

Creating Cayman as an Offshore Financial Center: Structure & Strategy since 1960

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Abstract

The Cayman Islands are one of the world's leading offshore financial centers (OFCs). Their development from a barter economy in 1960 to a leading OFC for the location of hedge funds, captive insurance companies, yacht registrations, special purpose vehicles, and international banking today was the result of a collaborative policy making process that involved local leaders, expatriate professionals, and British officials. Over several decades, Cayman created a political system that enabled it to successfully compete in world financial markets for transactions, participate in major international efforts to control financial crimes, and avoid the political, economic, racial, and social problems that plague many of its Caribbean neighbors. Using archival sources, participant interviews, and a wide range of other materials, this Article describes how the collaborative policy making process developed over time and discusses the implications of Cayman's success for financial reform efforts today.

Offshore financial centers (OFCs) generally and the Cayman Islands in particular have inconsistent reputations. While critics of offshore jurisdictions frequently assert that OFCs are under-regulated – as with Ronen Palen's complaint that OFC transactions “are not only free from the regulation of the country in which the bank resides, but are subject to no mandatory regulations whatsoever”¹ – others have seen them as an important part of the world financial

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¹ Ronen Palan, *Offshore in OFCs and Tax Havens* in OFFSHORE FINANCE CENTERS AND TAX HAVENS: THE RISE OF GLOBAL CAPITAL 18, 21 (Mark P. Hampton & Jason Abbott, eds. 1999). Nicholas Shaxson identified Cayman among stereotypical “treasure islands” engaged in money laundering, drug trafficking, and broader tax evasion. Nevertheless, he insisted, these were “all shades of gray.” Rob Hopkins, *An Interview with Nick Shaxson, author of*

system. Prof. William Vlcek termed them “nodal points in the web of banks and financial institutions that interlace the world via electronic connections.”² For example, the *Economist Intelligence Unit* published a series of reports on offshore jurisdictions between 1972 and 2002 that showed how Cayman exemplified efforts by OFCs to compete regionally and globally for economic growth through promotion of high value financial products.³ Although the EIU reports conceded that these growth strategies – as with some strategies used by onshore jurisdictions – sometimes involved illegal practices or political corruption, they noted that Cayman and other OFCs pursued development and competitive advantage through effective regulation that was often consistent with global best practices.⁴ If there are OFCs playing constructive roles within the international financial framework, different legal and policy responses to the regulatory competition they provide will be appropriate than if they are merely shady locales ‘subject to no mandatory regulation whatsoever.’⁵ Putting the development of OFCs like Cayman into the proper context is thus essential at a time when there are efforts underway to alter the

Treasure Islands: tax havens and the men who stole the world, Transition Culture (May 14, 2012) available at <http://transitionculture.org/2012/05/14/an-interview-with-nick-shaxson-author-of-treasure-islands-tax-havens-and-the-men-who-stole-the-world/> (Switzerland presented “a classic example” whereby for “decades [it] set out to provide banking secrecy and to attract dirty money, criminal money and other sorts of money from around the world. But every country, in a sense, is a tax haven in its own right because there [was not] an international network of transparency, of sharing information between countries that makes any country in the world completely transparent.” Id. Major malefactors nonetheless included large nations such as the United States and Great Britain that through “democratically created tax systems” enabled wealthy individuals and multinational corporations to exploit “a [global] system that remains unregulated and uncontrolled.” Id. Indeed, Cayman was only part of “a British . . . financial empire. It grew up from the 1950s onwards with the City of London, the growth of the oil markets. That was when the formal British empire was ended but the UK” maintained “influence over the flows of money around the world,” and it “now has this new kind of financial empire.” Id. See also Nicholas Shaxson, TREASURE ISLANDS: UNCOVERING THE DAMAGE OF OFFSHORE BANKING AND TAX HAVENS (2012) (expanding on criticisms); Andrew P. Morriss & Clifford C. Henson, *Regulatory Effectiveness in Onshore & Offshore Financial Centers*, 53 VA. J. INT’L L. XX (forthcoming 2013) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2016310 (summarizing criticisms) [page numbers available shortly].

² William Vlcek, OFFSHORE FINANCE AND SMALL STATES: SOVEREIGNTY, SIZE AND MONEY 6 (2008).

³ See Tony Doggart and Caroline Voûte (Doggart), TAX HAVENS AND OFFSHORE FUNDS, QER SPECIAL NO. 8 (1971); Caroline Doggart, TAX HAVENS AND THEIR USES, QER SPECIAL REPORT NO. 21 (1975); Caroline Doggart, TAX HAVENS AND THEIR USES, EIU SPECIAL REPORT NO. 61 (1979); Caroline Doggart, TAX HAVENS AND THEIR USES, EIU SPECIAL REPORT NO. 105 (1981); Caroline Doggart, TAX HAVENS AND THEIR USES 1990, EIU SPECIAL REPORT NO. 1191 (1985); Caroline Doggart, TAX HAVENS AND THEIR USES, EIU SPECIAL REPORT NO. 186 (1985); Caroline Doggart, TAX HAVENS AND THEIR USES 1990, EIU SPECIAL REPORT NO. 1191 (1990); Caroline Doggart, TAX HAVENS AND THEIR USES 1993, EIU SPECIAL REPORT NO. P261 (1993); Caroline Doggart, TAX HAVENS AND THEIR USES, EIU RESEARCH REPORT (1997); Caroline Doggart, TAX HAVENS AND THEIR USES, EIU RESEARCH REPORT (2002). See also Morriss & Henson, *supra* note 1, at XX.

⁴ See, e.g., Doggart, 1997 report, *supra* note 3, at 154 (describing Caymans as “an attractive base for banking and trust business because of their social and political stability, the accumulated expertise and operating infrastructure, and a sound regulatory environment” and the Financial Services Supervisory Department as having “watchful eyes” on the sector and closing a bank in 1995 involved in “trading irregularities”). See also Morriss & Henson, *supra* note 1, at XX (arguing that many OFCs offer equal or better regulatory measures than onshore jurisdictions); Tom Russell, I HAVE THE HONOUR TO BE 193 (2003) (former governor noting that process of meeting concerns of metropolitan powers “has continued through the years, with United Nations, the European Community, the O.E.C.D. and the Financial Action Task Force, all scrutinizing Caymanian laws and practices to ensure that these conform to international norms.”).

⁵ Morriss & Henson, *supra* note 1, at XX [page numbers available shortly].

international financial system and when OFCs are regularly at the center of U.S. and EU political controversies.⁶

This Article employs sources including participant interviews and archival evidence to argue that the Caymanian financial center emerged from, and evolved with, a constitutional structure that legitimated collaborative policymaking among the key stakeholders. Resting on Cayman's social stability, this constitutional legitimacy promoted a regulatory and tax competitive advantage that avoided capture and resisted both corruption and abuse better than many other jurisdictions.⁷ It shows how Cayman developed an effective and cost-effective regulatory framework that enabled it to grow from essentially a barter economy in 1960 with no banks to a sophisticated, developed economy with hundreds of banks playing a major role in the world economy by the 1980s.

Cayman's development must be examined within the context of broader constitutional trends within Britain's dissolving post-war Empire. In the Caribbean, Cayman, other jurisdictions that maintained ties to the colonial powers, and colonies that won independence like Jamaica and the Bahamas diversified from commodity economies into financial and tourist centers. Cayman was unusual, however, because its government constructed a financial regulatory system that enabled the territory to achieve more economic development and diversification than its peers, bringing it the highest per capita wealth in the Caribbean and put Cayman on par with the prosperity of Britain.⁸ This success is all the more remarkable because the Islands began from a base of a barter economy built on subsistence agriculture and the export of labor. Thus, between 1960 and 1980, the Cayman Islands went from being one of the least developed - both legally and economically - jurisdictions in a poorly developed region to surpassing its former colonial power in GDP per capita terms and developing a sophisticated body of financial law.

The evolution of the British constitutional structure for the dependent territories - including checks and balances and the rule of law - steadily expanded Cayman's autonomy after 1959. Indeed, although prior to World War II, "at the root of the relationship between the colonial powers and their possessions ... was the apparent power of the former to control *directly* the economic development of the latter,"⁹ the new constitutional orders that arose after the war created policy space within which even those jurisdictions that did not choose to become independent gained greater control over their development. This constitutional autonomy

⁶ 2012 Republican presidential candidate Mitt Romney and Obama Treasury Secretary nominee Jack Lew both had Caymanian investments, which became issues. See Obama Treasury Pick Lew Defends Cayman Islands Investment, Reuters (Feb. 13, 2013) available at <http://www.reuters.com/article/2013/02/13/usa-congress-lew-caymans-idUSL1N0BDA1D20130213>; Matthew Mosk, et al., *Romney Parks Millions in Cayman Islands*, ABC News (Jan. 18, 2012) available at <http://abcnews.go.com/Blotter/romney-parks-millions-offshore-tax-haven/story?id=15378566>.

⁷ See Turks and Caicos Islands, Commission of Inquiry 2008-2009, Report of the Commissioner the Right Honourable Sir Robin Auld, Summary ¶¶ 1-2 (2009) (noting "high probability of systemic corruption in the government and the legislature and among public officers in the Turks & Caicos Islands in recent years" and "serious deterioration - from an already low level - in the Territory's systems of governance and public financial management control."); Stephen Clarke, *Antigua and Barbuda: History of Corruption and the Stanford Case*, Library of Congress (2011) ("Despite an absence of reported prosecutions, Antigua and Barbuda has gained a reputation for having had governments in which officials accepted bribes in return for legal favors."); Steve Eder, *Robin Hood of Antigua Left a Mess*, Wall St. J. (March 12, 2012) ("Prosecutors argued at [Allen Stanford's] trial that he concealed his [\$7.1 billion Ponzi] schemes by bribing an Antiguan regulator and an outside auditor.").

⁸ B.W. Higman, *A CONCISE HISTORY OF THE CARIBBEAN* 267-326 (2011).

⁹ John Darwin, *BRITAIN AND DECOLONIZATION: THE RETREAT FROM EMPIRE IN THE POST WAR WORLD* 9 (1988).

enabled collaboration among Caymanian and UK officials and Caymanian and resident expatriate lawyers and financial professionals to implement a series of financial-diversification strategies that incorporated, and eventually helped develop, global best practices in the finance sector. This became a quasi-institutionalized effort in which the government and business sectors worked together to develop an effective regulatory structure that both safeguarded the jurisdiction's reputation and facilitated profitable financial activity that provided law firms, accountants, insurance companies, company agents, and others with profits and the government with resources from fees. We argue that this produced regulatory efforts focused on developing and preserving the jurisdiction's reputational capital, enabling it to compete for international business by offering a low cost regulatory environment which credibly committed to controlling criminal activity and fraud.

In Alfred Chandler's classic thesis, strategy leads business structure.¹⁰ In Cayman, the constitutional structure enabled the competitive strategy that yielded the OFC, and enabled further evolution of the constitutional structure in pursuit of the strategy. Cayman's success is due both to the entrepreneurial activity of its business sector and the cost-effective regulatory structures which enabled Cayman to avoid killing the goose that laid the golden eggs either by stifling it through over-regulation or letting it be destroyed by corruption, crime, or fraud through under-regulation. In addition, Cayman successfully negotiated both fostering an entrepreneurial climate that brought it new businesses and being so entrepreneurial as to provoke onshore jurisdictions into closing off access to their economies to Caymanian entities. Cayman's success in navigating twice between Scylla and Charybdis provides valuable lessons for financial regulators elsewhere.

British overseas jurisdictions generally were positioned well to meet the growing post-war demand for jurisdictions providing opportunities to structure businesses and personal affairs to reduce tax.¹¹ Not only was there a long history of such activity in the Bahamas, Bermuda, the Channel Islands and Isle of Man, but the City of London had the cluster of accounting, legal, and banking services necessary to design and implement strategies that went beyond simple relocation of assets. Further, British economic and tax policy developments during the 1950s and 1960s gave overseas territories an incentive to meet that demand, both through the capital controls that restricted asset flows out of the post-war currency controls in the "Sterling Area" and through a combination of increasing tax and surtax rates and discussion of wealth taxes and other measures that motivated wealthy individuals to seek alternatives. At the same time, the post-war push for decolonization created the political space needed by the overseas territories to exploit this demand by reducing British control and empowering interests within the British government which focused on the territories' economic sustainability rather than on the impact "tax havenry" might have on the British Treasury. Thus, just as Britain was increasing overseas territories' autonomy with the goal of reducing their demands on British taxpayers, it was also creating conditions that provided a market for OFC services which City firms were happy to help

¹⁰ Alfred D. Chandler, Jr., *STRATEGY AND STRUCTURE: CHAPTERS IN THE HISTORY OF THE AMERICAN INDUSTRIAL ENTERPRISE* (1962).

¹¹ Christophe Farquet notes that there was substantial European demand for tax reduction strategies between World War I and World War II based on relocation of assets met primarily by Switzerland. Christophe Farquet, *The Rise of the Swiss Tax Haven in the Interwar Period: An International Comparison*, EHES Working Paper No. 27 (Oct. 2012). Nicholas Faith traces Swiss efforts at asset protection to the 17th century. Nicholas Faith, *SAFETY IN NUMBERS: THE MYSTERIOUS WORLD OF SWISS BANKING* (1982).

drive.¹² Combined with the development of the telex and long distance telephone systems – which by the 1950s made it “almost as easy to transact business with a bank in a foreign centre as with one just across the road”¹³ – there was now an opening for new jurisdictions to enter the market. By contrast, France’s constitutional relationship to the overseas territories it retained after decolonization made those areas integral parts of the French state, leaving no policy space for those jurisdictions to follow such a strategy.¹⁴

Section I explains how an economy based on seamen remittances and subsistence agriculture produced the 1960 Companies Law, the start of all subsequent tax, banking, and commercial-instruments legislation constituting the Cayman financial center using participants’ accounts, we explain the law’s origin within the growth of a more open Cayman government and the creation of the 1959 Constitution that formally ended Jamaica’s administrative control. Section II examines the constitutional structure and strategies promoting the first phase of financial diversification up to 1968. At that point, the racial unrest and turmoil surrounding the Bahamas’ independence brought new financial business to Cayman; it also consolidated collaboration among Caymanian elected officials, UK and Cayman civil servants, and expatriate lawyers and financial professionals in shaping financial policymaking. The Bahamas’ problems also demonstrated how the more stable Caymanian interracial politics combined with British constitutionalism and colonial status to provide a competitive advantage within the Caribbean and relative to other British offshore financial centers. Section III turns to the role of the 1972 Cayman Constitution that increased self-government, linking elected officials in the Legislative Assembly and the Executive Council, thereby strengthening the collaborative policymaking model. This allowed collaboration among resident expatriate and Caymanian legal professionals as well as Caymanian (both elected and unelected) and UK officials. By 1980 the constitutional structure enabled not only proliferating new, globally-competitive, diversified financial products, it also successfully contributed to social stability—including the encouragement of Caymanian employment—through interracial “Team” coalitions rather than ideologically-polarized or rent-seeking party politics. Section IV examines how during the mid-1980s the constitutional structure enabled Cayman to join the United States and UK in signing international agreements that policed money laundering and drug trafficking. In 1993 constitutional amendments conferred further internal self-government and in 1996 the new Caymanian government created an innovative financial regulatory body, the Cayman Island Monetary Authority (CIMA), which further enhanced Cayman’s competitive position. Section V evaluates claims made from 1997 to the 2009 UK grant of full constitutional self-government that Cayman poorly policed abuse of its financial products. The discourse also suggested that the appearance of party politics, charges of corruption, and budget deficits prompting UK intervention challenged the social order underpinning the Cayman financial center.

¹² In the 1970s, A UK executive, Lord Duncan-Sandys, “was revealed to be receiving an extra \$100,000 a year tax-free through the Cayman Islands, and the then British Prime Minister, Ted Heath, referred to it as the ‘unpleasant and unacceptable face of capitalism.’ ‘We had some good jokes about it,’ said one lawyer. ‘It may have been unacceptable to Mr. Heath, but it certainly wasn’t illegal.’” Anthony Sampson, *THE MONEY LENDERS: THE PEOPLE AND POLITICS OF THE WORLD BANKING CRISIS* 283 (1981).

¹³ Paul Einzig, *THE HISTORY OF FOREIGN EXCHANGE* 239 (2nd ed. 1970).

¹⁴ See Robert Aldrich & John Connell, *FRANCE’S OVERSEAS FRONTIER* 76 (1992) (describing the close legal integration of overseas territories into metropolitan France after World War II).

I. Constitutional Structure, Strategy & the 1960 Companies Law

The enactment of the 1960 Company Law, the first legislation directly promoting a Cayman financial center, followed a significant change in Cayman colonial government. In the 1950s the Caymanian economy relied on seamen's remittances and agriculture, supplemented by turtle and other fishing, shipbuilding, and hand crafts.¹⁵ Limited airline service sustained an embryonic tourist business built around small guest houses and hotels.¹⁶ There were no banks on any of the three islands.¹⁷ Within the British Empire, Grand Cayman and the smaller islands of Cayman Brac and Little Cayman were a dependency of the colony of Jamaica, which also separately administered the Turks and Caicos island group.¹⁸ The London-appointed Crown Governor (the Crown's representative) responsible for all three jurisdictions exercised colonial authority from Jamaica; subordinate commissioners represented the Crown in the two outlying dependencies.¹⁹

Within this structure, Cayman's resident Commissioner exercised executive power and proposed laws in conjunction with traditional officers known as Vestrymen and Justices of the Peace.²⁰ These were generally drawn from the Islands' small mercantile group, which dominated the Legislative Assembly.²¹ As pressures for independence across the Caribbean grew in the late 1950s, however, the larger political shifts in Jamaica and other major British Caribbean colonies facilitated creation of a new Cayman colonial constitution that altered existing politics and displaced the ruling elite.²² The 1960 Companies Law emerged from the transforming constitutional struggle, setting the stage for later developments.

A. Setting the Stage

Although Cayman was on the periphery of the British Empire, it was not an isolated colonial backwater. Despite infrastructure limitations and a largely barter-based domestic economy, a large proportion of Caymanian men spent many of their adult years as seamen and officers aboard merchant marine ships or on turtle boats that ranged widely throughout the Caribbean.²³ Caymanians were thus aware of changes in the world economy and able to contrast

¹⁵ In 1952 an academic study of the Cayman Islands concluded that "as a measure of the relative importance of the economic activities . . . [s]eafaring activities stand at the head of the list . . . as they do in all other statements about the islands. Second, however, is subsistence agriculture, heretofore almost completely neglected as being of significance. Of a decidedly lower order of importance . . . are storekeeping, scale and commercial fishing, thatch rope manufacture, shipbuilding, and the tourist trade." Edwin Beale Doran, Jr., *A Physical and Cultural Geography of the Cayman Islands*, (Unpublished Ph.D Dissertation, University of California, Berkeley, 1953) at 437-38, 443.

¹⁶ Doran, *supra* note 15, at 437-38.

¹⁷ Michael Craton, *FOUNDED UPON THE SEAS: A HISTORY OF THE CAYMAN ISLANDS AND THEIR PEOPLE* 352-353 (2003).

¹⁸ Vassel Johnson, *AS I SEE IT: HOW CAYMAN BECAME A LEADING FINANCIAL CENTRE* 103-04 (2001); Higman, *supra* note 8, at 269.

¹⁹ Craton, *FOUNDED*, *supra* note 17, at 306-307.

²⁰ Craton, *FOUNDED*, *supra* note 17, at 306.

²¹ J. A. Roy Bodden, *PATRONAGE, PERSONALITIES, AND PARTIES, CAYMANIAN POLITICS FROM 1950-2000* 2-4, 17-46 (2010).

²² Bodden, *PATRONAGE*, *supra* note 21, at 47-69, 99-128.

²³ Craton, *FOUNDED*, *supra* note 17, at 220-223, 281, 301-302, 401-403; Johnson, *supra* note 18, at 65 (describing turtling); 68-71 (describing post-World War II involvement of Caymanians as crew members on commercial shipping vessels and noting that "'Seamen's earnings were certainly the bulk of Cayman's economy for a decade and a half to 1965.'").

their home with the rest of the Caribbean and the broader world.²⁴ The Caymanian population grew increasingly sophisticated through this exposure. Moreover, the seafaring tradition fostered a strong tradition of independence among both the men and the women, who had to manage family and business affairs on their own while the men were away.²⁵ However, the majority of Caymanian seamen were effectively disenfranchised by their long absences from the islands.²⁶ Combined with the limitation of the franchise to men, these absences also restricted the ability of those serving as sailors to exert influence through their families at home. Neither Caymanian individuals nor companies operating there paid income, property or other direct taxes, leaving the colonial government dependent on limited revenue from import duties, the sale of postage stamps to collectors, and indirect taxes.²⁷ Cayman had “a history of largely handling their own affairs. Moreover, they were accustomed to living within their means. They had never had outside help to balance their modest budget.”²⁸ Combined with Britain’s relative parsimony towards its Caribbean possessions, this left the Islands with few public resources for economic development.²⁹ For example, a serious mosquito infestation hampered the development of tourism and budget limitations prevented steps to control the mosquitoes.³⁰ Cayman thus entered the post-war era with an antiquated political structure without access to much funding and few resources beyond a population with a strong tradition of independence.

The 1950s brought new economic challenges to Cayman. In the late 1950s and early 1960s, the global shipping industry was adopting large-bulk cargo ships, which meant fewer jobs for Caymanian seamen.³¹ In addition, Nicaragua reduced Caymanians’ access to Nicaraguan turtle fisheries in the 1960s.³² Like most in Caribbean jurisdictions in the 1950s, Caymanians began to look for economic development strategies. The combination of geographical isolation, the restrictive local political structure, and the jurisdictional connection to Jamaica influenced the choice of development projects available to the Caymanian government. The limited outside capital invested in Cayman came primarily from Britain, the Bahamas, and Jamaica; the few corporations doing business in the Cayman Islands registered under the Jamaican Companies Act,³³ reflecting both Cayman’s legal dependence on its larger neighbor and the significant limits on Caymanian sovereignty under the pre-1960 colonial constitution. This dependence extended

²⁴ Roger C. Smith, *THE MARITIME HERITAGE OF THE CAYMAN ISLANDS* 80 (2000) (“Caymanian seafaring men broadened their once-insular perspectives by voyaging worldwide.”).

²⁵ Elizabeth W. Davies, *THE LEGAL STATUS OF DEPENDENT BRITISH TERRITORIES: THE WEST INDIES AND NORTH ATLANTIC REGION* 33 (1995) (on individualism); *id.* at 94 (seafaring life “an antiauthoritarian existence”).

²⁶ Bodden, *PATRONAGE*, *supra* note 21, at 68, 132.

²⁷ Doran, *supra* note 15, at 438-39.

²⁸ Russell, *HONOUR*, *supra* note 4, at 167.

²⁹ Cayman Archives Oral History Interview, Benson O. Ebanks Discs 1-4 (1997); Craton, *FOUNDED*, *supra* note 17, at 332-335, 339-340, 347-48, 352; Davies, *LEGAL STATUS*, *supra* note 25, at 60-61 (British aid to the Caribbean was less than provided by some of the other European colonial powers, including the Dutch).

³⁰ Craton, *FOUNDED*, *supra* note 17, at 331, 343-346; Cayman Archives Oral Histories Interview, Jack Rose, Disc 3, at 17 (1999). On the mosquito problem, see Johnson, *supra* note 18, at 71 (noting that mosquitoes “plagued everyone” in mid-1960s.); *id.* at 114-124 (detailing nine years of control efforts and noting that “it was unwise to take a walk after sunset if you were not doused with insect repellent or did not have a ‘smoke pot’ for company” before the 1970s and noting that more than 80% of Grand Cayman was swampy and “ideal for mosquito breeding.”).

³¹ Smith, *MARITIME HERITAGE*, *supra* note 24, at 146; Johnson, *supra* note 18, at 71 (“cargo container [ships] appeared on the scene ... and joined ranks with new supertankers for the reduction of crew requirements.”).

