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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

* University Research Professor of History and Law, University of Alabama. The authors thank Dean Kenneth Randall for generous research support, and Jim Bryce, Vaughan Carter, Simon Cooper, Julie Hill, Ronald Krotoszynski, Roger Meiners, Richard Rahn, and Timothy Ridley for extensive comments, the staff of the British Archives and the Cayman National Archives for assistance with the materials there, the participants in the Harvard Business History Seminar in October 2012, in the faculty workshop at the University of California at Irvine School of Law in January 2013, the George Mason Philosophy and Political Economy Workshop in February 2013, and the George Mason Law & Economics Center Workshop in May 2013. Richard Rahn and Timothy Ridley generously shared their own collections of historical materials. We have benefited enormously from listening to eight years of lectures by Vaughan Carter on the evolution of the Caymanian constitution and its role in supporting the financial center; this paper would not be possible without his generous sharing of his insights.

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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.

system. For example, Prof. William Vlcek termed them “nodal points in the web of banks and financial institutions that interlace the world via electronic connections.”² And the *Economist Intelligence Unit* (“EIU”) 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

Nevertheless, he insisted, these were “all shades of gray.” Rob Hopkins, *An Interview with Nick Shaxson, author of 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. 417, 419-421 (2013) (summarizing criticisms).

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 1990*, 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 466, TABLE 4.

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 455-56 (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 458-460.

underway to alter the 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.⁸

Cayman's development must be examined within the context of broader constitutional trends within Britain's dissolving post-war Empire. In the Caribbean, Cayman, and other jurisdictions that maintained ties to the colonial powers—as well as those colonies that opted for 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.⁹ 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,”¹⁰ the new constitutional orders that arose after the war created policy space within which even those jurisdictions that did not choose to become

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 Key dates in the story are listed in the Appendix.

⁹ B.W. Higman, *A CONCISE HISTORY OF THE CARIBBEAN* 267-326 (2011).

¹⁰ John Darwin, *BRITAIN AND DECOLONIZATION: THE RETREAT FROM EMPIRE IN THE POST WAR WORLD* 9 (1988).

independent gained greater control over their development. This constitutional autonomy 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 that credibly committed to controlling criminal activity and fraud.

In Alfred Chandler's classic thesis, strategy leads business structure.¹¹ 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 fostered an entrepreneurial climate that brought it new businesses and was so effective 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 were generally well positioned to meet the growing post-war demand for jurisdictions providing opportunities to structure businesses and personal affairs to reduce tax.¹² 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 "Sterling Area" and through a combination of increasing tax and surtax rates, 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

¹¹ Alfred D. Chandler, Jr., *STRATEGY AND STRUCTURE: CHAPTERS IN THE HISTORY OF THE AMERICAN INDUSTRIAL ENTERPRISE* (1962). The idea that constitutional structure promotes collaborative policy making that avoids cartelization and capture is suggested in John Braithwaite and Peter Drahos, *GLOBAL BUSINESS REGULATION* (2000).

¹² 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).

a market for OFC services which City firms were happy to help drive.¹³ 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”¹⁴—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.¹⁵

Part 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 also 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. Part 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;¹⁶ 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 OFCs. Part 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. The link strengthened 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. Part 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

¹³ 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). *The Economist* argued that the UK tolerated its Dependent Territory OFCs because they brought more revenue to the City than it lost the UK via tax avoidance. *The Economist* (Oct. 24, 1996) at 95.

¹⁴ Paul Einzig, *THE HISTORY OF FOREIGN EXCHANGE* 239 (2nd ed. 1970).

¹⁵ 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). Roy Bodden argues that this was a viable model for British Overseas Territories as well. See J.A. Roy Bodden, *THE CAYMAN ISLANDS IN TRANSITION: THE POLITICS, HISTORY, AND SOCIOLOGY OF A CHANGING SOCIETY* 123 (Ian Randle 2007).

