their communication towards the public is however scarce. Regulatory communication is still a black box (Maggetti, Puppis 2012). The German-speaking research community differentiates between the communication of the administration (*Verwaltungskommunikation*) and the government communication (*Regierungskommunikation*). Baumgartner (2010) elaborates in her thesis the state of the art of the governmental and administrative communication and concludes that government communication is primarily politically motivated and that of the administration is primarily factual (p. 62). The government is assumed to communicate political goals and address more conflictive issues whereas the administration's communication is more limited and based on its legal mandate (p. 58). At the same time, the author concludes that even though there is indeed potential for differentiation between the two types of communication, this distinction is difficult to analyse empirically due to the close links between governmental and administrative actors (p. 63). The regulatory agencies under scrutiny are neither part of the government nor a conventional administrative body, it is therefore not considered expedient to follow this strand of research.

Deacon and Monk (2001) demonstrated that non-elected policy actors use their communication less to promote the agency to the public, but rather to impress their principals. Yet, the non-elected policy actors also use the media for this upward communication and invest in positive media coverage. The authors suggest however that the non-elected policy actors operate in a less conflictive media sphere than the electoral policy actors as the non-elected policy actors maintain media relations mainly with specialist or prestige media that are less inclined towards negativization and scandalization (p. 45-46). But, as I am examining a crisis situation where the non-elected policy actors face the risk of public blame, the media relations of non-elected policy actors might as well be more conflictive. Therefore, I include the crisis communication and blame game literature to examine how the agencies play the game. Brändström and Kuipers (2003) emphasizes that a large body of research provides empirical evidence that critical situations as crises lead to a blame game (p. 281). The starting hypothesis of Gerhards et al. (2009) re-



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garding the behaviour of policy actors towards the public is based on the assumptions of the blame game literature. The exponents of this strand of research suggest that generally, the policy actors portray themselves in a positive way and at the same time blame other actors for failures (Weaver 1986, Glazer, Segendorff 2005, Hood 2007, Hood 2002, Hood, Rothstein 2001). Furthermore, Gerhards et al. (2009) assumes that so far this basic assumption applies for all policy actors (p. 533).

The findings by the exponents of the crisis communication literature are closely linked to the empirical evidence provided by the above mentioned scholars of the blame game literature. A crisis is characterized by a setting of uncertainty that is accompanied by a lack of disposable information. Based on this situation, strategies are elaborated with the general aim of protecting the sender from reputational damage and promoting a positive image. As every crisis is a unique event, research on crisis communication relies mostly on case studies. However, several theoretical approaches have developed since the late 1980s (Coombs 2012: 23-25). The classical crisis response strategies consist of the following dimensions: apologia, response to embarrassment and impression management. Based on these core elements, researchers have subsequently developed a variety of communication strategies (Coombs, Holladay 1996: 280).

#### 1.3. Research Questions

This thesis is divided into two parts. The first examines the attribution of responsibilities in the media while the second examines the political communication of the policy actors that are responsible for the supervision of the financial sector is examined. The first question aims to detect a pattern of responsibility attribution in the British, German and Swiss media by comparing institutional characteristics of the policy actors and characteristics of the media systems and the political institutions. The second question analyses the communication behaviour of the supervisory agencies, the central banks and the Ministries of Finance in Germany, Switzerland and the United Kingdom relying on the explanatory factors elaborated in part 1.

With respect to the non-elected policy actors the first part examines the role of these regulators in the media discourse about responsibilities and if the media can act as an accountability forum for a constellation of regulators. The second part raises the question if the regulators actively use this forum

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to give account to the public and analysis communication pattern of the individual members of the constellation of regulators.

Is the Attribution of Responsibility in the Media Affected by Institutional Factors?

Exponents of media science suggest the inclusion of an institutional dimension in the analysis of mediatization such as the characteristics of political and media systems, the internal organization of political actors or the embedding of the relevant actors in the political system (Marcinkowski 2005, Donges 2005, Walgrave, van Aelst 2006). The challenge lies in examining the conditions under which the media influences the political agenda, furthermore, what the media effects actually are and which parts of the political system are affected (Marcinkowski 2005: 364, Esser 2013: 165-166). This thesis is interested in the latter. The existing literature focuses mainly on the mediatization of elected policy actors such as governments or parliaments. However nowadays, non-elected policy actors have a vital role in policy-making and should not be neglected in this debate (Vibert 2007). Thus, the aim of this part is to see if the non-elected policy actors are part of the media discourse about responsibilities and if the media apply the same rules to both non-elected and elected policy actors.

I address this by combining theoretical assumptions from the IRA and the political communication literature with focus on accountability issues to derive hypotheses about the characteristics of the policy actors involved in financial market supervision and the media system with its political institutions within which they operate. These institutional factors aim to clarify first, who is visible in the media discourse and how the attribution of responsibility is arranged in the media. Is it mainly positive or negative? Who is depicted as a sender and addressee of attributions? Who is held responsible by whom?

Shoemaker and Reese developed in their work of 1996 theories of influences on mass media content. The authors consider media content not as a starting point (p. 7). Shoemaker and Reese (1996) are looking for patterns of media content and the influence of individual media workers, thus the journalists, media routines, the media organization as such, and the influence from outside the media organizations as for example political, market or technological factors and finally the influence of ideology (p. 253-261). Sparked by the authors, the focus is on detecting explanatory factors on the

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individual, organizational and system level that shape the media content, more specifically, the discourse about responsibilities.

Furthermore, this question aims to assess the perception of legitimacy of policy actors. Gerhards et al. (2007) argues that the attribution of responsibility in the media influences the citizens' actions with respect to their evaluation of a policy actor (p. 106, see also Sheaffer, Gabay 2009: 449-450). Consequently, I work from the assumption that a policy actor's legitimacy decreases the more the actor is held responsible in the media for failures during the recent financial crisis. Hence, the concept of legitimacy relies on the sociological idea that legitimacy is socially constructed and it implies that a policy actor is perceived as legitimate if the actor is socially accepted and has credibility (Black 2008:144). The examination of the perception of a policy actor's legitimacy leads me to the second part of the thesis that tackles the question to what extent a blamed policy actor use the communication to deal with a legitimacy deficit.

#### Is there a Pattern to Redress Legitimacy?

The second collection of hypotheses refers to communication by policy actors responsible for supervisory tasks at times of crisis. Regulatory communication is a largely unexplored subject. Existing research centres mainly on elected policy actors like governments or parties (Maggetti, Puppis 2012: 85). Moreover, Born et al. (2011) points out that nowadays a constellation of regulators is responsible for the communication of supervisory issues, therefore analysing the coordination of the communication and the patterns of communication strategies is highly relevant. This is even more important as in the aftermath of the recent financial crisis the central bank is more involved in the supervision of the financial sector in several countries. Coordination issues are thereby of increasing significance (p. 247, 250).

The basic assumption is that crises are negative events and policy actors face a reputational loss, thus the public perceives them as less legitimate. Communication through the media is a key means of redressing their loss of legitimacy (Scheufele 2007: 535). Policy actors are aware of the impact of political communication towards the mass media; therefore they invest in expressing their views on political matters to the public in order to portray themselves positively and their political counterparts in a negative way (Gerhards et al. 2007: 106).