³² Davies, *LEGAL STATUS*, *supra* note 25, at 35; Smith, *MARITIME HERITAGE*, *supra* note 24, at 79-80.

³³ Cayman Archives Oral History Interview, Arthur Hunter, Disc 3, at 8 (2000).

to the legal profession, with few law agents (legally trained lay individuals) and no lawyers on the islands.³⁴

Three noteworthy developments occurred. First, after periodic interruptions to air service in the 1940s, the Cayman government began to subsidize Owen Roberts' airline service (registered as an English company), allowing the airline to operate regularly by 1950.³⁵ Second, influential Caymanian businessman-public official E. D. Merren and two Bahamian-English entrepreneurs secured passage of the 1950 Hotels Aid Act, which facilitated opening several modern hotels between 1951 and 1958 to accommodate the small numbers of tourists arriving by air.³⁶ Some Caymanian property-holders opposed the Hotels Aid Act because some land consolidations were necessary to construct the hotels.³⁷ The archaic system of proving land title aided their resistance and continued to limit tourism-related development into the 1960s, just as the broader Caribbean began to focus on North American tourism as a development strategy.³⁸ Third, Barclays opened the islands' first bank, using a Jamaican-registered subsidiary.³⁹ Barclays' initial business was handling seamen's remittances; prior to the bank's establishment, local mercantile firms like Merren's handled these.⁴⁰ Barclays thus created an initial connection, albeit a limited one, between Caymanians and the world's banking system.⁴¹

While these small steps expanded Cayman's connections to the outside world, the limitations of the existing constitutional order constrained efforts to build on those new connections. Forced to seek alternatives by the prospect of constitutional change stemming from the impending large change in Britain's relationship with its Caribbean territories on the horizon, by 1958 colonial officials and a transformed Legislative Assembly began to consider foreign investment as a new source of revenue and employment.⁴²

B. Decolonization, Federation, and Jamaica

Cayman's constitutional evolution occurred in the context of, and under the influence of, contemporary, larger scale constitutional developments in the British Caribbean. In particular, British colonial and local officials throughout the Caribbean debated the creation of a West Indian Federation as a path to self-government beginning in 1955.⁴³ From Britain's point of

³⁴ Caymanians depended primarily on "law agents" rather than solicitors and barristers to accomplish legal tasks into the early 1960s. See Hunter Interview, *supra* note 33, at Discs 3-4.

³⁵ Doran, *supra* note 15, at 317-319; Craton, FOUNDED, *supra* note 17, at 334-335.

³⁶ Craton, FOUNDED, *supra* note 17, at 347-348.

³⁷ Craton, FOUNDED, *supra* note 17, at 339-340.

³⁸ Craton, FOUNDED, *supra* note 17, at 340-341.

³⁹ Craton, FOUNDED, *supra* note 17, at 352-353.

⁴⁰ Craton, FOUNDED, *supra* note 17, at 309-310, 473 n. 4; Bodden, PATRONAGE, *supra* note 21, at 68; Smith, MARITIME HERITAGE, *supra* note 24, at 80.

⁴¹ Ebanks, *supra* note 29, at 14; Craton, FOUNDED, *supra* note 17, at 332-335, 339-340, 347-48, 352-53.

⁴² Doran, *supra* note 15, at 437-38, 443.

⁴³ British interest in consolidating her Caribbean possessions was long-standing. Elizabeth Wallace noted that

For almost three centuries some form of closer association has been propounded as a solution to British Caribbean problems. Such proposals originally emanated, not from West Indians, but from Englishmen impressed by the probable economies of unified administration. The usual attitude of the islanders was early Illustrated, towards the end of the seventeenth century, when Barbadian planters rejected a Jamaican plan for a joint expedition against the pirates then infesting the Leewards, on the ground that they would not expend one shilling to save their little northern neighbors.

view, the West Indies “were a monument to colonial failure: poverty-stricken, politically backward, economically as well as politically fragmented....” Her overseas territories “were more of an embarrassment than a source of strength, trade or influence.”⁴⁴ Britain’s goal became, as a draft official memorandum noted, “to avoid any situation which results in our being left with any of the present federated territories on our hands for which we can see no obvious future except as colonies.”⁴⁵ Britain saw the Federation as the key to reducing the costs of its smaller Caribbean colonies, as the Federation would allow consolidating the smaller islands with the larger colonies of Jamaica, Barbados, Trinidad and Tobago, and the Bahamas.⁴⁶ At the same time, the economic problems of the Caribbean territories received comparatively little attention from a Britain preoccupied with more pressing imperial issues elsewhere.⁴⁷ The combination of a distracted metropolitan power and its focus on narrow fiscal issues helped create an opening for developing an OFC.

Outside Cayman, Caribbean politicians initially saw the Federation proposals as a path to sovereignty and so were receptive to the idea, although their enthusiasm cooled as it became clear that Federation would require them to yield some of the powers they were just acquiring from Britain to a Federation government.⁴⁸ Moreover, as Elizabeth Davies notes, the Federation “was intended as a vehicle to independence for those colonies that were viewed at the time as too small to proceed to independence alone. The larger colonies, however, did not need such a vehicle in order to become independent, so why should they choose to continue to bear the expense?”⁴⁹ As leading Jamaican and Trinidadian politicians in particular chose to focus on their own islands, the British plan to consolidate the smaller islands with them unraveled.⁵⁰

Amidst Britain’s efforts to consolidate its Caribbean territories into the Federation, successive resident Commissioners responsible for the Cayman Islands reported to colonial authorities on the existing local political structure. In 1956, the Commissioner wrote the colonial Governor in Jamaica that the “population of the Dependency is now estimated to be 8300. The

Elizabeth Wallace, *THE BRITISH CARIBBEAN: FROM THE DECLINE OF COLONIALISM TO THE END OF FEDERATION* 85 (1977). Like the British, the Dutch also wrestled with issues of consolidation and fragmentation among their Caribbean possessions. Also like the British, the issue for the colonial government was related to concerns over costs while the Caribbean populations on smaller islands feared consolidation with larger islands. See Craig M. Boise & Andrew P. Morriss, *Change, Dependency & Regime Plasticity in Offshore Financial Intermediation: The Saga of the Netherlands Antilles*, 45 *TEX. INT’L L. J.* 377, 396-401 (2009) (describing struggles over structure for the Netherlands Antilles).

⁴⁴ Darwin, *supra* note 9, at 222.

⁴⁵ *THE WEST INDIES* (S.R. Ashton & David Killingray, eds. 1999) Series B, vol. 6 of British Documents on the End of Empire, at lxxi (quoting Colonial Cabinet Policy Committee draft memorandum, 1961).

⁴⁶ *Id.*

⁴⁷ Darwin, *supra* note 9, at 216. Again, there are parallels with the Dutch experience, in which Dutch preoccupation with Indonesia affected the relationship between the Netherlands and the Caribbean territories. See Boise & Morriss, *supra* note 43, at 397 (“The constitutional structure ultimately proposed by the Dutch as a basis for association with its former colonies was developed with the objective of keeping Indonesia within the Kingdom, not with the well-being of the Caribbean territories in mind.”).

⁴⁸ Darwin, *supra* note 9, at 215 (quote), 219 (initial local enthusiasm); *THE WEST INDIES*, *supra* note 45, at lxxi (being left quote), xli (federation seen as solution from mid 19th century). Davies, *LEGAL STATUS*, *supra* note 25, at 104-05 (attributing failure of federation to “disproportionate, onerous, financial obligation” it placed on Jamaica and Trinidad and Tobago.)

⁴⁹ Davies, *LEGAL STATUS*, *supra* note 25, at 105-6.

⁵⁰ Craton, *FOUNDED*, *supra* note 17, at 306-311, 314-315.

franchise being restricted to adult males, there is a maximum political electorate which I estimate as being not more than 750. The Dependency is in fact one rotten borough” dominated by the Justices of the Peace and Vestrymen, who controlled the Legislative Assembly.⁵¹ An essential reform was the “extension of the franchise to women, who are at present disenfranchised, and who constitute over eighty percent of the adult population.”⁵² In 1958, the Commissioner explained to the Governor that a drive for greater self-government would need to address resistance from Caymanian “merchants” and individuals “open to bribery” because of their need “for credit” and “employment.”⁵³ Although Caymanian seamen were the “large group of independent men, whose money keeps the islands going,” they were “virtually disenfranchised by being at sea. Once the women are given the vote [in 1958] a very audible voice will be heard from this independent group, and the one who pays the piper will start calling the tune. Vested interest is worried.”⁵⁴ This forecast how the enfranchisement of women would significantly broaden the interests represented in the legislative assembly.⁵⁵

Britain pressed Cayman to consider association with the Federation, at one point proposing that Cayman take a status similar to that of the Channel Islands with Britain, even offering to take Cayman back as a colony if such status proved unsatisfactory after five years.⁵⁶ Britain feared that if it did not persuade Cayman to agree to join the Federation, Cayman would “remain a permanent U.K. dependency.”⁵⁷ One British analysis listed Cayman as a possession for which there was “no probability” of independence.⁵⁸

While Britain saw Cayman’s future as being a tiny part of the Federation, Caymanians were less certain. Some urged severing the Jamaican connection altogether in favor of greater self-government as a separate British territory.⁵⁹ Other Caymanians, led by Ormond Panton, argued that greater self-government was compatible with a looser Jamaican connection, preserving traditional uses of Jamaican laws and legal services.⁶⁰ Even as this discussion proceeded, small steps gradually separated Cayman’s legal identity from Jamaica’s. For example, during 1958-59 the Governor in Jamaica appointed a stipendiary magistrate for the Cayman Islands, who would cooperate with the Commissioner.⁶¹ In 1958, colonial officials discussed—and the Commissioner left for his successor’s consideration—proposals for more open immigration into the Caymans, a general Companies Law no longer drawn from Jamaican laws, and funding of mosquito eradication.⁶²

Caymanians began to consider a model based on Bermuda and the Bahamas’ nascent tax and exchange control avoidance businesses,⁶³ Curaçao’s “ring-fenced” tax regime benefitting

⁵¹ Bodden, PATRONAGE, *supra* note 21, at 66.

⁵² Bodden, PATRONAGE, *supra* note 21, at 66.

⁵³ Bodden, PATRONAGE, *supra* note 21, at 68.

⁵⁴ Bodden, PATRONAGE, *supra* note 21, at 68.

⁵⁵ Bodden, PATRONAGE, *supra* note 21, at 66-68; Craton, BAHAMAS, *supra* note 90, at 306-314.

⁵⁶ THE WEST INDIES, *supra* note 45, at 417.

⁵⁷ THE WEST INDIES, *supra* note 45, at 418.

⁵⁸ THE WEST INDIES, *supra* note 45, at 518.

⁵⁹ Bodden, PATRONAGE, *supra* note 21, at 95-96.

⁶⁰ Bodden, PATRONAGE, *supra* note 21, at 96-97.

⁶¹ Cayman Archives Oral History Interview, Sir James Astwood, Disc 3, at 3-4, 40-41 (2005).

⁶² Rose Interview, *supra* note 30, at Disc 3, 12, 17, 18, 20, 21.

⁶³ Mark P. Sullivan, *The Bahamas*, in ISLANDS OF THE CARIBBEAN: A REGIONAL STUDY (Sandra W. Meditz & Dennis M. Hanratty, eds. 1987) at 521, 535 (“A large number of trust and finance companies and investment firms were established [in the Bahamas] in the 1950s, following the imposition of restrictive finance laws in many

from the extension of the U.S.-Netherlands tax treaty to the Netherlands Antilles,⁶⁴ and the tax structuring business in the Channel Islands and Europe generally.⁶⁵ Tax avoidance was becoming an important political issue in Britain in the 1950s, with the Labour Party's Working Party on Tax Avoidance and Evasion's 1959 report, *Tax Dodging*, stressing the need to focus taxation on "those who live by speculation or who already have wealth".⁶⁶ Serious discussions of the introduction of wealth taxes in Britain also created a growing demand for offshore products within the sterling area (as the exchange control area managed by the British and incorporating both colonies and some former colonies was known), as did the weakening of capital controls brought about by the British return to current account convertibility in 1959.⁶⁷ The British side of such transactions was already well developed: British banks and financial firms had more than a century of international operations, with experience to develop techniques "only acquired by the inherited aptitudes and many years of experience".⁶⁸ The City had also developed considerable expertise navigating regulatory thickets in adapting to the 1947 Exchange Control Act's impact on British multinationals that went well beyond simple avoidance techniques like the "hand payments" (illegal hand carried deliveries of U.S. dollars in London) used in the late 1940s and early 1950s.⁶⁹ For Cayman to enter this business would require new legal infrastructure, however, and as Caymanians explicitly feared, legislation at the Federation level could prevent it should Cayman joined the Federation.⁷⁰

industrialized countries."); Sampson, *supra* note 12, at 281 ("By the mid-sixties a few businessmen on [Grand Cayman] were looking with envy at the Bahamas to the north, also a British colony, which was attracting many big companies and banks by providing exemption from tax."); Brian Archer, *The Impact of International Companies on the Economies of Small Islands: a Case Study of Bermuda*, in *Banking and Finance in Islands and Small States* 192, 194 (Michael Bowe, et al., eds., 1998) (first offshore company established in Bermuda in 1935).

⁶⁴ Boise & Morriss, *supra* note 43, at 409 (discussing extension of treaty).

⁶⁵ Farquet, *supra* note 11, at 16 (describing use of holding companies as strategy); David W. Moore, *THE OTHER BRITISH ISLES* 245-46 (2005); Michael Craton, *A HISTORY OF THE BAHAMAS* 269-70 (1986) (describing importance 1950s and 1960s of "offshore" or "suitcase" companies").

⁶⁶ Richard Whiting, *THE LABOUR PARTY AND TAXATION: PARTY IDENTITY AND POLITICAL PURPOSE IN TWENTIETH-CENTURY BRITAIN* 147 (2000).

⁶⁷ Barry Eichengreen, *GLOBALIZING CAPITAL: A HISTORY OF THE INTERNATIONAL MONETARY SYSTEM* 94, 121-22 (1998).

⁶⁸ *A BANKER'S WORLD: THE REVIVAL OF THE CITY 1957-1970, SPEECHES AND WRITINGS OF SIR GEORGE BOLTON* (Richard Frye, ed. 1970) at 113. *See also* Farquet, *supra* note 11, at 18 (describing City involvement in international tax issues in interwar period).

⁶⁹ *BANKER'S WORLD*, *supra* note 68, at 15-16 (experience with controls); City discovers role separate from sterling, *BANKER'S WORLD*, *supra*, at 31-32; 113, techniques experience; Susan Hine & John Olienyk, *The Evolution of U.S. Multinational Banking*, in *THE GLOBAL STRUCTURE OF FINANCIAL MARKETS: AN OVERVIEW* at 319, 319 (Dilip K. Gosh & Edgar Ortiz, eds., 1997) (noting British had "organizationally sound banks run by superior managers" even before World War II).

⁷⁰ Bodden, *PATRONAGE*, *supra* note 21, at 66; Sullivan, *Bahamas*, *supra* note 63, at 522; *THE WEST INDIES*, *supra* note 45, at 415 (fear of federation legislation); Myhill, *supra* note 66, at 238-242 (on well known avoidance activity in Channel Islands & Bahamas & involvement of London firms in it); Labour report quoted in Whiting, *supra* note 66, at 147; wealth tax, Whiting, *supra* at 189-90; John Stopford & Louis Turner, *Britain and the Multinationals NY: (John Wiley & Sons, 1985)*, at 198-99; Heather D. Gibson, *THE EUROCURRENCY MARKETS, DOMESTIC FINANCIAL POLICY, AND INTERNATIONAL FINANCIAL INSTABILITY* (1989) at 4, 10; Cairncross & Eichengreen, *supra* note 66, at 115-116 (hand payments), 142-43 (describing complexity of controls and terming them "the principle instrument by which the government sought to regulate economic activity").

C. Autonomy

In 1959, Cayman's colonial administrative connection to the Jamaican legislature ceased; the Governor for the Caymans and Jamaica remained a single position.⁷¹ The old Cayman legislature of Justices of the Peace and Vestrymen ended and a new Legislative Assembly took its place.⁷² The new Assembly included two or three "official members" appointed by the Cayman Administrator (who replaced the Commissioner), two to three other "nominated" members also selected by the Administrator, twelve members elected from districts (some multimember), and an Executive Council, included a member appointed by the Administrator from among the Legislative Assembly's "nominated" members and two chosen by the Assembly's elected members from among themselves.⁷³

The Executive Council was formally merely advisory to the Administrator, who presided at its meetings.⁷⁴ The Administrator also held "reserve powers" and executive prerogatives such as the granting of pardons, though these powers were in effect shared with the governor in Jamaica.⁷⁵ The new Administrator's role thus preserved considerable British colonial authority. At the same time the displacement of the Justices and Vestrymen in the Legislative Assembly subjected legislation—including the 1960 Companies Law—to a more open electoral process than had previously existed in Cayman. Although the formal changes in Cayman's relationship with Britain were in some ways less dramatic than, and even in the opposite direction from, those occurring in the larger Caribbean jurisdictions firmly on the path to independence, on balance the shift from Jamaican dependency to Crown Colony both increased Cayman's effective autonomy and broadened the political basis for the Islands' government.⁷⁶

Under the old constitutional order, developers lobbied for and won passage of special laws like the Hotel Act that favored well-connected promoters like the Caymanian Merren and foreign entrepreneurs. The old order had not enabled steps to broadly develop the economy, such as funding mosquito eradication.⁷⁷ At first, Caymanian politics took steps toward the same type of party-based political culture emerging elsewhere in the British Caribbean, but significant differences soon emerged.⁷⁸ Importantly, issues of race and class played a less central role in Cayman than in Jamaica and elsewhere. For example, in 1958 the Cayman Vanguard Progressive Party (CVPP) attempted to mobilize the newly enfranchised women, and also expressly appealed for support across social-class and racial lines. The CVPP "president was a black businessman in George Town [the largest town], and other leading members were also black or colored."⁷⁹ By contrast, the Bahamas' politics was dominated by Bay Street faction through the white-led United Bahamian Party at this time.⁸⁰ In addition, "school teachers among them ensured that the

⁷¹ Craton, *FOUNDED*, *supra* note 17, at 309-11; Sir Harold Paton Mitchell, *CARIBBEAN PATTERNS: A POLITICAL AND ECONOMIC STUDY OF THE CONTEMPORARY CARIBBEAN* 213 (2nd ed. 1972) (terming the dual nature of the governor's position "an illogical but convenient solution").

⁷² Craton, *FOUNDED*, *supra* note 17, at 310.

⁷³ Craton, *FOUNDED*, *supra* note 17, at 310.

⁷⁴ Craton, *FOUNDED*, *supra* note 17, at 310.

⁷⁵ Craton, *FOUNDED*, *supra* note 17, at 310.

⁷⁶ Bodden, *PATRONAGE*, *supra* note 21, at 66, 70, 74-75; Rose Interview, *supra* note 30, at Disc 3 12, 17, 18, 20, 21.

⁷⁷ Craton, *FOUNDED*, *supra* note 17, at 347.

⁷⁸ Bodden, *PATRONAGE*, *supra* note 21, at 107-45.

⁷⁹ Bodden, *PATRONAGE*, *supra* note 21, at 67.

⁸⁰ Michael Craton, *PINDLING: THE LIFE AND TIMES OF THE FIRST PRIME MINISTER OF THE BAHAMAS* 85 (2002) ("Even more damaging and divisive was the exacerbation of the racial issue. This was perhaps inevitable in a system

improvement of educational facilities figured prominently in the party platform, and such items as mosquito eradication and the encouragement of foreign investments figure[d] prominently in the platform,” which an observer noted “stood for other views than those which had thus far prevailed in the Assembly.”⁸¹ Although the CVPP dissolved after the 1958 elections, the new government pursued the link between mosquito eradication and foreign investment by passing the 1960 Companies Law.⁸² Although the new, more open Legislative Assembly that debated and enacted the 1960 Companies Law arose out of the new constitutional structure and the Law itself resonated with the CVPP platform, it remained Administrator Rose’s proposal.⁸³ Thus both a British official and Caymanians collaborated on this initial step in establishing the OFC.

D. The 1960 Companies Law

Like the more open 1959 constitution under which it was created, the 1960 Companies Law was a departure from prior practice. The statute created a Caymanian Registrar of Companies, eliminating formal dependence upon Jamaican law.⁸⁴ (Existing Cayman companies with Jamaican registration re-registered under the new law.⁸⁵) As Arthur Hunter, the new Registrar recalled: “the Companies Law . . . was making it possible for Cayman to register the companies on their own, without any reference to Jamaica or anywhere else.”⁸⁶ Along with the preexisting customs duties and collectable stamps, the registration fees provided revenues that gave Cayman greater effective autonomy from the UK by enabling it to fund its own activities.⁸⁷

The 1960 law did more than encourage registrations to shift from Jamaica to Cayman, however. As Registrar Hunter described, the “Companies Law that *we* ended up with was basically the same as the [relevant sections of] the English Company Law [the Companies Act] of 1948 dealing with public companies, prospectuses and that type of thing, but what really started the ball a-rolling were the bits of legislation offering tax concessions,” and the “idea that we could have a company separate from the individual, that he could shield behind the [company name].”⁸⁸ Thus the selective use of the English Companies Act together with the absence of direct taxes enabled Cayman to begin competing with established financial centers like Bermuda, the Bahamas, and the Channel Islands. Jack Rose, the Administrator who introduced the Law into the Assembly, pursued two goals suggested by his immediate predecessor: first, the company registration fees would provide funds for the mosquito eradication program, and second, a growing financial sector could create employment for the seamen whose jobs were threatened by the restructuring of the shipping industry.⁸⁹ It is important to note that the use of company registries as part of a tax avoidance strategy was not a new one, and so Cayman was entering an existing international business. For example, the Bahamas, Bermuda, and the Channel Islands had been in the registry business for tax purposes since the 1930s⁹⁰ and

in which the minority in power were whites (or regarded themselves as such), and the powerless majority was overwhelmingly non-white.”).

⁸¹ Bodden, PATRONAGE, *supra* note 21, at 67.

⁸² Rose Interview, *supra* note 30, at Disc 3, 12, 17, 18, 20, 21; Bodden, PATRONAGE, *supra* note 21, at 66-68.

⁸³ Craton, FOUNDED, *supra* note 17, at 313; sec.1 notes.

⁸⁴ Hunter Interview, *supra* note 33, Disc 3 at 8-9.

⁸⁵ Hunter Interview, *supra* note 33, Disc 3 at 9.

⁸⁶ Hunter Interview, *supra* note 33, Disc 3 at 9.

⁸⁷ Rose Interview, *supra* note 30, at Disc 3, 12, 17, 18, 20, 21.

⁸⁸ Hunter Interview, *supra* note 33, at 9.

⁸⁹ Rose Interview, *supra* note 30, at Disc 3, 12, 17, 18, 20, 21.

⁹⁰ See notes 63 to 65 *supra*.