¹⁶ Bill Walker (with M. Shane Aquart), *FROM GEORGETOWN TO GEORGE TOWN* 127 (2010) (noting that “But for the misguided actions of the grossly misguided actions of the Pindling government, we [Cayman] might still be struggling in the mix.”); Bodden, *CAYMAN ISLANDS IN TRANSITION*, *supra* note 17, at 141 (noting role of expatriate migrants from the Bahamas in promoting Cayman as a jurisdiction).

Caymanian government created an innovative financial regulatory body, the Cayman Island Monetary Authority (CIMA), which further enhanced Cayman's competitive position. Part 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.

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.¹⁷ Limited airline service sustained an embryonic tourist business built around small guest houses and hotels.¹⁸ A 1950s tourism pamphlet promoted the Islands by cautioning, "You must console yourself with the thought that life anywhere is impossible without a little healthy frustration."¹⁹ There were no banks on any of the three islands.²⁰ 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.²¹ 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.²²

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.²³ These were generally drawn from the Islands' small mercantile group, which dominated the Legislative Assembly.²⁴ 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.²⁵ The 1960 Companies Law emerged from the transforming constitutional struggle, setting the stage for later developments.

¹⁷ 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.

¹⁸ Doran, *supra* note 17, at 437-38.

¹⁹ Walker, FROM GEORGETOWN, *supra* note 16, at 130.

²⁰ Michael Craton, FOUNDED UPON THE SEAS: A HISTORY OF THE CAYMAN ISLANDS AND THEIR PEOPLE 352-353 (2003).

²¹ Vassel Johnson, AS I SEE IT: HOW CAYMAN BECAME A LEADING FINANCIAL CENTRE 103-04 (2001); Higman, *supra* note 9, at 269.

²² Craton, FOUNDED, *supra* note 20, at 306-307.

²³ Craton, FOUNDED, *supra* note 20, at 306.

²⁴ J. A. Roy Bodden, PATRONAGE, PERSONALITIES, AND PARTIES, CAYMANIAN POLITICS FROM 1950-2000 2-4, 17-46 (2010).

²⁵ Bodden, PATRONAGE, *supra* note 24, at 47-69, 99-128.

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-fishing boats that ranged widely throughout the Caribbean.²⁶ Caymanians were thus aware of changes in the world economy and able to contrast their home with the rest of the Caribbean and the broader world.²⁷ 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.²⁸ However, the majority of Caymanian seamen were effectively disenfranchised by their long absences from the islands.²⁹ 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.³⁰ 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.”³¹ Combined with Britain’s relative parsimony towards its Caribbean possessions, this left the Islands with few public resources for economic development.³² For example, a serious mosquito infestation hampered the development of tourism and budget limitations prevented steps to control the mosquitoes.³³ 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.

²⁶ Craton, *FOUNDED*, *supra* note 20, at 220-223, 281, 301-302, 401-403; Johnson, *supra* note 21, 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.”). Caymanians began serving on merchant marine ships after World War II, in part because of the decline of turtle fishing. Bodden, *CAYMAN ISLANDS IN TRANSITION*, *supra* note 17, at 19-20. At its peak, 1,000 Caymanians out of a total population of 10,000 islanders were at sea. *Id.* at 21.

²⁷ Roger C. Smith, *THE MARITIME HERITAGE OF THE CAYMAN ISLANDS* 80 (2000) (“Caymanian seafaring men broadened their once-insular perspectives by voyaging worldwide.”); Bodden, *CAYMAN ISLANDS IN TRANSITION*, *supra* note 17, at 82 (“It was these opportunities that allowed Caymanian seamen to travel the world, exposing them to different cultures and to a variety of consumer goods.”).

²⁸ 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”). *See also*, Bodden, *CAYMAN ISLANDS IN TRANSITION*, *supra* note 17, at 2 (arguing that “benign neglect” of Cayman by Britain left Caymanians viewing “themselves as being apart and distinct from the rest of the Caribbean”).