Switzerland, Liechtenstein, and Luxembourg had been since the 1920s.⁹¹ Thus, not only were City firms familiar with the concept but the use of the English Company Law as a model made it easy for UK lawyers to create strategies using Caymanian entities.⁹²

The 1960 Companies Law promoted foreign investment, replacing Jamaican incorporation with the Cayman registration of firms. The Law ensured both individual and corporate freedom from direct taxation, an improvement on the possibilities for tax avoidance offered by the Bahamas and other Caribbean competitors.⁹³ Administrator Rose's linking of the seamen reemployment and mosquito eradication with revenues from the Companies Law fees aligned the new Legislative Assembly with newly enfranchised women and the program the interclass, interracial CVPP had advocated in 1958. Also important for the future was the 1960 visit of James MacDonald, a Canadian lawyer. He attended the Assembly when the Companies Law was enacted, soon became a Cayman resident, and began to aggressively promote Cayman's distinctive tax status.⁹⁴ Nevertheless, divided local politics persisted concerning whether the Caymans should preserve some connection with Jamaica;⁹⁵ and the colonial Administrator's dominance of the Executive Council recalled rule by Justices and Vestrymen. Consummation of the Companies Law's possibilities required resolving vital constitutional and diversification-financial issues during the 1960s.⁹⁶

II. Constitutional Stability and Financial Diversification through 1968

Passage of the 1960 Companies Law coincided with demands from Ormond Panton and others for stronger self-government; demands that were entangled with the consequences of the demise of the Federation and Jamaica's imminent independence.⁹⁷ Cayman's challenge was to secure sufficient legal and fiscal autonomy from Britain while creating a climate of fiscal stability that could attract business and fund the infrastructure necessary for both business and development.

A. Creating Autonomy

External events made Panton's insistence that self-government could be consistent with a loose Jamaican connection harder to sustain. As a result, Caymanians confronted an increasingly stark choice: independence or preserving colonial status, albeit with greater self-government.⁹⁸ Thus, during 1961-62 when the Companies Law went into operation and MacDonald began promoting Cayman's tax status, the future depended, as it had in 1958-59, on the resolution of constitutional structure issues.⁹⁹ As leading Caymanian elected public official Benson Ebanks

⁹¹ Farquet, *supra* note 11, at 16-17.

⁹² See generally Erin O'Hara & Larry E. Ribstein, *THE LAW MARKET* (2009) (describing factors involved in competition among jurisdictions).

⁹³ Hunter Interview, *supra* note 33, at Disc 3, 10-11.

⁹⁴ Cayman Archives Oral History Interview, William Walker, Disc 3, 5-6 (2000); Cayman Archives Oral History Interview, Aileen MacDonald, at Disc 3, 25, 26 (2001); Benson Ebanks Interview, *supra* note 29, at Disc 3, 10-12.

⁹⁵ Bodden, *PATRONAGE*, *supra* note 21, at 94-98.

⁹⁶ Bodden, *PATRONAGE*, *supra* note 21, at 76-106.

⁹⁷ Craton, *FOUNDED*, *supra* note 17, at 305-14; sec. 1, notes.

⁹⁸ Craton, *FOUNDED*, *supra* note 17, at 315-317.

⁹⁹ Craton, *FOUNDED*, *supra* note 17, at 315-17, 319; Bodden, *PATRONAGE*, *supra* note 21, at 107-145; Walker Interview, *supra* note 94, at 6-9; Aileen MacDonald Interview, *supra* note 94, at Disc 3, 11; Benson Ebanks Interview, *supra* note 29, at 19-21.

described the dynamic process: “the new Companies Law was in 1960 . . . the beginning . . . of a conscious effort to go after the off-shore business.” The remarkable growth that followed “all had to do with planning, not just the physical planning, but the fiscal planning as well.”¹⁰⁰

Ebanks’ focus upon offshore business required the transformed constitutional structure that reached a turning point in 1962. Although the 1959 colonial constitution had formally terminated the Jamaican administrative connection, practical political implementation awaited resolution of disputes over the Federation and Jamaica’s place within it.¹⁰¹ After Jamaicans opted for independence in a referendum in September 1961, Jamaica, soon followed by Trinidad and Tobago, withdrew from the Federation in spring 1962. The Federation then dissolved and Jamaican independence from Britain began on 6 August.¹⁰² Given its concerns over being left with an expensive legacy of financially dependent territories, Britain’s interest in the region focused on finding a means for fiscal self-sufficiency in the Caribbean. The Colonial Office was intent that Britain not be “left with a residue of financially dependent territories such as the Caymans, Turks and Caicos, and the British Virgin Islands.”¹⁰³ Thus, the Companies Law went into operation at the time Caymanians were wrestling with the practical consequences of the Federation’s demise and Jamaican independence and Britain was focused on reducing its fiscal exposure to her remaining Caribbean territories.

Amidst these events, Caymanian views on how to structure self-government remained in dispute.¹⁰⁴ In the 1962 election, self-described conservatives, such as D.E. Merren, formed the Christian Democratic Party (CDP) and insisted that self-government must above all include a direct link to Britain.¹⁰⁵ Fears of domination by Jamaica led the conservatives to oppose continuing legal links to an independent Jamaica.¹⁰⁶ In contrast, Ormond Panton and Warren Conolly’s National Democratic Party (NDP) favored self-government with a loose administrative connection with Jamaica, together with continued ties to Britain.¹⁰⁷ Complicating the issue, political affiliations mixed substantive positions with friendships and animosities among those individuals who had the interclass and interracial connections within the various kinship, friendship, and patronage networks among the three Islands’ communities which were necessary to mobilize political support.¹⁰⁸ Thus, the NDP had to walk a fine line on the issue of ties to Jamaica to retain support from people like the widely respected Dr. Roy McTaggart, who favored continued colonial status and no Jamaican connection but who had personal disagreements with the CDP leadership.¹⁰⁹ Reflecting Britain’s policy preferences, both Rose and the out-going Governor, Sir Kenneth Blackburne, promoted the benefits of ties with an

¹⁰⁰ Benson Ebanks Interview, *supra* note 29, at Disc 3, 19; Disc 4, 20.

¹⁰¹ Rose Interview, *supra* note **Error! Bookmark not defined.**, at Disc 4, 2; Craton, FOUNDED, *supra* note 17, at 314-15.

¹⁰² Craton, FOUNDED, *supra* note 17, at 315.

¹⁰³ *Introduction* in THE WEST INDIES, *supra* note 45, at lxxi. During 1959-61 Cayman representatives participated in London conferences that crystallized these views. Craton, FOUNDED, *supra* note 17, at 309, 314; Rose Interview, *supra* note 30, at 4.

¹⁰⁴ Rose Interview, *supra* note 30, at 2-17; Craton, *supra* note 17, at 315-317.

¹⁰⁵ Craton, FOUNDED, *supra* note 17, at 316.

¹⁰⁶ Craton, FOUNDED, *supra* note 17, at 316.

¹⁰⁷ Craton, FOUNDED, *supra* note 17, at 315-316.

¹⁰⁸ Bodden, PATRONAGE, *supra* note 21, at 36-46, 116-128.

¹⁰⁹ Craton, FOUNDED, *supra* note 17, at 315-316.

independent Jamaica, while simultaneously professing respect for leaving the ultimate decision to Caymanians.¹¹⁰

Although a majority of Caymanian voters supported the NDP, public opinion also favored continued colonial status.¹¹¹ Caymanians saw Jamaican independence as the break and sought stability in their relationship with Britain. As a Caymanian official put it, “it wasn’t that we moved away from the Caribbean, the Caribbean moved away from us.”¹¹² Although at first British officials resisted increased self-government, perhaps hoping to encourage departure; Governor Blackburne soon retreated from Administrator Rose’s earlier indication that Britain would not grant immediate self-government, suggesting instead that Britain might grant increased self-government on a reasonable timetable.¹¹³ As members of the Legislative Assembly debated these issues, a formal petition from voters in Cayman Brac and Little Cayman not only endorsed remaining a British colony, but also declared support for secession from Grand Cayman if the larger island pursued a Jamaican connection.¹¹⁴ Blackburne claimed that the volume of applause following the debate supported maintaining Cayman’s colonial status.¹¹⁵ The following day there was a more objective result: The Legislature voted unanimously—including both Panton and Merren—for a resolution stating: “It is the wish of the Cayman Islands: 1. To continue their present association with Her Majesty’s Government in the United Kingdom; 2. To negotiate with Her Majesty’s Government in the United Kingdom for internal self-government, taking into account the wishes of the people of the Cayman Islands as to timing.”¹¹⁶ Some ties remained to Jamaica as Cayman continued the official use of Jamaican currency¹¹⁷ (although U.S. dollars also circulated unofficially on the island through the payment of seamen’s wages in dollars¹¹⁸) and Jamaican appellate judges.¹¹⁹

Caymanians’ broad public support for a direct link to Britain under increased self-government facilitated collaborative promotion of the offshore financial center. Following the November 1962 elections, a substantial NDP majority controlled the Legislative Assembly, providing democratic legitimacy for its platform, which had included “Education, public facilities, road improvements, and mosquito control”, as well as “encouragement of local industries.”¹²⁰ The NDP platform also opposed “introduction of income tax” and “invited foreign

¹¹⁰ Craton, *FOUNDED*, *supra* note 17, at 316-319.

¹¹¹ Craton, *FOUNDED*, *supra* note 17, at 316-319.

¹¹² Sampson, *supra* note 12, at 280.

¹¹³ Craton, *FOUNDED*, *supra* note 17, at 315-319; Bodden, *supra* note 21, at 117-145. House of Commons, Foreign Affairs Committee, Overseas Territories, Seventh Report of Session 2007-08, Vol. II, at 154 (“Different cultural traditions in the Territories have led to conflict with London in the past. For example, the refusal by the Caribbean Territories to decriminalize homosexual acts between consenting adults in private, contrary to the European Convention on Human Rights, forced the UK to legislate by Order in Council in December 2000. The death penalty for murder was abolished by Order in Council in the Caribbean Territories in 1991, also because the Territories refused to legislate themselves.”); Secretary of State for Foreign and Commonwealth Affairs, *Partnership for Progress and Prosperity: Britain and the Overseas Territories* 21, ¶4.7 (1999) available at <http://www.ukotcf.org/pdf/charters/WhitePaper99full.pdf> (“Bermuda’s degree of constitutional autonomy prevents us from imposing the abolition of the death penalty there by Order in Council.”).

¹¹⁴ Craton, *FOUNDED*, *supra* note 17, at 317.

¹¹⁵ Craton, *FOUNDED*, *supra* note 17, at 317.

¹¹⁶ Craton, *FOUNDED*, *supra* note 17, at 316-317.

¹¹⁷ Craton, *FOUNDED*, *supra* note 17, at 318.

¹¹⁸ Johnson, *AS I SEE IT*, *supra* note 18, at 176-178.

¹¹⁹ Craton, *FOUNDED*, *supra* note 17, at 318.

¹²⁰ Bodden, *PATRONAGE*, *supra* note 21, at 118.

investment”,¹²¹ issues on which the NDP and the CVPP had similar views. Not surprisingly, Rose linked mosquito eradication to Caymans’ no-direct tax status and the development strategy reflected in the 1960 Companies Law.¹²²

Despite the NDP’s electoral strength, however, the use of the “so-called Membership system,” under which the Administrator invited two or three Legislative Assembly members to take responsibility for specific government policies, undercut the development of the type of political party system arising elsewhere in the Caribbean at this time.¹²³ Although Rose first used the “invitation power” as a means of blocking NDP leader Pantón’s influence, the “membership system” ultimately facilitated policy collaboration among the Administrator, the Executive Council, and the Legislative Assembly and so strengthened collective promotion of offshore finance.¹²⁴ It may also have played a role in the transformation of Caymanian politics into a system in which for several decades after the early 1960s candidates stood primarily as independents rather than on party platforms.¹²⁵ The 1962 governmental changes facilitated development of the collaborative process involving the nascent Civil Service and Treasurer, Vassel Johnson. Though not yet a member of the Executive Council as he would be later, Johnson repeatedly contributed policy initiatives that the Executive Council and Legislative Assembly employed.¹²⁶ Meanwhile, the collaborative process funded Dr. Marco Giglioli’s mosquito eradication campaign that was critical to the development of large scale-tourism;¹²⁷ it also installed Cable & Wireless, a leading British telecommunications company, which led to improved communications infrastructure.¹²⁸

B. Exchange Controls, Eurodollars, and Banks

Johnson played an influential role in developing the 1966 Exchange Control Law, which proved an important step in the creation of Cayman as an OFC.¹²⁹ In general, the sterling area served as “a formal collective arrangement for discriminating against the scarce [U.S.] dollar.”¹³⁰ Exchange control both complicated offshore strategies and created demand for them as a means of avoiding the controls.¹³¹ Jurisdictions within the sterling area had the problem that the

¹²¹ Bodden, PATRONAGE, *supra* note 21, at 116-145; as quote, 118.

¹²² Rose Interview, *supra* note 30, at 2-17; Bodden, PATRONAGE, *supra* note 21, at 67.

¹²³ Bodden, PATRONAGE, *supra* note 21, at 99-153.

¹²⁴ Craton, FOUNDED, *supra* note 17, at 317-18.

¹²⁵ Davies, LEGAL STATUS, *supra* note 25, at 33.

¹²⁶ Johnson, AS I SEE IT, *supra* note 18, at 125-133.

¹²⁷ Craton, FOUNDED, *supra* note 17, at 343-44.

¹²⁸ Craton, FOUNDED, *supra* note 17, at 343-346; Johnson, AS I SEE IT, *supra* note 18, at 91-95, 114-124; William Walker & Shane Aquart, LIFE OF WILLIAM WALKER 85 (2012). As Walker described it, improving telecommunications was important because of the problems of being dependent on a single radio operator. “There were no telephones to speak of. Overseas information was transmitted by short-wave Morse code, from the telegraph office. There was a little local telephone network but it never really worked. Our short-wave operator was a bit of a drinker and so you had to make sure that any transmissions were made by 10:00am or you could never be sure what the message was going to say.” *Id.* at 2.

¹²⁹ Johnson, AS I SEE IT, *supra* note 18, at 125-129.

¹³⁰ Benjamin J. Cohen, THE FUTURE OF STERLING AS AN INTERNATIONAL CURRENCY 81 (1971); Cairncross & Eichengreen, *supra* note 66, at 23.

¹³¹ INVESTMENT PARTNERSHIPS AND “OFFSHORE” INVESTMENT FUNDS, PLI Corporate Law and Practice Transcript Series No. 2 B 0223 PLI (Jim McCord, ed. Practising Law Institute 1969), at 244-245 (noting that a shareholder resident in the UK would pay the 40% investment dollar premium to invest in a US security and pay 25% tax of premium he received on sale of the investment dollars. “By investing in an offshore fund, the foreign investor can limit the foreign exchange risks and costs solely to the time of the purchase and sale of the fund shares.”);

regulations required entities dealing in dollars and U.S. securities to be non-resident for exchange control purposes but barred such entities from selling shares into the sterling area.¹³² Within Britain, a hefty tax was applied to sales proceeds of foreign currency securities, and no official exchange was available for portfolio investment outside the sterling area.¹³³ Sterling area residents' desire to invest outside the exchange control region meant there was a market for strategies and structures that enabled them to side step the controls. Adding to the incentive, U.S. estate taxes did not apply to U.S. investments foreigners held through corporate vehicles.¹³⁴

British efforts at exchange controls were only partially successful, as outward direct investment increased from £102 million to £157 million between 1964 and 1966.¹³⁵ Not surprisingly, British exchange controls tightened after 1965, limiting investment even into Australia, New Zealand, Ireland, and South Africa, where the majority of British investment within the sterling area had been placed.¹³⁶ Fears Britain would devalue sterling – despite a “kind of conspiracy of silence in relation to devaluation” in Britain, as people feared open discussion would make it more likely – motivated sterling area investors to attempt to shift their assets out of the British currency.¹³⁷ However, the City's business in international finance grew despite the controls and doubts about sterling. “By the close of the sixties the overseas funds deposited in London were equal to half the British national income, and the net overseas earnings of the various services centred in the City—banking, insurance, merchanting, brokerage and shipping—were estimated at around [£] 350 million a year”¹³⁸ This growth in financial services was based, at least in part, on “a firm conviction [among senior Treasury and Bank of England officials] that the financial and commercial services trades had something unique to contribute to the rebuilding of Britain's economic position in the world.”¹³⁹ Moreover, it built on the British legal tradition.¹⁴⁰

Eichengreen, *GLOBALIZING CAPITAL*, *supra* note 67, at 194 (“Once financial markets joined the list of those undergoing decontrol, new channels were opened through which capital might flow, and the feasibility of controlling international capital movements diminished accordingly.”).

¹³² Albert Francke III & William S. Robertson III, *Offshore Investment Funds*, in *Investment Partnerships*, *supra* note 131, at 256.

¹³³ Francke & Robertson, *supra* note 132, at 256. After 1957, British purchases of non-sterling securities from overseas sterling area residents was prohibited. Cohen, *supra* note 130, at 180.

¹³⁴ *Investment Partnerships*, *supra* note 131, at 243.

¹³⁵ Cairncross & Eichengreen, *supra* note 66, at 174-75. In 1960, the sterling area had 60% of British foreign investment; by 1970 it had only 38%. Darwin, *supra* note 9, at 305.

¹³⁶ Cohen, *supra* note 130, at 179-80; Cairncross & Eichengreen, *supra* note 66, at 22-23. Other European countries including France and Italy also tightened controls in the second half of the 1960s. Einzig, *HISTORY*, *supra* note 13, at 334-35.

¹³⁷ Cairncross & Eichengreen, *supra* note 66, at 159-60. Labour Prime Minister Harold Wilson's concern that devaluation on his watch would cause Labour to be viewed as “the party of devaluation” made him “too willing to run risks with sterling” and so delayed devaluation, despite the series of crises which “battered” his ministers almost from the moment they took office in 1964. Cairncross & Eichengreen, *supra*, at 167-68; Darwin, *supra* note 9, at 291; Robert Z. Aliber, *THE INTERNATIONAL MONEY GAME* 7, 65 (5th ed. 1987). Labour feared becoming “the Devaluation Party” in 1960s).

¹³⁸ Richard Frye, *Introduction*, in *BANKER'S WORLD*, *supra* note 68, at 12.

¹³⁹ Frye, *Introduction*, *BANKER'S WORLD*, *supra* note 68, at 15.

¹⁴⁰ Vlcek, *supra* note 2, at 21 (arguing that “In a broad sense, the legal space in which the offshore business sector has been built exists within a fundamental difference between the English and Continental legal systems. The difference lies within the foundation of each legal system – for the continental legal tradition *explicitly* identifies what is permitted, whereas the English legal tradition *explicitly* identifies what is *not* permitted.”).

At the same time, a pool of U.S. dollars had been accumulating outside the United States since 1957, when the U.S. trade surplus had shifted to a trade deficit; by mid-1958 a European market for deposits and loans in dollars had appeared.¹⁴¹ Since the post-war international financial framework permitted variation in banking regulation, this created an opportunity.¹⁴² Eurodollar volume “roughly tripled” in 1959 and doubled again in 1960.¹⁴³ North American demand for offshore entities grew after the United States imposed the Interest Equalization Tax (IET) in 1963, and both the Voluntary Foreign Credit Restraint program and the Foreign Direct Investment Regulations in 1965, all of which were intended to reduce the flow of capital out of the U.S. market.¹⁴⁴ (The IET remained in effect until June 1974.)¹⁴⁵ In addition, Federal Reserve Regulation Q’s limits on interest paid on deposits in the United States also pushed dollars into the Eurocurrency markets, where higher rates were available.¹⁴⁶ Both U.S. firms’ foreign subsidiaries (which were expanding their borrowing in Europe because U.S. interest rates in the 1950s and 1960s were often higher than in Western Europe)¹⁴⁷ and non-American firms thus entered the rapidly growing Eurodollar market in pursuit of cheaper financing.¹⁴⁸ That market was centered in the City in London, because City firms had the “traditional skills and stability in looking after other people’s money” and, as Citibank’s European head Walter Wriston noted, “people believe that the British government is not about to close it down.”¹⁴⁹ Further, for Eurodollar depositors like the Soviet-owned Banque Commerciale de l’Europe du Nord, which worried about too close contact with American institutions, “what was wanted was a reliable non-American bank which would borrow the dollars and undertake to repay them in dollars.”¹⁵⁰ The growth of the Eurodollar market was important for Cayman because although it was primarily headquartered in London, Eurodollar transactions were “behind much of the financial activity based on Grand Cayman.”¹⁵¹

The American policies also led U.S. banks to establish foreign branches and subsidiaries: in 1960, eight U.S. banks had 130 foreign branches; in 1964, eleven U.S. banks had a total of 181 overseas branches with assets of \$6.9 billion; in 1970, seventy-nine U.S. banks had a total of

¹⁴¹ Gibson, *supra* note 70, at 10.

¹⁴² Vlcek, *supra* note 2, at 25.

¹⁴³ Sampson, *supra* note 12, at 139.

¹⁴⁴ Frederick G. Fisher III, *THE EURODOLLAR BOND MARKET* 21 (1979); Gibson, *supra* note 70, at 11-12; R.A. Johns & C.M. Le Marchant, *FINANCE CENTRES: BRITISH OFFSHORE DEVELOPMENT SINCE 1979* 13 (1993); Sampson, *supra* note 12, at 139; Hine & Olienyk, *Multinational Banking*, *supra* note 69, at 322; *BANKER’S WORLD*, *supra* note 68, at 30-31. The tax had to be paid each time a foreign security was acquired by a U.S. person, “an effective disincentive to investment in such securities” despite the modest level of the tax. Fisher, *supra*, at 21. It reduced effective yields on foreign securities by about 1%. Eichengreen, *GLOBALIZING CAPITAL*, *supra* note 67, 129.

¹⁴⁵ Exec. Order No. 11,766 (1974), reprinted in [1974] U.S. Code & Ad. News 8260 (setting rate to zero); Tax Reform Act of 1976, Pub. L. 94-455, 90 Stat. 1520 (repealing tax).

¹⁴⁶ Eichengreen, *GLOBALIZING CAPITAL*, *supra* note 67, 121-22. *See also* R. Alton Gilbert, *Requiem for Regulation Q: What It Did and Why It Passed Away*, FEDERAL RESERVE BANK OF ST. LOUIS (Feb. 1986) (describing history of regulation).

¹⁴⁷ Aliber, *supra* note 137, at 289-90.

¹⁴⁸ Gibson, *supra* note 70, at 11-12. *See also* Statement of Roscoe L. Egger, Jr., Commissioner, Internal Revenue Service, in Tax Evasion through the Netherlands Antilles and Other Tax Haven Countries, Hearings before a Subcommittee of the Committee on Government Operations, House of Representatives, April 12 and 13, 1983, at 236 (US encouraged use of Netherlands Antilles financing subsidiaries in 1960s.)

¹⁴⁹ Sampson, *supra* note 12, at 142. Britain’s “welcome” to foreign banks was also important. Stopford & Turner, *supra* note 70, at 227.

¹⁵⁰ *BANKER’S WORLD*, *supra* note 68, at 31-33.

¹⁵¹ Sampson, *supra* note 12, at 284.

536 overseas branches with assets of \$52.6 billion.¹⁵² By 1980, 126 U.S. banks had nearly a thousand foreign branches.¹⁵³ Offshore banks “borrow[ed] money from nonresidents and [lent] to other nonresidents,” serving as “crucial intermediary conduits, global transnational structures, for ongoing activities based on the inward and outward routing and re-routing of business profits and incomes.”¹⁵⁴ The appearance of the Euromarkets in currencies weakened domestic efforts at financial regulation throughout the world,¹⁵⁵ creating space for offshore business strategies that had not existed under the tighter national control of banking possible when the Euromarket alternative was not available. Banks having branches in multiple countries further internationalized financial markets, as branches kept in touch with their home offices even outside local trading hours, gradually creating more continuous trading opportunities.¹⁵⁶ Thus, just at the moment when Cayman was entering the market, regulatory efforts in Britain and the United States were creating demand for offshore jurisdictions’ services and spurring the financial and legal industries in both countries to exploit their respective competitive advantages in developing that demand. In particular, the demand for structures to avoid British exchange control regulations and the growing Eurocurrency market in London gave sterling area jurisdictions an advantage and a “home” market in the sterling area that developed institutional capacity and promoted innovation, while also allowing growth into the larger North American market.¹⁵⁷

C. Responding to Demand

Demand for offshore jurisdictions was growing and Cayman had an initial product with the 1960 Companies Law and the policy space necessary to respond to it by 1962. It was not the only OFC, however. To compete with Bermuda, the Bahamas, the Channel Islands, Curaçao, and the Isle of Man, all of which had head starts, as well as other jurisdictions entering the market, Cayman would need to develop additional products and expand its capabilities. An important source of policy innovation for Cayman was the slowly growing group of expatriate professionals who followed MacDonald to Cayman in the mid-1960s and established Caymanian

¹⁵² Gibson, *supra* note 70, at 12; Fisher, *supra* note 144, at 43 (describing how “U.S. investment houses were able to transfer their operations to Europe to continue their underwriting and placement of foreign bonds outside the territorial boundaries of the United States” after the IET); Aliber, *supra* note 137, at 175-76 (“In the absence of the ability to sell dollar deposits in London, most of these [U.S.] banks would not have established London branches.”); 179-80 (noting lower regulatory costs in London drew U.S. banks there to access Eurodollar market and enabled paying higher interest rates there); Aliber, *supra*, at 263. Note that during this same period, foreign banks opened U.S. branches. More than 50 opened U.S. branches between 1960 and 1980, with the goal of “retaining the U.S. business of their domestic customers—and attracting some U.S. customers.” Aliber, *supra*, at 263.

¹⁵³ Aliber, *supra* note 137, at 263.

¹⁵⁴ Johns & Le Marchant, *supra* note 144, at 21.

¹⁵⁵ Gibson, *supra* note 70, at 45; Hine & Olienyk, *Multinational Banking*, *supra* note 69, at 323.

¹⁵⁶ Einzig, HISTORY, *supra* note 13, at 21 (describing how U.S. bank branches presence in London eventually led to after hours trading by U.K. banks attempting to compete with the U.S. branches.).

¹⁵⁷ Michael E. Porter, THE COMPETITIVE ADVANTAGE OF NATIONS 71-73 (1998) (describing importance of a “home base” in developing “a complex of specialized assets and skills” and providing “better ongoing information and insight into product and process needs”). Farquet’s observation that the greater British emphasis on taxation of income at the source made the British tax system more effective at collecting taxes without taxpayer cooperation in the interwar period than nominally more progressive continental tax systems suggests another ‘home market’ advantage for City firms and sterling area OFCs over continental tax advisors and OFCs. Farquet, *supra* note 11, at 11-12. It took more creativity and effort to avoid UK taxes, forcing City firms and sterling area OFCs (including the UK itself) to go beyond simple asset relocation schemes earlier. They thus had an advantage for the post-World War II competition.

residency.¹⁵⁸ British-trained lawyer William Walker, born in British Guiana and educated in Barbados before studying law at Cambridge University and in London, arrived in Cayman from Canadian law practice in 1964. Like MacDonald, Walker started Cayman law practice alone.¹⁵⁹ Walker later described Cayman on his arrival as having “cows wandering through Georgetown, only one bank, only one paved road, and no telephones.”¹⁶⁰ Within two years he applied his transatlantic legal experience, collaborating in the governmental process to bring in two pivotal pieces of legislation: the Banks and Trust Companies Regulation Law (copied from the Bahamas) and the Trusts Law (drafted by English barrister, Milton Grundy).¹⁶¹

Each Law extended the philosophy behind the 1960 Companies Law to new fields, implementing a policy of diversification and expansion that continues into the present and which contrasts with other 1960s-era OFCs.¹⁶² Walker’s contributions to the legislation brought to bear practical expertise in the service of the government’s collaborative policy making.¹⁶³ The involvement of resident expat professionals’ involvement in the collaborative process grounded policy making in the combination of Cayman’s constitutional autonomy backed by British sovereignty.¹⁶⁴ Financial Secretary Vassel Johnson “spearheaded” the development of the OFC, insisting it “must be under government control,” a crucial step for building regulatory infrastructure.¹⁶⁵ By contrast, Rose had employed a Kingston, Jamaica law firm to draft the 1960 Companies Law, which the Colonial Office approved as written, amidst the uncertain colonial constitutional disputes of 1959-1962.¹⁶⁶ The process included a small but growing Caymanian elite, “a tightly knit group”.¹⁶⁷ Cayman’s incorporation of its small but growing expatriate community into the policy-making process contrasts sharply with the more contentious relationship between expats, local white elites, and the black majority taking shape at the same time in the Bahamas and Bermuda.¹⁶⁸

Diversification of laws designed to attract the offshore investor confirmed the collaborative process in which the “Government likes to work with committees and get lots of input.”¹⁶⁹ Walker described the 1966 Trusts Law, drafted by London trust expert Milton Grundy,

¹⁵⁸ Aileen MacDonald Interview, *supra* note 94, at 24-27; Ebanks, *supra* note 29, at 20, 13-14; Russell, HONOUR, *supra* note 4, at 168 (giving credit to lawyers Arthur Hunter, Bill Walker, Warren Connolly, and Charles Adams, and accountant Michael Austin).

¹⁵⁹ Walker & Shane, *supra* note 128, at 3-82.

¹⁶⁰ Sampson, *supra* note 12, at 281.

¹⁶¹ Timothy Ridley, Personal Communication to authors, October 14, 2012.

¹⁶² Boise & Morriss, *supra* note 43, at 431-34.

¹⁶³ Walker & Shane, *supra* note 128, at 80-89; Johnson, AS I SEE IT, *supra* note 18, at 126, 132-133; Craton, FOUNDED, *supra* note 17, at 353.

¹⁶⁴ Walker Interview, *supra* note 94, at 5-27.

¹⁶⁵ Russell, HONOUR, *supra* note 4, at 168.

¹⁶⁶ Rose Interview, *supra* note 62, Disc 3, at 21.

¹⁶⁷ Sampson, *supra* note 12, at 283 (noting that 3 of 7 members of Cabinet in mid-1960s were named Bodden and of remaining 8 members of legislature, 1 was a Bodden and 3 were Ebanks.)

¹⁶⁸ Davies, LEGAL STATUS, *supra* note 25, at 11-12 (describing “racial tension and rioting” before 1968 elections in Bermuda that led to the declaration of a state of emergency, imposition of a curfew, and arrival of British troops and noting that the subsequent Report of the Commission of Inquiry had found that the PLP had a “positively racial character”; 1969 regional Black Power conference in Hamilton; riots in October 1970; murder of police commissioner in 1972 and assassination of governor and his aide six months later.); Terry Tucker, BERMUDA TODAY & YESTERDAY (1503-1978) 162-63 (1979) (describing rise of racial politics in late 1950s). *See also* note 63 *supra*.

¹⁶⁹ Walker & Shane, *supra* note 128, at 88.

as an “exempted trust using principles from the ‘Anstalt trust’ from Liechtenstein,” plus the “British law . . . adjusted . . . to fit the needs of Cayman.”¹⁷⁰ Caymanian lawyers, government officials, and businessmen sought Grundy’s assistance, in part because he was well known in the Bahamas and in part because of his expertise in British tax law.¹⁷¹ Treasurer Vassel Johnson helped push for the law, as part of creating “the right atmosphere” for a development strategy based on finance.¹⁷² The Cayman Trusts Law was “designed not really to evade taxes, but more often than not, to preserve property from generation to generation and keep children from spending inherited money.”¹⁷³ As the Labour Party in Britain was increasingly focusing on efforts to tax passive income, British wealth was passing “outside the more exposed forms of individual title and instead through the more elusive and labyrinthine network of trusts.”¹⁷⁴

The Banks and Trust Companies Regulation Law created two license and regulatory categories for banks and trust companies, which, like the Bahamas law on which it was based,¹⁷⁵ took the same approach as the ring-fenced model established in Curaçao in the 1950s.¹⁷⁶ In Category A were banks and trust companies operating within the Caymans; they were more closely regulated than Category B entities doing business solely as offshore entities.¹⁷⁷ Caymans’ more numerous Category B entities, unlike many competing offshore jurisdictions, required some minimal local office representation, and local supervision,¹⁷⁸ helping to build infrastructure. Firms paid annual fees that steadily increased.¹⁷⁹ The policy launched five years earlier with the Companies Law thus was “making a valuable contribution to the building of the financial industry.”¹⁸⁰

By 1968 the collaborative policy making enabled Cayman to seize a competitive advantage. The Bahamas had had a “large number of trust and finance companies” since the 1950s, exploiting its proximity to Miami and its location in the same time zone as New York City.¹⁸¹ Cayman saw a chance to distinguish itself, focusing on being a “clean spot” in contrast to the Bahamas, where unrest surrounding Bahamian independence and some taint of the casinos in Nassau, “which were often suspected of money laundering,”¹⁸² made foreigners suspicious. Walker recalled the “Banks and Trust Companies [Regulation] Law being enacted as literally an emergency piece of legislation,” exploiting the establishment of Bahamian majority rule in 1968, when tensions between Lyndon Pindling’s black majority government, white business elites

¹⁷⁰ Walker & Shane, *supra* note 128, at 86.

¹⁷¹ Sampson, *supra* note 12, at 281.

¹⁷² Sampson, *supra* note 12, at 281.

¹⁷³ Walker & Shane, *supra* note 128, at 86.

¹⁷⁴ Whiting, *LABOUR PARTY AND TAXATION*, *supra* note 66, at 138.

¹⁷⁵ On the evolution of Bahamian offshore bank regulation, see Carlene Y. Francis, *Central Banking in a Developing Country with an Offshore Banking Centre*, Paper prepared for presentation at the 11th Annual Monetary Studies Conference, Kingston, Jamaica, Oct. 23-25, 1978, 2-3 (Oct. 1978) available at <http://ccmfuwi.org/files/publications/conference/59.pdf>; Ralph Deans, *History and success - financial services evolution*, BAHAMAS INVESTOR MAGAZINE (June 23, 2009) available at <http://www.thebahamasinvestor.com/2009/history-and-success-financial-services-evolution/>.

¹⁷⁶ Boise & Morriss, *supra* note 43, at 405 (Antilles had first ring-fenced tax regime in 1954).

¹⁷⁷ StratInfo, *The Economic Impact of the Banking Industry in the Cayman Islands*, May 19, 2006, available at http://www.cibankers.org/pdfs/CIBA_Economic_Impact.pdf at 9 (tracing distinction to 1966 statute).

¹⁷⁸ StratInfo, *supra* note 177, at 10; Craton, *FOUNDED*, *supra* note 17, at 353.

¹⁷⁹ Walker & Shane, *supra* note 128, at 85; Craton, *FOUNDED*, *supra* note 17, at 353.

¹⁸⁰ Johnson, *AS I SEE IT*, *supra* note 18, at 127.

¹⁸¹ Sullivan, *Bahamas*, *supra* note 63, at 535

¹⁸² Sampson, *supra* note 12, at 282.

(known as the “Bay Street Boys”) and the expat financial community over Pindling’s Bahamization program provoked an exodus of financial industry firms from the Bahamas.¹⁸³ Many of these firms shifted operations to Cayman – as one Caymanian lawyer put it, “We should have put up a golden statue to Pindling.”¹⁸⁴ As the Bahamas was revoking expatriate work permits, Cayman officials enacted measures offering relatively open admission for law and accountancy firms, as well as preserving an individual’s comparatively easy route to from residency to citizenship.¹⁸⁵ Mosquito control funded by OFC-generated revenues and increased air service allowed tourism to expand as well.¹⁸⁶

In Jamaica, British Guiana, the Bahamas, and elsewhere across the Caribbean, independence movements aggravated racial divisions.¹⁸⁷ These certainly played a role in the Bahamas, where UK trust and tax lawyer Milton Grundy attributed the financial industry’s disputes with the Pindling government more to race than Pindling’s actions, saying “It wasn’t that Pindling said or did anything to damage the banks, it was just that he was black.”¹⁸⁸ In the Caymans, however, although racism sometimes privately divided people, the long heritage of mixed-race “colored,” blacks, and whites linked through kinship and personal networks meant that representatives of each group occupied leadership positions in government, politics, professions, religion, and private life.¹⁸⁹ The Caymans’ constitutional autonomy within a British colonial framework offered those exiting the Bahamas not only professional opportunities but also the expectation of stable racial, social, and cultural relations. As speakers on offshore investment funds at a continuing legal education seminar in the United States concluded in 1969, “We also like political stability and a legal tradition that people really believe in and feel they are supported by.”¹⁹⁰ This meant that it was possible, as Walker described, for “the Cayman “private sector and the government [to] work[] together very closely to produce both the business and the laws that facilitated it.”¹⁹¹

¹⁸³ Sullivan, *Bahamas*, *supra* note 63, at 546. Letter from T. Russell to D F S Le Breton, Commissioner in Anguilla 21 May 1975, British National Archives File FCO 44/1181 at 1-2 (after threats to offshore sector, Bahamas “rapidly lost a great deal of off-shore business and the big bank operations normally have branches in several tax havens so that at the least whiff of trouble in the wind they can transfer business to another haven that seems more settled.”); Craton, PINDLING, *supra* note 80, at 161 (“Many companies transferred all or part of their operations to what were seen as more favorable locations, bringing the first surge of prosperity to the Cayman Islands and reinforcing the longer-established financial industry of Bermuda.”). The conflict began before Pindling took power. In 1965, Pindling was leader of the opposition and he seized the speaker’s mace and threw it out of the window during a session of the House of Assembly. Sullivan, *supra*, at 546. *See also* Craton, BAHAMAS, *supra* note 90, at 276-79 (describing growing tensions in the Bahamas in late 1960s, including “purge” of “white, or near-white, candidates” from Pindling’s party).

¹⁸⁴ Walker & Shane, *supra* note 128, at 88. *See also* Sampson, *supra* note 12, at 281.

¹⁸⁵ Walker & Shane, *supra* note 128, at 85.

¹⁸⁶ Davies, Legal Status, *supra* note 25, at 35; Sampson, *supra* note 12, at 281.

¹⁸⁷ Walker & Shane, *supra* note 128, at 22-23, 25, 28 85, 88]; Sullivan, *Bahamas*, *supra* note 63, at 548 (referring to an environment of “intense racial polarization” in the Bahamas during election campaign of 1968.)

¹⁸⁸ Sampson, *supra* note 12, at 281.

¹⁸⁹ Bodden, *supra* note 55, at 36-46.

¹⁹⁰ Francke & Robertson, *supra* note 132, at 242, 252.

¹⁹¹ Walker & Shane, *supra* note 128, at 87.

III. Constitutional Consolidation, Collaborative Policymaking, and Diversification: 1968-1980

From the late-1960s through the end of the 1970s, collaborative policymaking and Cayman's constitutional structure were consolidated, tested, and further developed to promote the jurisdiction's competitive advantages. The success of this process can be seen in the jurisdiction's growing financial sector. The number of Caymanian-registered companies increased steadily: The 1960 Companies Law-promoter MacDonald's registered firms grew from 20 to "hundreds" in a few years.¹⁹² Following the Bahamas' 1967-68 independence disorders and political and racial destabilization in Jamaica and Bermuda during the early 1970s, the number of Caymanian-registered entities climbed in 1970 to "2000 companies," and in 1976 to "7,521 registered companies, 126 banks and trust [companies], and one captive insurance company."¹⁹³ The captive insurance company reflected an initial step into diversification beyond the company registry, into not only local and international banking and trust business, but also malpractice insurance, predictable land titles fostering a hotel and government building boom, North American mass tourism, immigration and employment policies, and infrastructure. As the Caymans' local and global business diversified, the evolution of its constitutional structure and the collaborative policy-making process incrementally addressed local and foreign demands and pressure for improved policing of criminal conduct, largely avoiding the corruption problems that plagued some of its competitors.

A. Growing Demand

Cayman's evolution occurred in a shifting business environment for Caribbean OFCs in the early 1970s. The collapse of the Bretton Woods system in 1971 dramatically changed currency risks;¹⁹⁴ the decline of exchange controls altered the international financial landscape;¹⁹⁵ the infusion of petrodollars into the Eurodollar market vastly expanded the scope of

¹⁹² Walker & Shane, *supra* note 128, at 85.

¹⁹³ Walker & Shane, *supra* note 128, at 85, 93, 100, 101; Walker Interview, *supra* note 94, disc 3 at 13; Craton, PINDLING, *supra* note 80, at 161 (after Pindling took power "the rate of increase [of banks] slowed dramatically, and the number of trust companies substantially declined. Many companies transferred all or part of their operations to what were seen as more favourable locations, bringing the first surge of prosperity to the Cayman Islands and reinforcing the longer-established financial industry of Bermuda. Besides almost missing out on the development of the offshore 'captive' insurance business to those rival colonial jurisdictions, The Bahamas began to gain a reputation as a refuge for offshore financial operations at the shadier and shakier end of the spectrum....").

¹⁹⁴ Paul Krugman, *Exchange Rates*, in THE CONCISE ENCYCLOPEDIA OF ECONOMICS (1993) available at <http://www.econlib.org/library/Enc1/ExchangeRates.html> ("Exchange rates between currencies have been highly unstable since the collapse of the Bretton Woods system of fixed exchange rates, which lasted from 1946 to 1973."); Laurent L. Jacque, MANAGEMENT AND CONTROL OF FOREIGN EXCHANGE RISK 1 (1997) ("Of all the winds of change that have buffeted multinational corporations in recent years, none has had a more pervasive impact upon their risk-return profile than the break down of the international monetary system of fixed exchange rates that had prevailed until March 1973 under the Bretton Woods agreement (1944-1971) and, later, under the short-lived Smithsonian accord (1971-1973).").

¹⁹⁵ See Barry Eichengreen, GLOBALIZING CAPITAL: A HISTORY OF THE INTERNATIONAL MONETARY SYSTEM 191 (1996) ("[A]s international transactions were liberalized, it became impossible to keep domestic markets tightly regulated. Once financial markets joined the list of those undergoing decontrol, new channels were opened through which capital might flow, and the feasibility of controlling international capital movements diminished accordingly.") See also Christopher J. Neely, *An Introduction to Capital Controls*, Fed. Res. Bank St. Louis Rev. 13 (Nov/Dec 1999) (describing dismantling of capital controls); Pascal Petit, *Exchange Control*, in THE NEW PALGRAVE: A DICTIONARY OF ECONOMICS 207, 207 (1987) (first half of 1980s "characterized by the liberalization

international finance;¹⁹⁶ and entrepreneurs in finance spread new products around the world.¹⁹⁷ On the exchange control front, Britain subdivided the sterling area into the “scheduled territories” (the United Kingdom, Isle of Man, Channel Islands, and Irish Republic, plus, after January 1, 1973, Gibraltar) and the “overseas sterling area”, and applied restrictions on capital outflows to the overseas sterling area.¹⁹⁸ (All British exchange controls were formally ended in 1979.¹⁹⁹) Cayman responded, in part, by shifting first from the Jamaica dollar to a British pound-linked currency in 1972 and then changing the currency link to the U.S. dollar in 1974.²⁰⁰ Moreover, once Britain entered the EEC, it found its “residual responsibilities” to the Caribbean “increasingly hard to reconcile with the reality of Britain’s perceived new future with Europe”,²⁰¹ increasing British interest in its Caribbean territories’ fiscal self-sufficiency.

Demand for international financial services grew as the global economy became more interlinked. “[I]nvestments by United States sources in foreign countries increased from \$62 billion in 1968 to \$168 billion in 1978. Earnings from these investments totaled \$6.5 billion in 1968 and \$25.7 billion in 1978.”²⁰² British banks were unshackled by the combination of the 1970 return of a Conservative government and the shift in policy marked by the Bank of England’s publication of its *Competition and Credit Control* paper in 1971. “For the banks, the critical difference made by the Bank of England’s new policy was that they might cease to be the fall guys, expected to pursue the public interest while supposedly being private organizations motivated by profit.”²⁰³ This shift “had a profound effect on bankers’ ways of doing business and they soon found very distinct attractions in it.”²⁰⁴ As a result, British bankers became more aggressive about expanding into new markets. And it was not just British banks that took advantage of Britain’s new policies. Between 1971 and 1984, the number of employees of foreign banks and securities houses in London doubled to 42,000.²⁰⁵ The growth of British-based financial services enhanced Cayman’s competitive advantage, as Oxbridge-trained British lawyers John Maples and Douglas Calder moved to the jurisdiction in the late 1960s, followed by Anton Duckworth, Timothy Ridley, and Anthony Travers in the early 1970s.

of capital movements”)

¹⁹⁶ See Youssef Cassis, *CAPITALS OF CAPITAL: A HISTORY OF INTERNATIONAL FINANCIAL CENTRES 1780-2005* 236 (2007) (from 1974 to 1980 oil exporters accumulated \$383 billion in liquid assets, half of which was invested as short term deposits).

¹⁹⁷ Franklin Allen & Douglas Gale, *FINANCIAL INNOVATION AND RISK SHARING* 3 (1994) (“The world has been transformed by the frantic pace of financial innovation in the 1970s and 1980s.”).

¹⁹⁸ Jozef Swidrowski, *EXCHANGE AND TRADE CONTROLS: PRINCIPLES AND PROCEDURES OF INTERNATIONAL ECONOMIC TRANSACTIONS AND SETTLEMENTS* 85 (1975). The sterling area itself became an “irrelevance” and was formally wound up in 1976. Margaret Ackrill & Leslie Hannah, *BARCLAYS: THE BUSINESS OF BANKING 1690-1996* 303 (2001).

¹⁹⁹ Sean Glynn & Alan Booth, *MODERN BRITAIN: AN ECONOMIC AND SOCIAL HISTORY* 232 (1995) (exchange controls removed in 1979 in part done as aid to the City of London “to compete more effectively for international financial services”).

²⁰⁰ Johnson, *AS I SEE IT*, *supra* note 18, at 177-179, 185-188.

²⁰¹ Anthony Payne, *Britain and the Caribbean*, in *EUROPE AND THE CARIBBEAN* 13, 18 (Paul Sutton, ed. 1991).

²⁰² IRS, Review of Service Programs Relating to International Transactions (Aug. 25, 1981) in *Improper Use of Foreign Addresses to Evade U.S. Taxes*, Hearing before a Subcommittee of the Committee on Government Operations, House of Representatives, 97th Cong., 2nd sess. (June 10, 1982) at 53.

²⁰³ Ackrill & Hanna, *Barclays*, *supra* note 198, at 163-64.

²⁰⁴ Ackrill & Hanna, *Barclays*, *supra* note 198, at 163-64.

²⁰⁵ Ackrill & Hanna, *Barclays*, *supra* note 198, at 215.

The global financial market's demand for offshore services grew and investment funds in offshore jurisdictions became increasingly important. Bernard Cornfeld had created his Investors Overseas Services, Ltd. (IOS) mutual fund organization in the mid-1950s, first in Paris and then in Geneva in 1958, selling mutual fund shares to European and Latin American investors and American expatriates.²⁰⁶ By 1969, IOS was the largest financial sales organization in the world, with offices in 50 countries, sales forces in 100 countries, 30,000 employees, more than a third of a million investors, and over \$2.5 billion in assets.²⁰⁷ Although Cornfeld's empire soon collapsed, he had identified both an important market need, liquid investments that protected against inflation and devaluation,²⁰⁸ and the product that met this need, offshore mutual funds.²⁰⁹ The overall funds market – largely funds incorporated in “low-tax, minimal regulation jurisdictions like the Bahamas, Panama, and the Cayman Islands” – reached \$6 billion in 1969.²¹⁰ As new funds entered the market in the 1970s to meet the growing demand for these products, the demand for OFC jurisdictions' services continued to grow.

Demand for offshore financial activity also grew in the 1970s, in part because of the massive amount of money that petro-states needed to recycle after OPEC successfully raised oil prices.²¹¹ External liabilities with respect to OPEC countries of banks in countries reporting to the Bank for International Settlements soared from \$16 billion to \$43.5 billion between December 1973 and December 1974, much of which went into Eurodollar investments.²¹² In addition, the increased internationalization of business activity meant there was a greater need for

cross-border, cross-currency loans and loans booked at foreign booking offices. In the financial sector, operational requirements became twofold. Firstly, the establishment of a networked institutional infrastructure to promote global deposit-sourcing and lender-servicing, covering all time-zones, via which to secure and effect transnational ease of currency movement and translation to promote international tax-planning and cash management. Secondly, the identification and representation in trouble-free jurisdictions for the strategic deposit of funds and the legal *situs* of particular intra-firm activities.²¹³

²⁰⁶ Bert Cantor, THE BERNIE CORNFELD STORY 49-57 (1970) (describing origins of IOS).