²⁹ Bodden, *PATRONAGE*, *supra* note 24, at 68, 132.

³⁰ Doran, *supra* note 17, at 438-39.

³¹ Russell, *HONOUR*, *supra* note 4, at 167.

³² Cayman Archives Oral History Interview, Benson O. Ebanks Discs 1-4 (1997); Craton, *FOUNDED*, *supra* note 20, at 332-335, 339-340, 347-48, 352; Davies, *LEGAL STATUS*, *supra* note 28, at 60-61 (British aid to the Caribbean was less than provided by some of the other European colonial powers, including the Dutch).

³³ Craton, *FOUNDED*, *supra* note 20, at 331, 343-346; Cayman Archives Oral Histories Interview, Jack Rose, Disc 3, at 17 (1999). On the mosquito problem, see Johnson, *supra* note 21, 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.”).

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.³⁴ In addition, Nicaragua reduced Caymanians' access to Nicaraguan turtle fisheries in the 1960s.³⁵ 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,³⁶ 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 to the legal profession, with few law agents (legally trained lay individuals) and no lawyers on the islands.³⁷

Three noteworthy developments occurred during this formative period. 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 1950.³⁸ Second, influential Caymanian businessman and 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.³⁹ Some Caymanian property-holders opposed the Hotels Aid Act because some land consolidations were necessary to construct the hotels.⁴⁰ 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.⁴¹ Third, Barclays opened the islands' first bank, using a Jamaican-registered subsidiary.⁴² Barclays' initial business was handling seamen's remittances; prior to the bank's establishment, local mercantile firms like Merren's handled these.⁴³ Barclays thus created an initial connection, albeit a limited one, between Caymanians and the world's banking system.⁴⁴

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

³⁴ Smith, *MARITIME HERITAGE*, *supra* note 27, at 146; Johnson, *supra* note 21, at 71 ("cargo container [ships] appeared on the scene ... and joined ranks with new supertankers for the reduction of crew requirements.").

³⁵ Davies, *LEGAL STATUS*, *supra* note 28, at 35; Smith, *MARITIME HERITAGE*, *supra* note 27, at 79-80; Bodden, *CAYMAN ISLANDS IN TRANSITION*, *supra* note 17, at 47.

³⁶ Cayman Archives Oral History Interview, Arthur Hunter, Disc 3, at 8 (2000).

³⁷ Caymanians depended primarily on "law agents" rather than solicitors and barristers to accomplish legal tasks into the early 1960s. *See* Hunter Interview, *supra* note 36, at Discs 3-4.

³⁸ Doran, *supra* note 17, at 317-319; Craton, *FOUNDED*, *supra* note 20, at 334-335.

³⁹ Craton, *FOUNDED*, *supra* note 20, at 347-348. *See also*, Bodden, *CAYMAN ISLANDS IN TRANSITION*, *supra* note 17, at 18-19 (describing early efforts to develop tourism).

⁴⁰ Craton, *FOUNDED*, *supra* note 20, at 339-340.

⁴¹ Craton, *FOUNDED*, *supra* note 20, at 340-341.

⁴² Craton, *FOUNDED*, *supra* note 20, at 352-353.

⁴³ Craton, *FOUNDED*, *supra* note 20, at 309-310, 473 n. 4; Bodden, *PATRONAGE*, *supra* note 24, at 68; Smith, *MARITIME HERITAGE*, *supra* note 27, at 80.

⁴⁴ Ebanks, *supra* note 32, at 14; Craton, *FOUNDED*, *supra* note 20, at 332-335, 339-340, 347-48, 352-53.

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.⁴⁵

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 1955.⁴⁶ From Britain's point of 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."⁴⁷ 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."⁴⁸ 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.⁴⁹ 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.⁵⁰ 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

⁴⁵ Doran, *supra* note 17, at 437-38, 443.

⁴⁶ 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.

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).

⁴⁷ Darwin, *supra* note 10, at 222.