²⁰⁷ Aliber, *supra* note 137, at 272.

²⁰⁸ Robert Aliber notes that Cornfeld's “genius” was to see the European market for “liquid financial assets that would offer protection against domestic inflation” at a time when “most European investors had few attractive financial investment opportunities in their own currencies.” Domestic bank deposit interest rates “were kept deliberately low, partly because banks were inefficient and partly because banking systems were rigged to subsidize borrowers, including government, at the expense of lenders,” providing real rates that were sometimes negative. Aliber, *supra* note 137, at 276.

²⁰⁹ Aliber, *supra* note 137, at 273 (market need and product), 275 (collapse caused by tight money and “extravagant” mismanagement).

²¹⁰ Aliber, *supra* note 137, at 273. *See also* Robert A. Hutchinson, VESCO: THE STORY OF THE BIGGEST SECURITIES FRAUD OF MODERN TIMES – THE LOOTING OF IOS 39-40 (1974) (describing growth of offshore fund industry as in 1968 165 “truly offshore funds” with assets of \$3.6 billion).

²¹¹ Johns & Le Marchant, *supra* note 144, at 3.

²¹² Gibson, *supra* note 70, at 16.

²¹³ Johns & Le Marchant, *supra* note 144, at 3.

The growth in these transactions and greater volume of money moving internationally meant there was growing demand for offshore banks that could borrow money from and lend to nonresidents, acting “as crucial intermediary conduits, global transnational structures, for ongoing activities based on the inward and outward routing and re-routing of business profits and incomes.”²¹⁴

By the end of the 1970s, a network of “as many as thirty-six jurisdictions” had grown up to service the demand for international financial transactions.²¹⁵ Cayman played a major role in this network, with 30 billion Eurodollars in Cayman by 1980, about 3% of world supply and another \$30 billion in accounts of insurance companies and other companies on island.²¹⁶ Global banks expanded their networks to leverage the opportunities provided by these jurisdictions. For example, Barclays created Barclays Bank International in 1972 out of its Dominion, Colonial and Overseas unit because, as bank chairman Sir James Thompson put it, the bank “needed a network of branches in all the principal financial centres of the world with the organization and expertise to offer a comprehensive package of financial services to the multinational corporate market.”²¹⁷ Market segmentation within the offshore world began to occur: “At the end of the 1970s, the offshore network consisted of four primary centres, eleven secondary centres, four transitional secondary centres, and eleven peripheral tax havens, each interconnected with one another and interposed between onshore external centres”²¹⁸ with Cayman a peripheral secondary center.²¹⁹ Financial services professionals, particularly the lawyers, and Caymanians were “very aware that they face constant competition in the tax-haven business”²²⁰ and they began to take steps to differentiate Cayman in the marketplace (which we describe below).

B. Adapting to Changes through Increased Autonomy

As the global economic environment became more complex, Caymanians achieved more self-government in a new Constitution. After three unsuccessful attempts to do so during the late-1960s, the Legislative Assembly agreed in 1970 to pursue stronger self-government powers, much like those advocated in the early 1960s by the NDP,²²¹ formally requesting action on increased self-government from the Foreign and Commonwealth Office (FCO).²²² In response, the FCO sent the Earl of Oxford and Asquith, a British constitutional expert, on a fact-finding visit in early 1971. Two-party politics had ended with the 1962 election, replaced by independent candidates in local districts across Grand Cayman, Cayman Brac, and Little Cayman organized as “Teams” electioneering for seats in the Legislative Assembly.²²³

Lord Asquith found that Cayman politics were centered on individuals and rooted in local-district kinship and community networks, which diffused interracial and class-based politics: “There is at present,” he concluded, “no marked stratification of society by colour, age,

²¹⁴ Johns & Le Marchant, *supra* note 144, at 17-18.

²¹⁵ Johns & Le Marchant, *supra* note 144, at 15.

²¹⁶ Sampson, *supra* note 12, at 285.

²¹⁷ Ackrill & Hannah, Barclays, *supra* note 198, at 306 (quoting Sir John Thompson, A world banking group, Barclays Bank Briefing, 20, Dec. 1972, at 1). b

²¹⁸ Johns & Le Marchant, *supra* note 144, at 17-18.

²¹⁹ Johns & Le Marchant, *supra* note 144, at 17-18.

²²⁰ Sampson, *supra* note 12, at 285.

²²¹ Bodden, *supra* note 55, at 129-160.

²²² Craton, FOUNDED, *supra* note 17, at 319.

²²³ Craton, FOUNDED, *supra* note 17, at 315-22.

wealth, class or education.”²²⁴ This was in sharp contrast to the more turbulent racial climate in competitor jurisdictions such as the Bahamas and Bermuda (where race riots would break out again in 1977).²²⁵ Substantively, Lord Asquith found the Assembly united in favor of an increase in elected ExCo Members, a measure which reduced, but did not eliminate, the Governor’s power.²²⁶

Lord Asquith’s findings shaped the changes embodied in the 1972 Constitution, which consolidated the collaborative policy-making approach. The gradualist approach reinforced Cayman’s reputation – and competitive advantage – as a stable, law-abiding offshore financial center.²²⁷ The new Constitution left the London-appointed Governor charged with foreign affairs, national security, and traditional executive powers such as the pardon.²²⁸ London gave the governor considerable autonomy. Governor Russell, who served from 1974 to 1982, described it as being “left in large measure to run my own shop” as long as he kept London informed.²²⁹ While the Governor lost the power to appoint “nominated Members,” he retained the power to appoint the Chief Secretary, the Financial Secretary, and the Attorney General, who were the *ex officio* members of the Executive Council.²³⁰ These executive officers joined the twelve elected Members of the Legislative Assembly, where the Governor presided and had the tie breaking vote.²³¹ The majority could have created its own office of speaker to take over this function, but did not do so for many years.²³²

The 1972 Constitution enabled the Legislative Assembly to elect four of the seven Members to the Executive Council, where the Governor still presided.²³³ The elected ExCo members from the Assembly held portfolios (allocated by the Governor) responsible for social services; agriculture, lands, and natural resources; communications and other infrastructure; and tourism, aviation, and trade.²³⁴ Serving both in the Assembly and on ExCo, these elected Members helped to consolidate the collaborative policymaking process.²³⁵ The *ex officio* ExCo members were primarily those committed to the collaborative process, such as the Financial Secretary, Vassel Johnson, appointed by the Governor in 1972.²³⁶ Capturing the results, Governor Thomas Russell told an interviewer at the end of this period, “It’s a pleasantly compact government—all my [C]abinet are on the same floor. People here are very critical of independence; they think it causes troubles like Jamaica’s. My job here is really a kind of combination of ombudsman and business consultant. I don’t interfere very much and the British government leaves us very much alone—largely no doubt because we don’t need any kind of

²²⁴ Craton, FOUNDED, *supra* note 17, quoted at 320.

²²⁵ Davies, LEGAL STATUS, *supra* note 25, at 12-13.

²²⁶ Craton, FOUNDED, *supra* note 17, at 319. There were local differences. For example, Lord Asquith ascertained that the two smaller islands urged preserving their share of the Assembly versus Grand Cayman. *Id.* at 319-322.

²²⁷ Craton, FOUNDED, *supra* note 17, at 320.

²²⁸ Craton, FOUNDED, *supra* note 17, at 321; Russell, HONOUR, *supra* note 4, at 174.

²²⁹ Russell, HONOUR, *supra* note 4, at 180.

²³⁰ Craton, FOUNDED, *supra* note 17, at 321; Russell, HONOUR, *supra* note 4, at 174.

²³¹ Craton, FOUNDED, *supra* note 17, at 321-22; Russell, HONOUR, *supra* note 4, at 174.

²³² Craton, FOUNDED, *supra* note 17, at 321; Bodden, PATRONAGE, *supra* note 21, at 268; Russell, HONOUR, *supra* note 4, at 174, 186.

²³³ Craton, FOUNDED, *supra* note 17, at 321.

²³⁴ Craton, FOUNDED, *supra* note 17, at 321; Russell, HONOUR, *supra* note 4, at 174.

²³⁵ Craton, FOUNDED, *supra* note 17, at 320-322.

²³⁶ Ebanks, *supra* note 29, at disc. 3, 9-10.

grant.”²³⁷ As Russell’s comment noted, the space for the development of the Caymanian model existed because Cayman was not a drag on British resources. The OFC revenue effectively bought Cayman additional autonomy. Britain was delighted with the tradeoff – ending development loans in 1976 despite Governor Russell’s argument that continuing the loans would give Britain a greater voice in policy discussions.²³⁸ In addition, the network of British officials facilitated collaboration. The Attorney General for much of Russell’s tenure was a former colleague and personal friend from Russell’s time in the Pacific territories, which he found “helped ... enormously.”²³⁹

Cayman used that autonomy to enable Assembly and ExCo members to work collaboratively with legal and other professionals representing business interests. From 1969 to 1984 Benson Ebanks served as an elected Assembly member on ExCo; like his colleagues, he actively supported major legislation of the early 1970s such as the Currency Law that tied the Cayman currency to the U.S. dollar in 1974, tighter immigration residency requirements implemented in Caymanian Protection Laws, and the Land Adjudication, Land Surveyors’, and Registered Land Laws.²⁴⁰ Ebanks said that “certainly in many instances [ExCo and the Assembly] sought advice before we implemented anything” following “regular meetings” between “Financial Secretary [Vassel Johnson] and the Attorney General” and “representatives of the financial community,” especially lawyers from one of the three major law firms, Walkers, MacDonald and Maples [later Maples and Calder], and Hunter and Hunter.²⁴¹ Indeed, Walker later termed the process, “a very collaborative government, working very closely with the private sector in the midst of a time of great growth.”²⁴² Governor Russell actively promoted the financial sector in speeches in the United States.²⁴³ Then-Deputy Financial Secretary John Lemuel Hurlston later summed up the collaborative process: “I believe” there was “a tremendous fusion of ideas from all of the people working in harmony together to come up with what the country was capable of affording.”²⁴⁴

Collaborative policy making promoted further diversification beyond the company registry and tax avoidance. Claiming that revising the land-title regime would facilitate imposing property taxes, Caymanian property holders resisted adopting the cadastral land-title registration system which colonial officials, ExCo, and Assembly leaders advocated as necessary to promotion of tourism development.²⁴⁵ Amidst discussion of the Constitution in 1971, however, the collaborative process facilitated enactment of the cadastral system.²⁴⁶ During 1971-72, collaborative policymaking built on stabilized land titles and the effective mosquito campaign—which earlier had resulted from the same policy process—to enact new laws fostering hotel and

²³⁷ Sampson, *supra* note 12, at 288. *See also* Russell, HONOUR, *supra* note 4, at 168 (noting that while Cayman had a smaller population than his previous posting in the Solomon Islands, it had a larger budget without “the administrative restraint of budgetary control from Whitehall.”).

²³⁸ Russell, HONOUR, *supra* note 4, at 178.

²³⁹ Russell, HONOUR, *supra* note 4, at 177.

²⁴⁰ Craton, FOUNDED, *supra* note 17, at 341; Ebanks, *supra* note 29, at disc 3, 20-21, disc 4, 3, 6, 11-12, 19.

²⁴¹ Ebanks, *supra* note 29, at Disc 4, at 14.

²⁴² Walker & Shane, *supra* note 128, at quote 117.

²⁴³ Russell, HONOUR, *supra* note 4, at 190-191.

²⁴⁴ Cayman Archives Interview, John Lemuel Hurlston (1996) at disc 3, 15.

²⁴⁵ Johnson, AS I SEE IT, *supra* note 18, at 239.

²⁴⁶ Craton, FOUNDED, *supra* note 17, at 340-343. Caymanian property holders soon embraced the new system. *Id.* *See also* Russell, HONOUR, *supra* note 4, at 175 (describing survey).

condo construction, attracting wealthier tourists.²⁴⁷ In the Assembly, former-NDP leader Warren Conolly promoted the Tourist Board, which administered license-fee regulations to promote hotel and condo occupancy through 1976.²⁴⁸ For eight years beginning in 1976, James Bodden, the ExCo member responsible for Tourism, Aviation, and Trade, used a collaborative approach to encourage a shift from tourists arriving by air to growing cruise-ship visits.²⁴⁹ Collaborative policymaking benefitted further from the 1978 establishment of the Central Planning Authority, which oversaw Cayman's growing real estate development industry.²⁵⁰ During the 1960s and 1970s, Cable and Wireless, a UK government-owned company, also invested in improving the communications infrastructure, a necessary precondition to a serious financial industry,²⁵¹ further evidence of collaboration between British and Caymanian interests. Governor Russell helped regularize administration, leading efforts to publish an official gazette for new laws, among other things.²⁵²

Things did not always go well. Cayman experienced its first banking scandal when Interbank collapsed in 1974. The bank's founder, Canadian Jean Doucet, arrived in Cayman in 1966 from the Bahamas, where he had worked in the offshore industry.²⁵³ Doucet soon had a network of offices in Miami, Montreal, London and Geneva as well as a Cayman headquarters. Unlike many in the offshore industry, Doucet expanded into local banking almost immediately, creating a subsidiary providing large local mortgages at attractive rates in 1974.²⁵⁴ When rumors began to circulate that Doucet was involved with the Mafia, his bank suffered a "crippling liquidity crisis".²⁵⁵ Although the Mafia rumors proved unfounded, problems with the bank's handling of gold were discovered in the investigation. Doucet chartered a jet and fled Cayman for Monaco, from which he was eventually extradited, and prosecuted, convicted, and imprisoned for nine months.²⁵⁶

²⁴⁷ Craton, FOUNDED, *supra* note 17, at 348-349.

²⁴⁸ Craton, FOUNDED, *supra* note 17, at 348.

²⁴⁹ Craton, FOUNDED, *supra* note 17, at 348-349.

²⁵⁰ Craton, FOUNDED, *supra* note 17, at 350-352.

²⁵¹ Johnson, AS I SEE IT, *supra* note 18, at 91-93. The importance of such infrastructure can be seen in a 1969 comment at a continuing legal education seminar on offshore strategies, where one participant noted that

The Cayman Islands became popular several years ago. In the flush of excitement over this new jurisdiction, I tried to call someone there by telephone. After a long wait during which I was trying to find the Cayman Islands in an atlas on my lap, I was informed by the overseas operator that there was a ham radio operator in the Bronx who made a weekly transmission to Grand Cayman, and if I wished he would let me talk at the end of it.

Francke & Robertson, *supra* note 132, at 242, 253-54.

²⁵² Russell, HONOUR, *supra* note 4, at 174. Russell described the prior practice as "pinning a copy of the laws with a drawing-pin to a notice board outside Post Offices." *Id.*

²⁵³ William Brittain-Catlin, OFFSHORE: THE DARK SIDE OF THE GLOBAL ECONOMY 154-55 (2005).

²⁵⁴ Brittain-Catlin, *supra* note 253, at 157 (Doucet's Cayman Mortgage Bank dealt "only with personal mortgages for local Caymanians, offering them large advances at preferable rates. The venture would show, once and for all, that Doucet was committed to Cayman, not just using the island for his own convenience.").

²⁵⁵ Brittain-Catlin, *supra* note 253, at 157.

²⁵⁶ Cayman Archives Interview, Ian Boxall 2002 at Disc 3, 32; Johnson, AS I SEE IT, *supra* note 18, at 158-160, 162-164, 242; Brittain-Catlin, *supra* note 253, at 158-159. Not all in Cayman saw Interbank as a complete disaster: Deputy Financial Secretary Hurlston noted that notwithstanding Doucet's illegal conduct, many "Caymanians own their homes today as a result of some of the early mortgages that were made available through that [Interbank] group of companies." Hurlston, *supra* note 244, at disc 3, 19.

Although offshore critics like William Brittain-Caitlin portray the Doucet prosecution as “an institutional cover-up” that threw “a strictly imposed veil of secrecy over” activities on the islands,²⁵⁷ it is also possible to see the affair as an example of how collaborative policy making enabled learning from the problem.²⁵⁸ Deputy Financial Secretary Hurlston concluded: the “way the government responded and managed that particular crisis led others [locally and internationally] to realize that they were dealing with an administration that was capable of . . . steering itself away from those kinds of mistakes in the future.” Indeed, “that collapse produced the decision to establish the Banking Inspectorate, which had not existed before.”²⁵⁹ Moreover, Cayman’s institution of the Inspectorate paralleled the adoption of a similar regulatory approach in other nations developing multi-purpose banking “involved in land development, land reclamation, [and] shipping”.²⁶⁰ Cayman’s regulatory response to the Interbank crisis coincided with the “emerging of inspectorates worldwide, who collaborate more closely with one another” to address “any problem that stretches across boundaries. You’ve got to have that collaborative capability If you have a problem that stretched across borders, share your intelligence with your neighbors. They, in turn, do the same in return.”²⁶¹

C. Diversification into Insurance

Caymans’ collaborative policymaking also played a role in the jurisdiction’s diversification into captive insurance. While Bermuda led the way overall in registering captive insurance companies – those which “underwrite solely for their parent companies” – social tensions there and Bermuda’s reluctance to expand into medical malpractice captives offered competitive opportunities for Cayman policymakers.²⁶² When U.S. medical malpractice market ‘hardened’ in the early 1980s, Cayman was able to take advantage of the opening.²⁶³ Cayman’s use of English gave it an advantage over the Netherlands Antilles where official filings had to be in Dutch, as did Cayman’s willingness to adapt regulations for the medical malpractice captive market.²⁶⁴ Financial Secretary Johnson’s published account described the collaborative “committee” work of British, foreign, and Cayman authorities shaping the Caymans’ 1979 Insurance Law, that established regulatory categories for fee-licensing of insurance companies, including captives.²⁶⁵ The committee endorsed having a regulatory role for “an insurance inspector . . . in the same manner that the Inspector of Banks performed his duties under banking legislation.”²⁶⁶ Another example was when a group of Boston hospitals lead by Harvard Health

²⁵⁷ Brittain-Catlin, *supra* note 253, at 158-59.

²⁵⁸ A comparison of the Interbank/Doucet problems with Antigua’s difficulties with Allen Stanford and his Stanford International Bank in the 2000s shows the advantages of the collaborative policy making model. Much like Doucet, Stanford attempted to buy his way into Antiguan society. Stanford’s ability to penetrate the government, influencing banking regulators, facilitated the fraudulent activity that ultimately brought down his empire. See Tom Leonard, *How Sir Allen Stanford Bowled Antigua Over*, DAILY TELEGRAPH (Feb. 20, 2009) available at <http://www.telegraph.co.uk/finance/financetopics/sir-allen-stanford/4736739/How-Sir-Allen-Stanford-bowled-Antigua-over.html>.

²⁵⁹ Hurlston, *supra* note 244, at disc 3, 18; Russell, HONOUR, *supra* note 4, at 193.

²⁶⁰ Hurlston, *supra* note 244, at disc 3, at 18.

²⁶¹ Hurlston, *supra* note 244, at disc 3, 18, 19-20.

²⁶² Johnson, AS I SEE IT, *supra* note 18, at 216-218; Russell, HONOUR, *supra* note 4, at 193 (“In 1980 we enacted insurance legislation to broaden the base of financial services. There was immediate growth in this sector. . .”).

²⁶³ Alan Markoff, *Cayman captives: past, present, and future*, CAYMAN FINANCIAL REVIEW (Oct. 12, 2012) available at <http://www.compasscayman.com/cfr/2012/10/12/Cayman-captives--Past,-present-and-future/>.

²⁶⁴ Boise & Morriss, *supra* note 43, at 441.

²⁶⁵ Johnson, AS I SEE IT, *supra* note 18, at 216-218.

²⁶⁶ Johnson, AS I SEE IT, *supra* note 18, at 216.

Systems, had the “pioneering idea of self insuring hospital/physician liability risk. Basically they believed they do it better than the commercial market.”²⁶⁷ When the Bermuda authorities refused to allow the offshore medical malpractice market to develop there, considering it too risky, Caymans’ collaborative policy process enabled the quick grasping of the opportunity by ensuring that the Insurance Law did not restrict the development of this business.²⁶⁸

Adapting the banking laws’ inspectorate to captive insurance suggested further competitive advantage collaborative policymaking achieved. After the Insurance Law’s regulations were fully operational in 1980, Vassel Johnson noted that the Caymans “attracted a complement of genuine insurers” and became second only to Bermuda in the global captive insurance market. Moreover, “about 200 companies who may not have been ‘real’ companies ‘packed their bags and left.’”²⁶⁹ The ability of Cayman’s professionals, civil service, and political system to continually innovate in attracting new structures and transactions to the jurisdiction was critical to maintaining the growth in the financial services sector necessary to fit within, and benefit from, evolving regulations elsewhere which sought to limit revenue losses by onshore jurisdictions to the growing offshore sector and distinguished Cayman from rivals like the Netherlands Antilles.²⁷⁰ Moreover, the nature of financial services competition required continual efforts to develop new products. As one analysis noted,

The point about most financial services is that there is no ‘magic mousetrap’ to be sought, which, if discovered, will have the world beating at the door of the company concerned. There is nothing any bank in the world can devise which can have the impact that, say, the discovery of the float glass technique did for Pilkington, or the development of the world’s most successful video recorder did for JVC. As a bank like Citicorp shows, competitive success in financial services stems from sustained attention to being more efficient and innovative than competitors over several decades, without getting overenthusiastic by jumping into some sector (such as loans to Latin America in the late 1970s) which is fundamentally unsound.²⁷¹

Through facilitating innovation, collaborative policymaking was able to maintain the Cayman Assembly’s stable budgets based on indirect fees — including those the financial industry paid — without the need to levy direct taxes, a situation that had prevailed (with rare exception) since the early twentieth century.²⁷² Through 1976 when Britain ended development aids to Cayman, Cayman’s budget stability gave it a significant competitive advantage over other OFCs in

²⁶⁷ Andrew P. Morriss, *Industry Insider ... Tom Jones and LJ Fallon*, CAYMAN FINANCIAL REV. (Oct. 5, 2011) available at <http://www.compasscayman.com/cfr/2011/10/05/Industry-Insider----Tom-Jones-and-LJ-Fallon/> at 1 (quoting Tom Jones).

²⁶⁸ Morriss, *Industry Insider*, *supra* note 267, at 1 (quoting Tom Jones that Bermuda “turned Harvard down based on the belief that the risk of physician professional medical liability was too volatile to self-insure.”).

²⁶⁹ Johnson, AS I SEE IT, *supra* note 18, at 213-218.

²⁷⁰ Boise & Morriss, *supra* note 43, at 414 (“Perhaps lulled into a false sense of security by its monopoly position in the lucrative international finance subsidiary business and distracted by inter-island squabbling and then ongoing struggles over Dutch involvement in insular governance, the Antilles government did not innovate.”).

²⁷¹ Stopford & Turner, *supra* note 70, at 124.

²⁷² Johnson, AS I SEE IT, *supra* note 18, at 103-226; Doran, *supra* note 15, at 437-439. A popular myth is that Cayman’s lack of direct taxation stems from the heroic rescue efforts by Caymanians of the crew and passengers in the 1794 “Wreck of the Ten Sail,” including a member of the royal family. There was a wreck, and Caymanians did brave a storm to save the crew and passengers, there was no prince aboard nor was freedom from direct taxation granted by a grateful monarch. Craton, *FOUNDED*, *supra* note 17, at 56-60.

securing British development aid.²⁷³ Thus, Cayman was able to secure British development loans for infrastructure projects improving harbor and airport facilities and instituting world-class telecommunications networks that further enhanced its competitive position,²⁷⁴ while avoiding British involvement in the legislative process that might have restricted innovations that interfered with British interests. British officials recognized the development potential of the finance industry and those in the FCO applauded the budgetary implications for the UK and resisted the Treasury's pressure to reign in Cayman and other offshore centers under British jurisdiction.²⁷⁵

The collaborative policymaking process also helped soften the conflicts over immigration that had been such a problem in the Bahamas. In 1972, Cayman enacted the Caymanian Protection Law, administered by an administrative board ("the CPL board"), which required foreign companies to comply with local licensing regulations and imposed tighter residency requirements on immigrants seeking work permits. The CPL board regulated entry and so reduced the threat of business nationalization and employment discrimination that characterized some other tax havens, while allowing in expatriate professionals and other workers much needed for the finance and tourism industries.²⁷⁶ Cayman policymakers established a "system," historian B.W. Higgs said, that "made Caymanians some of the best-off people in the Caribbean."²⁷⁷ Or, as one Caymanian put it, "The advantage of being an island is that you get to choose your own neighbors. We've chosen Miami instead of Jamaica."²⁷⁸ This did not mean that tensions did not emerge from the collaborative policymaking process. Young Caymanian educator (and later historian) Roy Bodden insisted that what he termed Caymanians' "total colonialism" replaced the merchant-dominated economy based on seamen and subsistence agriculture with a new dependency on foreign investment and North American tourism. Neither the old nor new dependency completely avoided claims of corruption.²⁷⁹

The combination of the evolution of the constitutional structure and collaborative policymaking also helped Cayman cope with external pressures. Soon after a Miami federal judge ordered a Cayman-based bank manager to divulge confidential client information U.S. authorities demanded, the collaborative process produced the 1976 Confidential Relationships (Preservation) Law,²⁸⁰ codifying and strengthening the British common law of financial privacy based on the 1924 decision in *Tournier v. National Provincial and Union Bank of England*.²⁸¹ The 1976 law and its 1979 amendments regulated foreign tax and law enforcers' access to

²⁷³ Cayman Archives Interview, A. Peter Lloyd, at disc 3, 7 (1997); Johnson, AS I SEE IT, *supra* note 18, at 103-226.

²⁷⁴ Johnson, AS I SEE IT, *supra* note 18, at 125-146.

²⁷⁵ See, e.g., Tax Havens and Tax Concessions, Note of a meeting held in the Foreign and Commonwealth Office on 25 March 1969, British National Archives, File FCO 59/533 (discussing concerns of various British government offices over the rise of tax havens in dependent territories). See also Russell, HONOUR, *supra* note 4, at 178 (UK refused to continue aid as a means of influencing policy).

²⁷⁶ Johnson, AS I SEE IT, *supra* note 18, at 240-242, 256-257.

²⁷⁷ Higman, *supra* note 8, at 296.

²⁷⁸ Sampson, *supra* note 12, at 290.

²⁷⁹ *Colonialism's Curbs, Party Politics' Failure, and Future Problems, Part I*, THE NOR'WESTER (Sept. 1978) at 36-42, 37; *Some Unanswered Questions about our Future, Concluding Part*, THE NOR'WESTER (Oct. 1978) at 35-42; Vlcek, *supra* note 2, at 71-72.

²⁸⁰ *US Grand Jury Indict Castle Bank Manager*, THE NOR'WESTER (Apr. 1977) at 39; Johnson, AS I SEE IT, *supra* note 18, at 154-156.

²⁸¹ [1924] 1 KB 461.

confidential financial information.²⁸² “Thus the stage was set,” wrote Vassel Johnson, “to defend and safeguard confidentiality of customers’ financial information in these islands as far as this is possible under the law.”²⁸³ Although this solved the immediate problem, by the 1980s the U.S. government, the OECD, and others were using it to argue that Cayman exhibited regulatory laxity fostering criminal conduct like the Interbank collapse or sham insurance companies.²⁸⁴ Cayman’s strengthened confidentiality regulations thus was used to support international claims that Cayman not only protected illegitimate “bank secrecy” but lacked effective financial regulation and enforcement. This returned again and again in onshore jurisdictions’ efforts to reduce OFC competition.

D. Challenges

Cayman faced several challenges during this period. First, both Britain and the United States began to take notice of the growth of tax planning and regulatory arbitrage strategies and of OFCs and to worry about the loss of tax revenues. A 1973 Labour Party paper, *Plugging a tax loophole*, argued that “the wealthy have made fools of our tax man for too long.”²⁸⁵ Its 1970-74 working party on taxation proposed “a veritable battery of capital taxes ... ‘with the objective of breaking up great concentrations of wealth’”²⁸⁶ and anti-tax haven legislation sponsored by an all party group of MPs was reported to “have considerable appeal” in Labour circles in 1978.²⁸⁷ All three were a dramatic change from a Labour MP’s 1965 plea that “I do not want a state of affairs in which people live in perpetual fear of having to see an inspector of taxes.”²⁸⁸

Another challenge was increased competition from onshore jurisdictions themselves. As William Vlcek notes, the U.S. exemption of interest paid foreign depositors makes the United States “the largest offshore tax haven in the world.”²⁸⁹ The United States created “International Banking Facilities” in New York at the end of the 1970s as a competitive response to OFCs.²⁹⁰ Britain began relaxing exchange controls under Prime Minister Margaret Thatcher, culminating in the 1979 UK Banking Act, which “removed all distinction between offshore and onshore markets.”²⁹¹ The United States also took steps to cut borrowing costs in the United States, easing up on monetary policy in 1969 and early 1970, raising the Regulation Q interest rate ceilings in January 1970, and eliminating capital controls in January 1974.²⁹² Although these steps reduced the U.S. demand for Eurodollars, they also played a role in enhancing the market since U.S. banks were now more free to arbitrage between the domestic and Eurodollar markets and to pursue international business with their non-U.S. subsidiaries.

²⁸² Johnson, AS I SEE IT, *supra* note 18, at 154-158.

²⁸³ Johnson, AS I SEE IT, *supra* note 18, at 155.

²⁸⁴ Doggart, 1997 report, *supra* note 3, at 66-70; Boxall Interview, *supra* note 256, at disc 3, 12; Hurlston Interview, *supra* note 244, at disc 3 12; Walker Interview, *supra* note 96, at Disc 3, 21-22; Ebanks, *supra* note 29, at disc 3, 16; Johnson, AS I SEE IT, *supra* note 18, at 154-166; Johnson, AS I SEE IT, *supra* note 18, at 217; Andrew P. Morriss & Lotta Moberg, *Cartelizing Taxes: Understanding the OECD’s Campaign against “Harmful Tax Competition”*, 4 COLUM. J. TAX L. 1, 33-56 (2012) (describing evolution of anti-tax competition campaign).

²⁸⁵ Whiting, LABOUR PARTY AND TAXATION, *supra* note 66, at 221.

²⁸⁶ Whiting, LABOUR PARTY AND TAXATION, *supra* note 66, at 221.

²⁸⁷ D.G. Kermod, DEVOLUTION AT WORK: A CASE STUDY OF THE ISLE OF MAN 9 (1979).

²⁸⁸ Whiting, LABOUR PARTY AND TAXATION, *supra* note 66, at 165.

²⁸⁹ Vlcek, *supra* note 2, at 81.

²⁹⁰ Ronen Palan, *Offshore and the Structural Enablement of Sovereignty*, in OFFSHORE FINANCIAL CENTERS AND TAX HAVENS: THE RISE OF GLOBAL CAPITAL (Mark P. Hampton & Jason P. Abbott, eds. 1999) 18, 33.

²⁹¹ Palan, *Structural*, *supra* note 290, at 33.

²⁹² Gibson, *supra* note 70, at 14-15.

However, Cayman and other OFCs were fortunate that the U.S. government significantly lessened its pressure on offshore tax avoidance strategies in the mid-1970s. In the late 1960s and early 1970s, the IRS had launched a number of investigations into overseas-based tax evasion, including the use of mail intercepts, undercover agents, and other measures.²⁹³ Cayman was relatively little affected by this. One estimate during the IRS's "Operation Tradewinds" was that Cayman accounted for only a small amount of illicit funds, with bank supervision described as "competent", the government as "honest" and "now interested in eliminating such criminal operations as may be active in the islands, including laundering."²⁹⁴ When the IRS' efforts became entangled in the Nixon Administration's use of the agency for political purposes, the resulting Tax Reform Act of 1976 "minimized, if not eliminated, [the IRS'] role in nontax law enforcement" and focused the IRS "almost exclusively" on "the voluntary tax collection system."²⁹⁵ This reduced IRS attention undoubtedly benefited the entire offshore sector.

The 1970s also saw growth in offshore centers where there was little regulation. For example, 1978 banking legislation in Montserrat provided that the Chief Minister would meet privately with license applicants, set out no requirements for the license, and established no schedule of fees.²⁹⁶ "The inference could be drawn that government officials had provided themselves an opportunity for private negotiations with applicants."²⁹⁷ Similar proposals were reported in other jurisdictions.²⁹⁸ Cayman thus faced competition both from onshore jurisdictions and other offshore centers, many using quite different strategies.

Cayman firmly rejected independence during this period. After a 1977 visit to the Islands by the U.N. Committee on Decolonization, two Caymanian representatives went to New York to give evidence. One of them, Truman Bodden, described the message they took as

We told them we didn't want to be decolonized. It was the first case like that they'd had for a long time. But we take the approach, sir, that if there's something good, you mustn't change it. We notice that other Caribbean countries may have political independence but don't have economic independence. If they do what we do, they could have success too. So long as Britain is responsible for our foreign policy and defense, we can rest quite well. We must be thankful to the

²⁹³ Blum Report in *Illegal Narcotics Profits*, Hearings Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, U.S. Senate, 96th Congress, 1st session (1979), at 475 (noting Operation Tradewinds in 1966-75 which led to 108 tax deficiencies of about \$500,000 per case and which was terminated after Tax Reform Act with 488 pending cases), at 480 (describing Project Haven); Statement of William Anderson, in *Tax Evasion*, *supra* note 148, at 31-33 (describing Operations Tradewinds, Swiss Mail Watch, Pirate, and Haven). *See also* Statement of William Anderson, in *Tax Evasion*, *supra* note 148, at 3 ("The use of tax havens has been of particular concern to the IRS since the mid-1950's."). ADD

²⁹⁴ Blum Report in *Illegal Narcotics Profits*, *supra* note 293, at 482.

²⁹⁵ Nathan Statement, *Illegal Narcotics Profits*, *supra* note 293, at 23. IRS witnesses testified that the Act reduced their ability to cooperate with prosecutors (233). Sen. William Cohen noted that he believed "everybody on this committee, most of the Senate and surely most of the House of Representatives" voted for the Tax Reform Act without being aware of its impact on law enforcement. *Illegal Narcotics Profits*, *supra*, at 84. *See also* Remarks of Donald Alexander to Tax Section of the ABA, Aug. 14, 1974, reprinted in *Illegal Narcotics Profits*, *supra*, at 499 (noting termination in 1973 of Special Service Staff at IRS); Blum Report, *supra*, at 476-77 (describing inter-agency rivalries between IRS and DOJ over IRS tax haven activities). There were other reasons for the pullback, including negotiations over military bases (Bahamas) Blum Report, *supra*, at 480.

²⁹⁶ Blum Report in *Illegal Narcotics Profits*, *supra* note 293, at 481.

²⁹⁷ Blum Report in *Illegal Narcotics Profits*, *supra* note 293, at 481.

²⁹⁸ Blum Report in *Illegal Narcotics Profits*, *supra* note 293, at 481-2.

Lord, sir, for leading us in the right direction. If we keep people in government who have a lot to lose, we should be all right.²⁹⁹

Caymanians thus identified maintaining the link to Britain as a critical part of their competitive strategy.

Between 1968 and 1980, Cayman made an important transition, which some of its rival OFCs did not. It was able to move from a business model based on first generation offshore transactions to a model based on regular innovation. Increasingly sophisticated transactions, not just relocation to a jurisdiction without a particular regulatory barrier, and collaboration with financial professionals in major financial centers like New York and London made Cayman capable of playing a new role in international finance. The collaborative policy making model gave Cayman the ability to develop products and services and the supporting regulatory structures which would enable Cayman to flourish in a more heavily regulated international environment after 1980.

IV. Collaborative Policymaking and Policing, 1980-1996

From 1980 through the mid-1990s opinion leaders assessed the evolving success of the Cayman financial center. In 1980 the weekly paper *The Nor'wester* commented that the balanced regulations instituted the previous year in the Insurance Law were indicative of the “Cayman Islands . . . decision to set up a financial centre as a means of establishing an economic base for its development back in 1966 and, unlike a number of other places already in business or considering it, enacted legislation to give its government powers to control and regulate the development of business.” Unlike “a tax haven . . . synonymous in some minds with the influx of fly-by-night operators”, Cayman “[w]ork[ed] to perfect its image as reputable financial centre” that “over the years reviewed and upgraded its legislation regularly to cope with growing demands. Such careful plotting of its course has brought it, within a relatively short period, to the position of the third largest financial centre in the world today with an enviable reputation for stable operation.”³⁰⁰ By 1980, Cayman was roughly equal to Hong Kong and Bahrain in Eurodollar volume.³⁰¹ Over the next decade-and-a-half, Caroline Doggart, perhaps the leading world authority on OFCs in the 1980s and 1990s as a result of her regular surveys of the jurisdictions for the *Economist*, examined how, despite criticism in popular media, Cayman became known among experts – including US and UK tax advisers and regulators – for both customer satisfaction and compliance with international standards.³⁰² Consistent with its history since 1960, proactive policing emerged from collaborative policymaking rooted in the constitutional structure.

A. Planning for Success

During the early 1980s Cayman commentators recognized competitive advantages gained from a deliberate, thoughtful policymaking process. In 1983 *The Nor'wester* reported that Central Planning Authority chairman, Linford Pierson stated that the “country’s most pressing need is planning . . . Careful, comprehensive planning now . . . will permit the Caymans to

²⁹⁹ Sampson, *supra* note 12, at 289. See also Russell, HONOUR, *supra* note 4, at 184-85.

³⁰⁰ Mary Lawrence, *New law’s controls firm but gentle*, THE NOR’WESTER (July 1980) at 39.

³⁰¹ Sampson, *supra* note 63, at 285.

³⁰² See, e.g., Doggart and Voûte, *supra* note 3, at 45-48.

avoid the mistakes made elsewhere in the Caribbean.”³⁰³ Pierson emphasized how in the past “government worked together with a committee comprised of leading men from the financial community.”³⁰⁴ Indeed, in 1980 the same periodical reported, the 1979 Insurance Law resulted from a “committee . . . set up in late 1978 to work with the legal draftsman,” and an “experienced London Insurance man” the British Executive Service Organization recruited.³⁰⁵ Financial Secretary Vassel Johnson’s 1981 annual report to new Governor Peter Lloyd highlighted the role of collaborative policymaking: the “progress and economic stability of Cayman Islands were,” he said, “created ‘by design’ and ‘did not happen by sheer coincidence.’” Thus, the collaborative process tapped the “Government’s complete freedom from direct taxation,” the “long history of political stability,” and the “charm of the people.”³⁰⁶ Governor Lloyd noted that colonial status provided a “check and balance” when “in the course of preparing and drafting a law or” even just “discussing” it, the “elected members” of ExCo and the Assembly knew the Governor and the colonial secretary not only reviewed the outcome, but also could ask to have the law disallowed in London.³⁰⁷

Cayman successfully navigated the politics of immigration and residency, allowing businesses to recruit foreign workers for hotels and the government regularly issued permits to expatriate professionals, most of whom entered the financial sector, which enabled them to enter the economy. Caymanians held various positions in the financial sector, such as McKeeva Bush (who later became Leader of Government Business in 2001, Leader of the Opposition in 2005, and Premier from 2009 to 2012), who in an early electoral campaign listed employment history as a hotel “night auditor,” then “construction, and later . . . banking, working at Canadian Imperial Bank, from 1972 to 1977.”³⁰⁸ By contrast, Vassel Johnson’s final budget stated in 1981 that the seamen who returned home amidst shipping industry restructuring “were rarely suited to bank jobs – temperamentally nor in terms of skills. Those men turned, instead, to construction and real estate, or to developing businesses of their own.” Yet the “many” seamen who “went into construction” also had a stake in the “financial industry” since it “demanded buildings. Government had to reorganize itself to cope with this novel form of earning money; it too, had to become sophisticated and, so, large, impressive buildings were needed.”³⁰⁹

Cayman’s competitive advantages derived from no direct taxes, and social, economic, and political stability were at a turning point in the 1980 election. Ormond Panton, chair of the Caymanian Protection Board urged a return to the two-party politics he led in the pivotal 1962 election.³¹⁰ Prominent MLA and Council Members, including Annie Bodden, Charles Kirkconnell, Benson Ebanks, Craddock Ebanks, Norman Bodden, and James Bodden all essentially agreed with John McClean’s rebuttal: “This is no time for political parties. Any system that has worked as good as the one we have in Cayman should be left alone.” Similarly, Norman Bodden said, “much more can be accomplished through . . . a spirit of cooperation amongst representatives. The establishment of a two party system,” by contrast, suggested “the

³⁰³ Linford Pierson, *Planning is Essential*, THE NOR’WESTER, February 1983, at 33.

³⁰⁴ Linford Pierson, *Our road ahead . . . the key issue is planning*, THE NOR’WESTER, June 1983, at 56.

³⁰⁵ Mary Lawrence, “The Ever-Changing Insurance Scene,” THE NOR’WESTER, July, 1980, at 41; Pierson, *Our Road*, *supra* note 304, at 56.

³⁰⁶ *Financial Record for 1904-1981*, THE NOR’WESTER, April 1982 at 47.

³⁰⁷ Cayman Archives Interview, Peter Lloyd, Disc 3, 11, 12 (1997).

³⁰⁸ *31 standing for election*, THE NOR’WESTER, October, 1980, at 7.

³⁰⁹ Charles Glidden, *MLA’s: no to political parties*, THE NOR’WESTER, Christmas 1981, at 37, 41

³¹⁰ Glidden, *supra* note 309, at 37

forerunner of [the Islands'] independence."³¹¹ Out-going Governor Thomas Russell reinforced the view that a better system was candidates running as independents, noting that candidates were divided principally by "grudges" that "seem to last for an awfully long time in the Caymans."³¹² *The Nor'wester* reported, however, that in the 1980 election the "Unity and Dignity 'teams' clearly identified with separate platforms," which persisted in the "election of the Executive Council," and in repeated 7-5 votes on certain issues. Thus, while MLA and ExCo Members rejected Panton's view, increasingly polarized politics transcended simple personal animosities, influencing political stability, the public consensus favoring colonial status, and collaborative policymaking.³¹³

Caymanians' preference for "teams" of independent candidates over two-party politics reinforced the financial sector. Elsewhere in the Caribbean, immigration and residency requirements could mobilize party politics around ideological or racial appeals fostering instability.³¹⁴ The "teams" rejected such appeals in favor of a Caymanian consensus linking economic development of tourism and the financial center to stable voluntary ties to Britain that distributed benefits across the three Islands. Independent candidates and elected officials thus disputed distributional outcomes rather than ideological or racial claims.³¹⁵

B. Diversification

Vassel Johnson's 1981 budget report indicated benefits the government gained from a diversified economy. Many other nations or colonies in and around the Caribbean depended upon tourism and direct business and personal taxes to generate revenue to fund budget deficits that paid for the services underpinning social order. Johnson reported, however, that "most definitely, there must be an alternative source of revenue for any country [like the Caymans] that foregoes direct taxation."³¹⁶ The Cayman "Government's revenue comes largely from duty on imported goods which produces 40 percent of total income."³¹⁷ The second most important was 20% derived from postage and revenue stamps;³¹⁸ companies incorporation fees provided 15%, "Ban[k] and Trust[s] licence fee –7 percent and the balance of 18 percent comes from over 60 small items, such as insurance license fees, royalty from the ship to ship oil transfer operation at the smaller Islands, car licensing, medical fees and income from investment."³¹⁹ Even during the depressed conditions of the early 1980s these revenue sources "produced a balanced budget" and "created reserves which can produce an income."³²⁰ Thus, the Caymans offered proof that, "A continuing pleasing performance of the economy of any country will depend on stability, for no business can thrive where there is constant change of policies sometimes at the whims and fancies of political leaders."³²¹

³¹¹ Glidden, *supra* note 309, at 37.

³¹² Mohamed Hamaludin, *Gov. Russell's farewell charge*, THE NOR'WESTER, February 1982 at 10.

³¹³ Glidden, *supra* note 309, at 37.

³¹⁴ Glidden, *supra* note 309, at 37.

³¹⁵ Glidden, *supra* note 309, at 41.

³¹⁶ Vassel G. Johnson, *'The fruits are now ripening' from Cayman's tax haven system*, THE NOR'WESTER, Christmas 1981 at 48,

³¹⁷ Johnson, *Fruits*, *supra* note 316, at 48.,

³¹⁸ Revenue stamps relate to the real estate business.

³¹⁹ Johnson, *Fruits*, *supra* note 316, at 48,

³²⁰ Johnson, *Fruits*, *supra* note 316, at 48,

³²¹ Johnson, *Fruits*, *supra* note 316, at 48,

Diversification of financial-fee revenues drove new markets for legal services. “Fees paid for the registration of companies in 1981, plus annual fees amounted to C\$4.85m,” *The Nor’wester* reported in 1982, “a substantial contribution to the Cayman Islands budget and a 33.43 percent jump over the 1980 figure of C\$3.6m.”³²² As noted above, the amendments to the original Companies Law expanding incorporation fees resulted from legislation MLA and ExCo members discussed or negotiated with Cayman law firms like Walkers, Maples and Calder, and Hunters.³²³ Government-business collaboration also created new sources of fees. Thus, during the early 1980s Cayman became home for “flag of convenience” shipping registration competing against long-established leaders in the business, Panama and Liberia.³²⁴ From 1981 to 1982 Caymans’ registrations increased “from 516 vessels to 582. Revenue from the Shipping Register also went up, from C\$87,815.00 in 1980 to C\$100,660.00 in 1981.”³²⁵ Eventually, Cayman law firms shifted the shipping-registration focus to registration of private mega-yachts, developing a legal framework that facilitated secured lending for construction of large yachts.³²⁶ Cayman also had a brief period during which it handled sea-based transfers of oil from super tankers too large to enter U.S. Gulf Coast ports into smaller tankers, taking advantage of maritime jurisdictional rules and deep water off Cayman Brac.³²⁷ Thus, once collaborative policymaking established the connection between the fee-structure and law firms, members of those firms possessed expertise that drew clients seeking registration. Similarly consistent with collaborative policy making, Dignity Team Member of the Legislative Assembly, Vassel Johnson (upon retirement as Financial Secretary, he had been elected a member of the Assembly and the ExCo)³²⁸ and a committee enacted the National Trust Law preserving Cayman heritage sites, which attracted tourists paying hotel fees.³²⁹ Expat lawyer Ian Boxall assisted in drafting the National Trust legislation and advised on legal matters for the National Trust.³³⁰

Caymanians’ pursuit of business diversification reflected foreign governments’ multiple taxation goals. Caroline Doggart noted that most nations’ revenue officials applied a “carrot-and-stick” approach to tax laws generally and towards OFCs in particular.³³¹ Thus, in order to promote corporate investment and employment, under the U.S. “1978 International Banking Act foreign banks’ representative offices set up in Florida may indulge in a variety of international financing operations.”³³² Lloyds Bank of London was one of eleven banks incorporated in Florida “regulated by the federal government.”³³³ More broadly, U.S. and other nations’ revenue laws granted “quid pro quo”, such as “the Colonial American Maximum Interest Trust (Camit). It invests primarily in US blue chip securities on which it writes covered options traded on US exchanges. Its income will consist mainly of premiums received from expired and exercised

³²² *Companies now total 14,391*, THE NOR’WESTER March 1982, at 41.