⁴⁸ *THE WEST INDIES* (S.R. Ashton & David Killingray, eds. 1999) Series B, vol. 6 of British Documents on the End of Empire, at Ixxi (quoting Colonial Cabinet Policy Committee draft memorandum, 1961).

⁴⁹ *Id.*

⁵⁰ Darwin, *supra* note 10, 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 46, 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.").

clear that Federation would require them to yield some of the powers they were just acquiring from Britain to a Federation government.⁵¹ 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?”⁵² 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.⁵³

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 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.⁵⁴ 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.”⁵⁵ 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.”⁵⁶ 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.”⁵⁷ This forecast how the enfranchisement of women would significantly broaden the interests represented in the legislative assembly.⁵⁸

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.⁵⁹ Britain feared that if it did not persuade Cayman to agree to join the Federation, Cayman would “remain a permanent U.K. dependency.”⁶⁰ One British analysis listed Cayman as a possession for which there was “no probability” of independence.⁶¹

Although 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

⁵¹ Darwin, *supra* note 10, at 215 (quote), 219 (initial local enthusiasm); THE WEST INDIES, *supra* note 48, at lxxi (being left quote), xli (federation seen as solution from mid 19th century). Davies, LEGAL STATUS, *supra* note 28, at 104-05 (attributing failure of federation to “disproportionate, onerous, financial obligation” it placed on Jamaica and Trinidad and Tobago.)

⁵² Davies, LEGAL STATUS, *supra* note 28, at 105-6.

⁵³ Craton, FOUNDED, *supra* note 20, at 306-311, 314-315.

⁵⁴ Bodden, PATRONAGE, *supra* note 24, at 66.

⁵⁵ Bodden, PATRONAGE, *supra* note 24, at 66.

⁵⁶ Bodden, PATRONAGE, *supra* note 24, at 68.

⁵⁷ Bodden, PATRONAGE, *supra* note 24, at 68.

⁵⁸ Bodden, PATRONAGE, *supra* note 24, at 66-68; Craton, BAHAMAS, *supra* note 93, at 306-314.

⁵⁹ THE WEST INDIES, *supra* note 48, at 417.

⁶⁰ THE WEST INDIES, *supra* note 48, at 418.

⁶¹ THE WEST INDIES, *supra* note 48, at 518.

self-government as a separate British territory.⁶² 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.⁶³ 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.⁶⁴ 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.⁶⁵

Caymanians began to consider a model based on Bermuda and the Bahamas' nascent tax and exchange control avoidance businesses,⁶⁶ Curaçao's "ring-fenced" tax regime benefitting from the extension of the U.S.-Netherlands tax treaty to the Netherlands Antilles,⁶⁷ and the tax structuring business in the Channel Islands and Europe generally.⁶⁸ 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".⁶⁹

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 1959.⁷⁰ 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".⁷¹ The City had also developed considerable expertise navigating regulatory thickets in adapting to

⁶² Bodden, PATRONAGE, *supra* note 24, at 95-96. *See also*, Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at 24 (describing goal of gaining "the maximum autonomy" in Caymanian affairs).

⁶³ Bodden, PATRONAGE, *supra* note 24, at 96-97.

⁶⁴ Cayman Archives Oral History Interview, Sir James Astwood, Disc 3, at 3-4, 40-41 (2005).

⁶⁵ Rose Interview, *supra* note 33, at Disc 3, 12, 17, 18, 20, 21.

⁶⁶ 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 industrialized countries."); Sampson, *supra* note 13, 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).

⁶⁷ Boise & Morriss, *supra* note 46, at 409 (discussing extension of treaty).

⁶⁸ Farquet, *supra* note 12, 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"). *See also* Walker, FROM GEORGETOWN, *supra* note 16, at 127 (noting that "the offshore financial business was not new").

⁶⁹ Richard Whiting, THE LABOUR PARTY AND TAXATION: PARTY IDENTITY AND POLITICAL PURPOSE IN TWENTIETH-CENTURY BRITAIN 147 (2000).