³²³ Ebanks, *supra* note 29, at Disc 4, 14.

³²⁴ *Companies now total*, *supra* note 322, at 41.

³²⁵ *Companies now total*, *supra* note 322, at 41; Craton, FOUNDED, *supra* note 17, at 357.

³²⁶ Stephen Porter, Lecture, March 13, 2012, Cayman Islands. *See also* Russell, HONOUR, *supra* note 4, at 182, 191-92.

³²⁷ Russell, HONOUR, *supra* note 4, at 182. The business ended when deep sea transfer points were built in U.S. waters. *Id.*

³²⁸ Johnson, AS I SEE IT, *supra* note 18, at 290.

³²⁹ Johnson, AS I SEE IT, *supra* note 18, at 356-365.

³³⁰ Boxall, *supra* note 256, at 12.

³³¹ Doggart, 1979 Report, *supra* note 3, at 38.

³³² Doggart, 1979 Report, *supra* note 3, at 28.

³³³ Doggart, 1979 Report, *supra* note 3, at 28.

options, as well as dividend interest income, and net gains from options.”³³⁴ Camit paid registration fees and had contracts drawn by law firms in Cayman, Bermuda, Channel Islands, or other “tax havens.” Meanwhile, American fund managers received the most income, which was subject to federal and state taxation. In Caymans and other “tax havens’ development planning mills,” by contrast, there was “a strong multiplier effect that runs through the building industry, commercial and professional services, the communications sector and even agriculture and fishing.”³³⁵

C. Money Laundering, Black Lists & Regulation

International efforts to police money laundering identified with drug trafficking and terrorism tested the tax policy trade-offs benefitting the Caymans. John Grisham’s 1991 multimillion best-selling novel *The Firm*,³³⁶ followed by Hollywood’s 1993 movie version, popularized an unflattering and inaccurate stereotype of Cayman as center for money-laundering, tax evasion, and criminal activity.³³⁷ Since the early 1980s, however, Cayman officials, legal and other professionals, and media perceived the detrimental reputational effects of an absolute insistence on total client secrecy in all areas.³³⁸ The United States began the criminalization of money laundering in 1986, as part of the larger effort against illegal drugs.³³⁹ Claims of money laundering in Cayman also created diplomatic tensions between the U.S. and Britain. Accordingly, British, U.S., and Cayman officials engaged in a series of negotiations, culminating in the 1986 Mutual Legal Assistance Treaty (MLAT).³⁴⁰ The MLAT committed Cayman to assist “US authorities in the investigation and prosecution of a range of criminal offenses including drug trafficking, inside trading, bribery of foreign officials, tax fraud and a catch-all category of racketeering crimes.”³⁴¹ Contradicting the stereotype, Caroline Doggart wrote, “The Financial Action Task Force, set up in 1987 to give effect to the Vienna Convention on illicit traffic in drugs and related money laundering, has been particularly complementary about Cayman Islands’ supervisory practices. The Caymans were the first and so far the only, jurisdiction to have passed a Caribbean Financial Action Task Force regulatory audit with flying colours.”³⁴² Cayman also took steps to build relationships in the UK, hiring the recently retired governor in

³³⁴ Doggart, 1979 Report, *supra* note 3, at 25.

³³⁵ Doggart, 1979 Report, *supra* note 3, at 24-28.

³³⁶ John Grisham, *THE FIRM* (1992). See Boise & Morriss, *supra* note 43, at 429, n. 329 (discussing the “Grisham effect”).

³³⁷ *The Grisham Effect*, THIS IS CAYMAN (Jan. 3, 2013) available at <http://www.thiscayman.com/content/222/the-grisham-effect> (“The impact of the movie based on the novel by John Grisham is known until today in Cayman’s financial circles as the ‘Grisham effect’.”)

³³⁸ Johnson, AS I SEE IT, *supra* note 18, at 300-306; Craton, *FOUNDED*, *supra* note 17, at 359; Walker Interview, *supra* note 96, at 4; Boxall Interview, *supra* note 256, at 14; Ebanks, *supra* note 29, at 17; Cayman Archives Interview, Peter Lloyd Interview, 29 April, 1997 at 12-14.

³³⁹ Vlcek, *supra* note 2, at 49.

³⁴⁰ Johnson, AS I SEE IT, *supra* note 18, at 300-306. United Kingdom-United States: Treaty Concerning the Cayman Islands and Mutual Legal Assistance in Criminal Matters, 26 I.L.M. 536 (1987). Interestingly, despite the treaty being the result of U.S. pressure, the United States did not ratify it until 1989. GAO, Cayman Islands: Review of Cayman Islands and U.S. Laws Applicable to U.S. Persons’ Financial Activity in the Cayman Islands (GAO-08-1028SP) at 8 (2008) available at <http://www.gao.gov/new.items/d081028sp.pdf>.

³⁴¹ Doggart, 1979 Report, *supra* note 3, at 155, 156; Russell, *HONOUR*, *supra* note 4, at 193 (“Legislative changes were progressively introduced ... to allay, as far as possible, the concerns of the metropolitan powers.”).

³⁴² Doggart, 1979 Report, *supra* note 3, at 155, 156.

1982 to represent it in London, making it one of just four overseas territories to maintain a London office at the time.³⁴³

In the late 1990s, observed one Cayman resident lawyer, the OECD and “metropolitan” authorities attempted through “blacklists” to “proscribe most of the financial centres.”³⁴⁴ The public and private sectors collaborated in resisting these pressures.³⁴⁵ As the transnational MLAT regulatory structure took hold, however, metropolitan powers, as well as Caymanian government officials and legal professionals alike recognized that “a transparent, well-regulated, well-organized financial centre [was necessary], so that business around the world can be done. Take for example a ‘tremendous source’ of Caymanian business, ‘aeroplane loans; every airbus that is sold costs around \$400,000,000.’ There were ‘20 banks who do a syndicated loan . . . they all want to know they’re going to be treated equally on the terms . . . [of] security documentation for that loan, they don’t want to pay VAT in one country, they don’t want to pay goods and services tax in another, and they don’t want to pay stamp duty in yet another, so they come to somewhere like Cayman.’”³⁴⁶ The Cayman Islands had “no local taxes [for international businesses] to worry about.”³⁴⁷ The banks “can do the documents under English law, which everybody understands, and so the end result is that they will all go and pay their taxes on the profits on their loans, in their country of origin, but they won’t get treated differently. If . . . the airline goes belly up, they will all be on a level playing field. You can’t do that without a country like Cayman.”³⁴⁸ Cayman lawyers competed for and won this “transparent” documents business, with its substantial fees.³⁴⁹

By the mid-1990s intensified team politics and further constitutional restructuring created a new forum for collaborative policymaking. Since 1980, independent candidates in local districts had aligned in interclass and interracial teams, which partially diffused racial and ideological party politics although at a personal level, racial tensions were sometimes divisive.³⁵⁰ The government managed contentious immigration and residency issues; it also lowered the voting age from 21 to 18, thereby increasing the participation and stake of the Caymanians in elections for the legislature.³⁵¹ In 1990 McKeeva Bush and other National Team Assembly independents secured the first Caymanian Speaker of the Legislative Assembly, “veteran civil servant,” Mrs. Sybil McLaughlin, who served from 1991 to 1996.³⁵² Caymanians’ regard for what might be termed a voluntary colonial relationship with the UK persisted during the early 1990s as National Team MLA and ExCo members declined to accept British officials’ suggestion of a complete ministerial system, including a Premier.³⁵³ Instead, National Team

³⁴³ Russell, HONOUR, *supra* note 4, at 201. The three other territories were the Falklands, Gibraltar, and Hong Kong. Id. Russell served as the representative for 18 years, bringing a “total commitment” to the effort. Id. at 201-202. This enabled Cayman to both be involved in policy decisions in London and to promote the jurisdiction. Id. at 203.

³⁴⁴ Boxall Interview, *supra* note 256, at Tape 2, side A at 15. *See also* Morriss & Moberg, *supra* note 284, at 39-48.

³⁴⁵ Russell, HONOUR, *supra* note 4, at 206.

³⁴⁶ Boxall Interview, *supra* note 256, at Tape 2, side A, at 17.

³⁴⁷ Boxall Interview, *supra* note 256, at Tape 2, side A, at 17.

³⁴⁸ Boxall Interview, *supra* note 256, at Tape 2 Side B, at 17.

³⁴⁹ Boxall Interview, *supra* note 256, at Tape 2 Side B, at 17 (emphasis in original).

³⁵⁰ Craton, FOUNDED, *supra* note 17, at 305, 306, 319; Glidden, *supra* note 309, at 37; Bodden, PATRONAGE, *supra* note 21, at 36, 44.

³⁵¹ Craton, FOUNDED, *supra* note 17, at 371-72; Bodden, PATRONAGE, *supra* note 21, at 251-266.

³⁵² Bodden, PATRONAGE, *supra* note 21, at 263-271; Craton, FOUNDED, *supra* note 17, at 313, 321-22.

³⁵³ Truman M. Bodden, *UK Dependent Territory Succeeds: An Analysis of Cayman’s Successful Development*, available at <http://www.ucciconference.ky/papers/Bodden%20->

leaders opted to have the MLA elect an additional ExCo member, establishing an elected majority on that body relative to the Governor and *ex officio* officers.³⁵⁴

The financial regulatory system continued to evolve as well. In 1995, the Financial Services Supervisory Department [FSSD], which had replaced the more jurisdictionally limited Banking Inspectorate as the financial industry expanded, shut down a “bank found to be involved in trading irregularities.”³⁵⁵ Concerns about Cayman’s positive expert reputation undoubtedly influenced incorporation of FSSD into the new Cayman Island Monetary Authority (CIMA). Starting in 1997, CIMA combined the extensive regulatory transparency of MLAT and mandatory consultation with business and legal professionals.³⁵⁶ Extending collaborative policymaking to policing, CIMA signaled a regulatory innovation that aimed to secure Cayman’s future competitive advantage.³⁵⁷

V. Innovating in Regulatory Structure

CIMA’s regulation of the financial industry evolved within the recent history of changing Cayman constitutional politics. After the millennium, Caymanian politics evolved from “team” politics into a two-party system; the combination of rising government spending and falling governmental revenues resulting from the 2007 global financial crisis led for the first time to serious budgetary problems that continue to plague the jurisdiction.³⁵⁸ The 2009 Cayman Constitution also introduced the previously rejected constitutional structure: a Chief Minister (Premier) controlling ExCo elected members (changed in 1972 to Ministers) who exercised independence in cooperation with Assembly. However, the constitutional change did not end. The checks-and-balances maintained through the British Governor and the Caymanian civil service removed much of the regulatory system from direct political pressures. Moreover, the independent judiciary led by the Chief Justice possessed autonomy, with final appellate review lodged, as it had been throughout colonial history, in the Privy Council.³⁵⁹ In addition, the Cayman legal profession and powerful law firms with international reputations promoted the rule of law. Checks and balances and the rule of law—reflected in ongoing embrace of the affiliation with Britain—enabled Caymanian and British officials to approve in 2012 a committee responsible for reinstituting the long tradition of balanced budgets after the global financial crisis produced several years of deficits. A public discourse suggested how this goal was consistent with the constitutional structure shaping policies that had constructed the Cayman financial center since the 1960 Companies Law. Finally, the late 2012 arrest of Premier McKeeva Bush on corruption charges led to a no confidence vote in which members of Bush’s party including his

%20UK%20Dependent%20Territory%20Succeeds%20-

%20An%20Analysis%20of%20Caymans%20Successful%20Development.pdf at 1.

³⁵⁴ Craton, FOUNDED, *supra* note 17, at 321-22, Bodden, PATRONAGE, *supra* note 21, at 272-288.

³⁵⁵ Doggart, 1979 Report, *supra* note 3, at 154.

³⁵⁶ Craton, FOUNDED, *supra* note 17, at 359.

³⁵⁷ Craton, FOUNDED, *supra* note 17, at 359-60; Doggart, 1979 Report, *supra* note 3, at 153-54.

³⁵⁸ See James C. Miller, III, et al., *Addressing the Challenge of Fiscal Sustainability of the Cayman Islands: Final Report of the Independent Commission* (Feb. 26, 2010) available at <http://www.gov.ky/pls/portal/docs/PAGE/CIGHOME/PRESSROOM/ARCHIVE/201003/MILLERCOMMISSION/CI-FINAL%20REPORT%2002-26-10F-MILLER%20REPORT.PDF> (hereafter “Miller Commission”); Daniel J. Mitchell, *Here’s Why the Cayman Islands Is Considering Fiscal Suicide*, *Forbes* (July 31, 2012) available at <http://www.forbes.com/sites/danielmitchell/2012/07/31/heres-why-the-cayman-islands-is-considering-fiscal-suicide/> (describing post-Miller Commission continuation of budget problems).

³⁵⁹ Craton, FOUNDED, *supra* note 17, at 326.

deputy, Julia O'Connor-Connolly, joined the opposition to oust him. As the Jamaican newspaper *The Gleaner* editorialized admiringly, “it is not a tradition of Jamaican politics for members of the legislature to support no-confidence votes against their governments. Indeed, it is far from current contemplation [in Jamaica] that a deputy prime minister would cast a ballot to oust his/her own administration.”³⁶⁰

A. Creating CIMA

Amidst the evolution from “team” to party politics, several factors facilitated CIMA’s regulatory independence and effectiveness. CIMA was created after the early-1990s global collapse of the Luxembourg-chartered Bank of Commerce and Credit International (BCCI) led to increased demands from governments, NGOs, and bankers for more effective financial regulation, as reflected in the 1992 Basle Committee Statement.³⁶¹ Cayman had participated, along with France, Hong Kong, Luxembourg, Spain, Switzerland and the United Kingdom, in a regulatory “college” to attempt to deal with BCCI’s complex corporate structure prior to the bank’s collapse.³⁶² Also, Caymanian officials’ (admittedly somewhat belated) success during the 1980s handling global policing standards, the establishment of effective banking inspectorates meeting international standards, and the UK independent Financial Services Authority were precedents for the 1996 Law establishing CIMA. Thus, wrote Maples and Calder senior partner, Timothy Ridley, “the [British Dependent Territory] Cayman Islands . . . provide a useful example to consider in terms of confidentiality laws, exchange of information, drugs and ‘all crimes’ money laundering since they are considered by the UK and USA as a pathfinder for cooperation and legislation.”³⁶³ For decades British officials required other Caribbean dependencies “to follow the Cayman Islands precedent. In the case of money laundering, Bermuda, the Channel Islands, and the Isle of Man are also following the Cayman Islands ‘lead.’ Most of the Independent Caribbean countries have adopted or are in the course of adopting broadly similar legislation.”³⁶⁴ More particularly, CIMA “requires . . . internal procedures to comply with . . . the Basle Committee Statement” prescribing global banking standards to combat money laundering.³⁶⁵

CIMA quickly established an international reputation for effective financial regulation. George McCarthy, Financial Secretary and Chairman during CIMA’s initial years of operation, noted that Cayman was an early adopter of the reforms brought in by the Basle Committee and Offshore Group of Banking Supervisors and “through the Monetary Authority” the Islands “continued to formulate a clear response to procedural concerns.”³⁶⁶ CIMA also adapted institutional independence to the government’s preexisting collaborative policy making. Thus,

³⁶⁰ Editorial – *Lessons from the Cayman Islands*, *The Gleaner*, December 20, 2012 available at <http://jamaica-gleaner.com/gleaner/20121220/cleisure/cleisure1.html> (last visited January 8, 2013).

³⁶¹ Craton, FOUNDED, *supra* note 17, at 358-359; Johnson, AS I SEE IT, *supra* note 18, at 191-192. See also Angelos Kanas, *Pure Contagion Effects In International banking: The Case of BCCI's Failure*, 8 J. APPLIED ECON 101 (2005) (describing lack of contagion).

³⁶² Richard J. Herring, *BCCI & Barings: Bank Resolutions Complicated by Fraud and Global Corporate Structure*, in SYSTEMIC FINANCIAL CRISES: RESOLVING LARGE BANK INSOLVENCIES (Douglas Darrell Evanoff & George G. Kauffman, eds.) 321, 326 (2005).

³⁶³ Timothy Ridley, *Money Laundering, Combative Legislation and Cross-Border Disclosure and Enforcement*, 2 J. Money Laundering Control 232, 232 (1997).

³⁶⁴ Ridley, *Money Laundering*, *supra* note 363, at 232.

³⁶⁵ Ridley, *Money Laundering*, *supra* note 363, at 232.

³⁶⁶ Ridley, *Money Laundering*, *supra* note 363, at 233.

among its “priorities” the Authority began “intensive discussions with Cayman’s private sector. In order to remain conversant with their issues and concerns, the Authority maintains an open door policy to all institutions operating within our financial industry to enable dialogue and monitoring of financial issues as they arise.”³⁶⁷ Consistent with global responsiveness implemented through collaborative policy making, Managing Director Neville Grant said: CIMA “has undertaken projects designed to enhance international co-operation and co-ordination” of “procedures for facilitating on-site examinations of Cayman banks by overseas supervisors by way of Memoranda of Understanding” with foreign governmental bodies. “To this end, an on-site bank inspection programme was developed and is now being implemented. Onsite review programmes for insurance and investment services are expected to be implemented in 1998. The Authority is also enhancing its off-site surveillance capabilities in line with its on-site programme and has recruited a number of experienced expatriate supervisors to assist in this process.”³⁶⁸

The Assembly approved CIMA’s stronger independent enforcement authority even as party politics took root.³⁶⁹ Under CIMA’s original legislative mandate prescribing regulation of insurance, banking, investment and securities and fiduciary services, the Cabinet, rather than the Authority, issued and revoked licenses.³⁷⁰ In 2002, however, the Assembly granted CIMA “operational independence” that authorized “enforcement” through “more clearly defined functions, duties, powers and obligations and has enabled the Authority to further meet international standards of accountability and transparency.”³⁷¹ The 2002 change in CIMA’s enforcement powers received support in the Government’s 1999 planning document that established “integrating” policy achieved by “maintaining balance.”³⁷² Regarding the economy, the planning document “balanced-integrated” strategy included the call too: “Amend Monetary Authority Law. Amend Banks & Trust Companies Law.”³⁷³ Its operational independence and enforcement effectiveness preserved the financial industry’s international standing, despite concerns over corruption worries which a leading local historian observed in Caymanian politics by 2009, and the budget-deficit crisis that resulted in the UK intervention in 2012.³⁷⁴

B. Maintaining Competitive Advantage Through Stability

CIMA promoted the prosperity underpinning the social stability essential to Cayman competitive advantage.³⁷⁵ World Bank data for 2010 ranked the Cayman Islands 8th in “gross national income per capita,” equal with the Isle of Man, three ahead of the Channel Islands, and close to third-ranked Bermuda. Cayman was far ahead of former British Caribbean colonies such

³⁶⁷ Hon. George McCarthy, *Chairman’s Statement, 22 April 1998*, CAYMAN ISLANDS MONETARY ANNUAL REPORT 1997, at 8.

³⁶⁸ *Managing Director Statement, 22 April 1998*, CAYMAN ISLAND MONETARY AUTHORITY ANNUAL REPORT 1997, at 9.

³⁶⁹ Bodden, PATRONAGE, *supra* note 21, at 301-305; T. Bodden, UK, *supra* note 353, at 1; Ridley, Remarks, *supra* note 370, at 1.

³⁷⁰ Remarks by Mr. Timothy Ridley, Deputy Chairman CIMA, Claridges Hotel, London, UK, 22 June 2004 at 1.

³⁷¹ Ridley, Remarks, *supra* note 370, at 1.

³⁷² Cayman Islands Government, *The Key to the Future A Guide to the Nation Strategic Plan 1999—2008*, at 17.

³⁷³ *The Key to the Future*, *supra* note 372, at 45.

³⁷⁴ Bodden, PATRONAGE, *supra* note 21, at 314.

³⁷⁵ See Remarks by Mr. Timothy Ridley, Chairman, Cayman Islands Monetary Authority, City-Cayman Luncheon, The Mansion House, 26 January 2005, at 1-10.

as Jamaica, which was ranked 111th.³⁷⁶ Such prosperity reflected the Caymans' standing as "the fifth largest banking centre in the world and the largest funds centre as well as the world's largest private yacht registry and a leading insurance centre."³⁷⁷ Moreover, "Cayman's political stability and modernization of its laws including the companies, trust, shipping, insurance and funds legislation [much of it regulated by CIMA] and a sound judicial system based on the UK's," stimulated the "rise of a world renowned financial centre."³⁷⁸ Despite Caymanians' comparative wealth, the political corruption and budget deficits identified elsewhere with party politics required constructive policies rather than "problematic economic planning."³⁷⁹

CIMA's collaborative policy making and enforcement sustained Cayman's reputation for diverse financial products benefiting international clients and the government itself. CIMA's full operational independence occurred under experienced leadership. It began with the Authority's experienced chair, George McCarthy, and continued with his successors, Mike Austin (2002-2004), a former senior partner at KPMG, Timothy Ridley (2004-2008), a British expatriate and Caymanian, and former Maples senior law partner who also practiced in Hong Kong.³⁸⁰ It also includes long-standing professional staff, such as CIMA Managing Director, Cindy Scotland (2002-to date). The transition from McCarthy to Austin to Ridley and now back to McCarthy (who returned as Chair after retiring from the government) illustrated Cayman's traditional social stability, despite political disputes involving resident status and work permits. The shared local and international experience also evidenced collaborative policy making between CIMA and "working groups in partnership with the private sector to recommend, where necessary, legislative amendments to other areas that fall to its regulatory authority."³⁸¹ Indeed, accompanying the legislation enabling CIMA's operational independence in 2002, similar government-business collaboration facilitated the Legislative Assembly extending the Authority's regulations in the Securities Investment Business Law [SIBL] and the Retail Mutual Funds (Japan) Regulations. Ridley "emphasize[d] CIMA's continued commitment to working with the Cayman Islands Government to create the optimal combination of business facilitation and prudent regulation to ensure that Cayman is the ideal domicile for all types of financial services."³⁸²

A 2002 criminal investigation complicated Cayman's relationship with Britain. As former Governor Russell described the incident:

Much of the evidence for the prosecution came from FRU [Financial Reporting Unit] sources. Reportedly it emerged from the trial that the head of the FRU had received payments from a United Kingdom Agency which has been assumed to be MI6. The head of the FRU had an informant in the bank from whom much of the evidence had been derived and which had been reported to the Agency. The relationship between the head of the FRU and the informer was queried by defence counsel during the trial. His relationship to a Agency in London, where further evidence was understood to be available, then came to light. This had not

³⁷⁶ T. Bodden, UK, *supra* note 353, at 1.

³⁷⁷ T. Bodden, UK, *supra* note 353, at 4

³⁷⁸ T. Bodden, UK, *supra* note 353, at 1.

³⁷⁹ Trufflenet, *Independent Analysis For Public Consultation On The Overseas Territories* 15 (February 2012) available at <http://www.provochamber.com/PDF/otsconsultationreport.pdf>.

³⁸⁰ See Morriss & Henson, *supra* note 1, at XX [page numbers available shortly].

³⁸¹ Ridley, Remarks, *supra* note 370, at 3.

³⁸² Ridley, Remarks, *supra* note 370, at 3.

been disclosed to defense counsel. It is reported that an effort was made to weed certain evidence of any intelligence information which the authorities did not wish revealed to the general public. Some evidence was also reportedly destroyed on instructions from London by the head of the FRU. In face of these developments, and on a statement by the Attorney-General that the prosecution had no further evidence to present, the Chief Justice instructed the jury to bring in verdicts of ‘Not Guilty’ against the accused.³⁸³

As Russell noted, this incident raised important issues about Cayman’s relationship with the UK as it revealed that the UK had conducted a covert operation in a British Overseas Territory and that this was known by senior British officials in Cayman but not shared with the elected leadership.³⁸⁴ Given the UK’s willingness to be creative in interpreting its powers in financial disputes, as demonstrated by its use of anti-terrorism legislation against Icelandic banks during the Icesave dispute with Iceland in 2008,³⁸⁵ this is a matter of concern for an area where the UK’s reserved powers for defense intersect with Cayman’s autonomy in commercial matters.³⁸⁶

In 2007 French periodical *Le Temps* examined OFCs. It suggested how these historically-rooted factors made the Cayman Islands the “world’s leading haven for the domicile of offshore hedge funds.” Phillippe Jabre, CEO of investment management firms in London and Geneva, domiciled his hedge fund Jab Cap Multi Strategy Fund in Cayman; over the course of 2007 its value reached \$3.5 billion. With territorial “choices” a “standard practice,” Cayman benefitted from being a British Overseas Territory where the common language was English among a population of 52,000, including “400 registered lawyers, the density . . . twice as high as the already densely populated Geneva.” Since the mid-1990s, investors in funds displaced individual private banking clients through the growing expertise of CIMA and “offshore specialist law firm[s]” like Maples & Calder. During the same period, the Cayman-registered funds’ “dynamic” growth resulted from expertise CIMA, the law firms, and other financial professionals provided, along with: “the tax system, a very flexible legislative system, a tradition of British law, a concentration of highly skilled, English-speaking labor and proximity to the United States (a one and a half hour flight from Miami).” Cayman financial services lawyer Bryan Hunter declared, “We can sort it [the registration fees] all out for less than US\$6,000.”³⁸⁷

Le Temps noted that Cayman regulators readily adopted international standards. To address money laundering and the illicit drug trade the UK, United States, and Cayman signed the 1986 MLAT; shortly thereafter the supranational Financial Action Task Force (FATF) “complemented” Cayman for its expeditious compliance with the global standards MLAT embodied. In 2000 FATFA blacklisted Cayman for being among “non cooperative jurisdictions in the fight against money laundering.” But the next year Cayman signed a “second treaty on mutual tax assistance with the United States, conferring to the latter the right to investigate the region on the basis of suspicions of tax fraud by American residents.” The FATF promptly removed the “Cayman Islands . . . from the black list after one year. In the meantime they had

³⁸³ Russell, HONOUR, *supra* note 4, at 233.

³⁸⁴ Russell, HONOUR, *supra* note 4, at 233.

³⁸⁵ See Andrew P. Morriss & Birgir Petursson, *Global Economies, Regulatory Failure, & Loose Money: Lessons for Regulating the Finance Sector from Iceland’s Financial Crisis*, 59 ALABAMA L. REV. 691, 762-64 (2012) (describing Icesave dispute).

³⁸⁶ Russell, HONOUR, *supra* note 4, at 233.

³⁸⁷ Yves Genier, *The Cayman Islands establish themselves as the offshore capital for hedge funds*, LE TEMPS, Wednesday 19 September 2007, at 1, 2.

adapted their legislation and strengthened their surveillance systems. They understood that the survival of their position relied on the implementation of international regulations against money laundering and the financing of terrorist activities.” Still, CIMA chairman Ridley said, Cayman officials had “responded to the market expectations.” Admittedly, “pressure” from the US, UK, and EU preceded Cayman signing agreements in the “fight against money laundering and the bilateral treaty with the United States instituting the exchange of information re taxation.” Yet since Cayman was “a British Overseas Territory and therefore not a sovereign state, the final decision did emerge from London.”³⁸⁸

Finally, *Le Temps* raised the “negative attitude” held in the United States and large European nations regarding the Cayman financial center. Ridley replied that the Cayman government consistently policed scandals like the global collapse of BCCI and evils of money laundering and drug trafficking. “Our mistake is not to have understood early enough the full extent of the damage that such scandals that were unfolding far from our shores would have on our reputation.” In addition, “Our confidential banking system has been misunderstood. Our law is similar to that of the UK. Each country has its own preference in terms of transparency.” The Cayman financial sector initially resisted CIMA’s adoption of “individual electronic reporting of business” by regulated entities. Although the growth of party politics reflected increased political tensions in Cayman society, elected officials from all parties supported CIMA, given that in return for a budget of “around US\$20 million” it “repay[d] the government each year approximately \$65 million in the form of licenses and other rights [fees].” Financial Secretary (Minister), Kenneth Jefferson concluded: “we welcome any business operation as long as they respect our laws.” The simple “opening of a bank account requires the client to follow many administrative steps. Such strict conditions are never mentioned by the foreign countries. Our financial sector is so successful because the laws of the larger countries have developed fiscal regimes that have allowed us to flourish. Ultimately our ‘tax neutral policy’ serves the interests of investors because it decreases the costs of their investments.”³⁸⁹

C. Coping with Crises

Three recent crises have or continue to test the robustness of the Cayman collaborative policy making process. First, on September 11-12, 2004, Hurricane Ivan passed close by Grand Cayman (the eye was within 21 miles of the island), causing considerable damage to real and personal property including directly affecting more than 80% of people on the island.³⁹⁰ Winds reached between 155-200 mph and the storm surge was over eight feet.³⁹¹ The destruction totaled 183% of the previous year’s GDP, an astounding amount.³⁹² This illustrated the significant threat to a financial services-based economy from natural disasters.

Although the tourism industry suffered a temporary setback due to storm damage, the financial industry did not. As a UN report noted,

Financial services and offshore activities did not suffer any significant direct

³⁸⁸ Genier, *supra* note 387, at 3, 4.

³⁸⁹ Genier, *supra* note 387, at 5-8.

³⁹⁰ United Nations, Economic Commission for Latin America, *The Impact of Hurricane Ivan in the Cayman Islands* 13 (2004) available at <http://siteresources.worldbank.org/INTDISMGMT/Resources/CaymanIsL645-Parte1.pdf>

³⁹¹ ECLA, *Hurricane Ivan*, *supra* note 390, at 18.

³⁹² *Cayman marks sixth anniversary of Hurricane Ivan*, Cayman News Service, Sept. 11, 2010 available at <http://www.caymannewsservice.com/science-and-nature/2010/09/11/cayman-marks-sixth-anniversary-hurricane-ivan>

damage as such and were quickly operating, in some cases even while the storm was still over the jurisdiction. Through re-routing of business and by placing staff abroad in an efficient and immediate manner this sector almost did not miss a beat. It has not been possible, though, to assess its increased operating costs that must have been significant. A sign of those is the expenses incurred in travel and relocation of their staff and families, and in operating through alternative communications and utilities.

This quick response and immediate recovery is crucial to maintain the country's lead in these activities and is surely recognized by their clients, as is attested by the fact that, even during the month of September, the number of company registrations increased, in keeping with the very positive trend observed during the first three quarters of the year.³⁹³

Since Ivan, Caymanian firms and the government have taken additional steps to enhance the robustness of the financial infrastructure.³⁹⁴ The Islands can thus be said to have successfully dealt with this challenge.

Second, the world financial crisis beginning in 2007 reduced Caymanian government revenue from both financial industry fees (as the global financial industry contracted) and tourism. In response, the Caymanian Premier, with the advice of the British Foreign and Commonwealth Office, appointed a three member commission (which became known as the "Miller Commission") to "assess the Government's fiscal challenges and to make recommendations."³⁹⁵ The commission included James Miller III, former director of the U.S. Office of Management and Budget, David Shaw, a former member of the British Parliament, and Kenneth Jefferson, the then Financial Secretary of the Cayman Islands and an accountant who had worked for PriceWaterhouseCooper and Ernst & Young.³⁹⁶ The final report, however, was the product of Miller and Shaw alone.³⁹⁷

The Miller Commission concluded that government expenditures were outstripping government revenues, there were few alternative sources of revenue available, and restructuring and cuts would be necessary.³⁹⁸ It rejected imposing direct taxation as a possible means of enhancing government revenue.³⁹⁹ Since the commission's final report was issued on February

³⁹³ ECLA, *Hurricane Ivan*, *supra* note 390, at 31.

³⁹⁴ See, e.g., One Year On from Hurricane Ivan: What Lessons Have Been Learnt?, Continuity Central, Oct. 14, 2005 available at <http://www.continuitycentral.com/feature0253.htm>; *Hit Hard by Ivan*, *Cayman Financial Services in Recovery*, Business Wire (2004) available at <http://www.thefreelibrary.com/Hard+Hit+by+Ivan%2c+Cayman+Financial+Services+in+Recovery-a0122728734>; Cayman Prepared, Financial Services, Cayman Islands National Emergency Website available at http://www.caymanprepared.gov.ky/portal/page?_pageid=3701,6816134&_dad=portal&_schema=PORTAL (describing collaborative response by industry and government and "how lessons learned had since been used to strengthen Cayman's resilience.")

³⁹⁵ James C. Miller, III, et al., *Addressing the Challenge of Fiscal Sustainability of the Cayman Islands: Final Report of the Independent Commission 3* (Feb. 26, 2010) available at <http://www.gov.ky/pls/portal/docs/PAGE/CIGHOME/PRESSROOM/ARCHIVE/201003/MILLERCOMMISSION/CI-FINAL%20REPORT%2002-26-10F-MILLER%20REPORT.PDF> (hereafter "Miller Commission").

³⁹⁶ Miller Commission, *supra* note 358, at 3.

³⁹⁷ Miller Commission, *supra* note 358, at 3.

³⁹⁸ Miller Commission, *supra* note 358, at 3-4 (summarizing major conclusions and recommendations).

³⁹⁹ Miller Commission, *supra* note 358, at 4 ("Major" recommendation one was "Do not impose direct taxation.").

26, 2010, the Cayman government has continued to struggle with revenue issues⁴⁰⁰ and has not, as yet, adopted the level of cuts and restructuring recommended by the commission.⁴⁰¹ Public disagreements over budget cuts marked the relationship between then-Premier McKeeva Bush and Governor Duncan Taylor, including over who had the authority to reduce the size of the civil service (with the Premier insisting only the Governor could do so).⁴⁰² Controversy within Cayman over how to cope with the deficit grew during 2012, with a “backbench revolt” over the terms of a “Framework for Fiscal Responsibility” negotiated between Bush and Britain.⁴⁰³ Because the Caymanian constitution requires UK approval of deficit budgets, the Islands found themselves in a difficult negotiating position with Britain.⁴⁰⁴ Unfortunately for the Islands, this weakened position coincided with a political uproar in Britain over multinational companies’ use of OFCs to reduce their UK tax liabilities.⁴⁰⁵ In summer 2012 the government floated the idea of a “community enhancement fee” (effectively a payroll tax) on expatriate workers earning above CI\$20,000 per year and brought in significant increases in work permit fees.⁴⁰⁶ The financial industry opposed the proposed payroll tax, which the government ultimately withdrew.⁴⁰⁷ As of this writing, the Islands have not yet found a solution to the problem of matching revenues to expenditure, although a private-public “budget board” had been appointed to seek consensus on measures to address the problems.⁴⁰⁸ The difficulty stems from the relatively large size of the civil service payroll and the benefits of government expenditure among the Caymanian electorate, making cuts politically difficult, combined with the possible competitive disadvantage further increases in work permit fees, filing fees, or other finance-industry or tourism-related

⁴⁰⁰ See Mitchell, *supra* note 358; *CIG faces cash flow issues*, CAYMAN NEWS SERVICE (Jan. 17, 2013) available at <http://www.caymannewsservice.com/politics/2013/01/17/cig-faces-cash-flow-issues>.

⁴⁰¹ Richard W. Rahn, *Is Cayman Committing Economic Suicide?*, CAYMAN FINANCIAL REVIEW (Oct. 12, 2012) available at <http://www.compasscayman.com/cfr/2012/10/12/Is-Cayman-committing-economic-suicide/>.

⁴⁰² See, e.g., Brent Fuller, *Premier: ‘We’ve gone as far as we can’*, CAYMAN FREE PRESS (July 27, 2012) (“The governor of this territory is responsible for the civil service, not the premier,” the premier said. “I do not hire – nor fire – nor do we sign any contract for any employed civil servant. The governor himself is better able to explain why the civil service levels are so high.”); *Mac attacks Taylor*, CAYMAN NEWS SERVICE (May 4, 2012) (describing claims by Bush that Taylor was undermining Cayman).

⁴⁰³ *Back benchers revolt on FFR*, CAYMAN NEWS SERVICE (Nov. 15, 2012) available at <http://www.caymannewsservice.com/politics/2012/11/15/back-benchers-revolt-ffr> (“Just a week short of a year since McKeeva Bush actually signed the FFR and made the commitment to the UK to pass it into local law before the end of the last financial year, via the PMFL, the framework has at last been formalized. After missing several deadlines imposed by the FCO to enact the necessary legislation and following a crisis between the premier and the UK minister over the tardiness in its passage and, more importantly, additions Bush had attempted to include in the law, the premier told the opposition that they should credit him with bringing the bill to the House.”).

⁴⁰⁴ Russell, HONOUR, *supra* note 4, at 231 (forecasting such issues would arise).

⁴⁰⁵ See Louise Armistead, *Autumn Statement: Britain to Drive G8 crackdown on company tax avoidance*, The Telegraph (Dec. 5, 2012) (UK “Chancellor said he was committed to ‘leading the international effort’ to prevent international companies transferring profits away from major economies, including Britain, to tax havens.”).

⁴⁰⁶ Brent Fuller, *Payroll Tax ‘Worst Option’*, CAYMAN COMPASS (July 27, 2012) (describing debate over tax) available at <http://www.compasscayman.com/story.aspx?id=103867>

⁴⁰⁷ See *Business Associations blast payroll tax*, CAYMAN COMPASS (August 3, 2012) (quoting Cayman Islands Council of Associations that “The Associations regard the Community Enhancement Fee in its current form to be discriminatory, divisive to society and inequitable.”) available at <http://www.compasscayman.com/caycompass/2012/08/03/Business-associations-blast-payroll-tax/>.

⁴⁰⁸ *Budget Board Appointed*, Cayman New Service (October 9, 2012) available at <http://www.caymannewsservice.com/politics/2012/10/09/budget-board-appointed> (describing board of 2 private sector representatives and a group of civil servants and headed by a deputy governor).

revenue measures might create. To take but one example, the money-losing Cayman Airways⁴⁰⁹ is unlikely to be privatized not only because it is a significant employer in the Islands but because residents perceive it to be an important resource after its role in assisting evacuation before Hurricane Ivan. However one might describe the disagreements over the fiscal issues among Caymanians, the British government, and the financial industry, it certainly cannot be termed “collaborative policy making”.

Further complicating matters, multiple and lengthy investigations into Premier McKeeva Bush over corruption charges led to his arrest in December 2012.⁴¹⁰ Although of this writing Bush has not been charged, he was removed from office on a no confidence vote in which a majority of his own party joined the opposition in voting against him.⁴¹¹ Bush charged that his removal was the result of a “vendetta” by the Governor.⁴¹²

After the no-confidence motion, the Governor then appointed Bush’s former deputy, Julianna O’Connor-Connolly, as Premier and she is leading a minority government.⁴¹³ (The minority government itself raises some legal questions, including who is the leader of the opposition.⁴¹⁴) With elections scheduled for May 2013, and a new political party vowing to field candidates as well, the political situation remains in flux.⁴¹⁵ We suspect that the most likely electoral outcome is a three or four way split of the Legislative Assembly among the various political groupings, with the former Premier being reelected as a MLA along with some of his remaining allies and opponents. The uncertainty over how coalition politics might work in Cayman, the outcome of the investigation into the former Premier, and the continuing budgetary issues pose serious challenges for the collaborative policy making process and the Caymanian constitutional order.

Two quite different outcomes of these events define the range of possible futures. (Of course, many intermediate scenarios are also possible.) The optimistic scenario for the Islands is that the corruption investigation into the former Premier proves to be a legitimate police matter, rather than a personal vendetta, and a Caymanian jury ultimately resolves the question of his guilt or innocence in a manner that proves convincing to the majority of Caymanian residents and the broader financial community one way or another. The 2013 elections produce a majority coalition that resolves the budget problems through a combination of budget cuts, revenue

⁴⁰⁹ Miller Commission, *supra* note 395, at 43, Table 4-1 (noting losses of CI\$2.6 million in 2008-09 and CI\$4.5 million in 2007-08 and negative net worth of CI\$42.7 million as of June 30, 2009).

⁴¹⁰ Matt Blake, *Cayman Islands leader McKeeva Bush is arrested on suspicion of corruption*, DAILY MAIL Dec. 11, 2012, available at <http://www.dailymail.co.uk/news/article-2246518/Cayman-Islands-leader-McKeeva-Bush-arrested-suspicion-corruption.html>.

⁴¹¹ *Cayman Islands MPs vote against Premier McKeeva Bush*, BBC NEWS (Dec. 19, 2012) available at <http://www.bbc.co.uk/news/world-latin-america-20779961>.

⁴¹² Byron Buckley, *Embattled Cayman Islands premier might quit party*, THE GLEANER (December 16, 2012) available at <http://jamaica-gleaner.com/gleaner/20121216/news/news1.html>.

⁴¹³ Alexander Britell, *Juliana O’Connor-Connolly Named New Premier of the Cayman Islands*, Caribbean Journal (Dec. 19, 2012) available at <http://www.caribjournal.com/2012/12/19/juliana-oconnor-connolly-named-new-premier-of-cayman-islands/>.

⁴¹⁴ *Mac disputes opposition job*, CAYMAN NEWS SERVICE (Jan. 10, 2013) available at <http://www.caymannewsservice.com/politics/2013/01/10/mac-disputes-opposition-job> (“McKeeva Bush suggested on Thursday that he should be the leader of the opposition, given that he leads a group of four, as does the PPM leader.”).

⁴¹⁵ *Editorial – Lessons from the Cayman Islands*, THE GLEANER, Dec. 20, 2012 available at <http://jamaica-gleaner.com/gleaner/20121220/cleisure/cleisure1.html>.

enhancements, and reforms. Cayman then regains its fiscal autonomy, strengthening its position with respect to the UK. If this is the outcome of the fiscal and political crises, Cayman will emerge stronger as a jurisdiction, just as it did from Hurricane Ivan. As the *Jamaica Gleaner* admirably noted in an editorial, it is relatively unusual for a sitting Caribbean government leader to be arrested over corruption charges and then to be ousted by members of his own party.⁴¹⁶ In this optimistic scenario, the collaborative policy making process reappears after the system demonstrates that it “works”.

An alternative pessimistic scenario is that the investigation into the former premier proves inconclusive or yields a divisive verdict (of either guilt or innocence), Caymanian politics fracture, and the 2013 elections produce a weak government which proves unable to resolve the fiscal issues. The finance sector begins a slow decline, with other OFCs gradually luring business away from Cayman by pointing to the instability caused by the combination of fiscal problems, increased British interference caused by a growing Caymanian dependence on UK funding assistance, and continuing disputes among political factions.⁴¹⁷ All of this leads to a long term breakdown in the collaborative policy-making model, with additional efforts to extract resources from the finance sector (as with the “service fee” on expatriates) pushing firms to other jurisdictions.

Conclusion

Understanding how constitutional structure shaped the history of the Cayman financial center offers a response to critics’ preoccupation with actual or imagined abuses. OFC critics generally ignore the role of the United States and European nations in tax avoidance policies used by multinational corporations and wealthy individuals and those nations’ own roles as tax havens.⁴¹⁸ Faced with a declining economy dependent upon seamen remittances and subsistence agriculture, Cayman enacted the 1960 Companies Law, the basis of all subsequent banking, and financial services and related legislation. Diversification in financial products and regulation followed basic changes in the Cayman constitutional structure. In 1959, 1972, 1993, and 2009 constitutional change extended Caymanians’ self-government and popular faith in maintaining a role for Britain that enforced checks-and-balances and the rule of law. Caymanian stability rested in part on what – within the Caribbean – were balanced proportions of black, white, and mixed-race people. While racial animosity sometimes divided individuals on a personal level, government, social, and economic leaders from each group managed the transition from “Team” to party politics, disputing practical policy outcomes rather than racial or social-class ideologies and giving the Islands considerable political stability in a region where that was often lacking.

The Cayman global competitive advantage thus did not originate in corrupt practices; it grew instead, from a history of social and constitutional stability sustaining collaborative policymaking among elected officials, legal professionals, and UK and Cayman civil service authorities like CIMA. In part, Cayman’s success rested on the widespread understanding among

⁴¹⁶ *MPs vote against*, *supra* note 411.

⁴¹⁷ There would be some irony in this, as Cayman used similar arguments to lure business from the Bahamas in the late 1960s and early 1970s. *See* notes 183 to 185 *supra*.

⁴¹⁸ *See, e.g.*, Leslie Wayne, *How Delaware Thrives as a Corporate Tax Haven*, N.Y. Times (June 30, 2012) available at <http://www.nytimes.com/2012/07/01/business/how-delaware-thrives-as-a-corporate-tax-haven.html?pagewanted=all&r=0>; *UK is a tax haven, says tax expert Richard Murphy*, The Methodist Church in Britain (July 2, 2012) available at <http://www.methodist.org.uk/news-and-events/news-releases/uk-is-a-tax-haven-says-tax-expert-richard-murphy>.

those who came of age as the financial services industry developed and who remembered the days of thatch rope and turtle fishing. As Caymanian Truman Bodden put it in 1981, “Most Caymanians are homeowners, sir, ... and most of them have been to sea. They know how quickly a country can be wrecked, and that if they do anything stupid they’ll lose. We mustn’t kill the goose that lays the golden egg.”⁴¹⁹

The evolution of the Caymanian financial sector has three key lessons for the rest of the world. First, financial services can provide a viable development strategy for small jurisdictions if they get the details right. Creating a climate that attracts financial professionals requires constitutional, political and legal stability and adaptability. Small (and perhaps larger as well) jurisdictions cannot rest on their laurels – they must innovate to develop new products and services and improve existing ones. The same attributes contribute to making these jurisdictions attractive places for their citizens. It is no wonder that these jurisdictions “have resisted the efforts of the OECD that they concede their sovereignty by cooperating fully with the desires of developed states’ own economic strategies.”⁴²⁰

Second, a successful OFC is not just a nexus of professionals, telecommunications and air routes. It also requires a regulatory framework that reinforces and supports the financial sector. That support includes not only creating appropriate legislation but also establishing capable regulators who can both weed out bad apples and participate in international fora where the future of financial markets are determined. More than a wall with brass name plates is needed to participate in the financial industry today. Cayman’s development of a collaborative policy making process enabled it to strike the balance necessary to innovate and grow while screening out problematic individuals, firms, and lines of business.

Finally, Cayman and its neighbors illustrate the fragility of successful legal, political, and constitutional arrangements – a fragility that larger nations would do well to keep in mind in future financial regulation. Britain has – some of the time – acknowledged her responsibilities to her current overseas territories and former colonies; other European and North American nations have been less attuned to the impact of their policies abroad. (Possibly Britain’s keener sense of responsibility may stem from her fear that she will be forced to subsidize her overseas territories should their financial sectors fail). As former Cayman Governor Russell noted in his memoir, “The basic problem is that there has never been direct taxation in the Cayman Islands. The outside world is the wolf without the tail trying to persuade a very happy bushy-tailed wolf to be the same.”⁴²¹ There is no question that the UK, the EU, and the United States have the power to amputate the tiny Cayman wolf’s bushy tail if they chose to do so. But if international relations are more than the exertion of brute force, there are important issues that need to be addressed in the development of international financial law with respect to OFCs. This requires broadly inclusive international consultations, not narrow efforts at defining best practices through rich nations’ clubs like the OECD or unilateral, asymmetric measures like the United States’ efforts through FATCA to force other countries to comply with U.S. regulatory measures. While it remains to be seen whether Cayman can avoid killing the goose that lays the golden eggs, there are also outside threats to the goose.

⁴¹⁹ Sampson, *supra* note 12, at 284.

⁴²⁰ Vlcek, *supra* note 2, at 5.

⁴²¹ Russell, HONOUR, *supra* note 4, at 193.