⁷⁰ Barry Eichengreen, GLOBALIZING CAPITAL: A HISTORY OF THE INTERNATIONAL MONETARY SYSTEM 94, 121-22 (1998).

⁷¹ 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 12, at 18 (describing City involvement in international tax issues in interwar period).

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.⁷² 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.⁷³

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.⁷⁴ The old Cayman legislature of Justices of the Peace and Vestrymen ended and a new Legislative Assembly took its place.⁷⁵ 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.⁷⁶

The Executive Council was formally merely advisory to the Administrator, who presided at its meetings.⁷⁷ 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.⁷⁸ 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

⁷² BANKER'S WORLD, *supra* note 71, 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).

⁷³ Bodden, PATRONAGE, *supra* note 24, at 66; Sullivan, *Bahamas*, *supra* note 66, at 522; THE WEST INDIES, *supra* note 48, at 415 (fear of federation legislation); Myhill, *supra* note 69, 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 69, 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 EURO CURRENCY MARKETS, DOMESTIC FINANCIAL POLICY, AND INTERNATIONAL FINANCIAL INSTABILITY* (1989) at 4, 10; Cairncross & Eichengreen, *supra* note 69, 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").

⁷⁴ Craton, *FOUNDED*, *supra* note 20, 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"). Cayman's early constitutional history is explored in the context of the relationship of the Anglican church in Cayman to the British church in Nicholas J.G. Sykes, *THE DEPENDENCY QUESTION: A STUDY OF CHURCH AND STATE IN THE CAYMAN ISLANDS* 15-50 (1996) available at <http://www.churchofenglandcayman.com/Dep%20Ques%20-%20Contents.html>. Sykes argues that Cayman was always treated as a separate dependency by the British government, but instead that some personnel (e.g. the governor of Jamaica) had additional roles with respect to the Cayman Islands. Thus Sykes concludes "*To have the Governor of Jamaica as the Governor of the Cayman Islands does not by itself necessitate or imply a state of dependency of the Cayman Islands upon Jamaica.*" *Id.* at 17.

⁷⁵ Craton, *FOUNDED*, *supra* note 20, at 310.

⁷⁶ Craton, *FOUNDED*, *supra* note 20, at 310.

⁷⁷ Craton, *FOUNDED*, *supra* note 20, at 310.

⁷⁸ Craton, *FOUNDED*, *supra* note 20, at 310.

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.⁷⁹

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.⁸⁰ 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.⁸¹ 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."⁸² By contrast, the Bahamas' politics was dominated by Bay Street faction through the white-led United Bahamian Party at this time.⁸³ In addition, "school teachers among them ensured that the 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."⁸⁴ 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.⁸⁵ 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.⁸⁶ 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.⁸⁷ (Existing Cayman companies with Jamaican registration re-registered under the new law.⁸⁸) As Arthur Hunter, the new Registrar recalled: "the Companies Law . . . was making it possible for Cayman to register the

⁷⁹ Bodden, PATRONAGE, *supra* note 24, at 66, 70, 74-75; Rose Interview, *supra* note 33, at Disc 3 12, 17, 18, 20, 21.

⁸⁰ Craton, FOUNDED, *supra* note 20, at 347.

⁸¹ Bodden, PATRONAGE, *supra* note 24, at 107-45.

⁸² Bodden, PATRONAGE, *supra* note 24, at 67.

⁸³ 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 in which the minority in power were whites (or regarded themselves as such), and the powerless majority was overwhelmingly non-white.").

⁸⁴ Bodden, PATRONAGE, *supra* note 24, at 67.

⁸⁵ Rose Interview, *supra* note 33, at Disc 3, 12, 17, 18, 20, 21; Bodden, PATRONAGE, *supra* note 24, at 66-68.

⁸⁶ Craton, FOUNDED, *supra* note 20, at 313; sec.1 notes.

⁸⁷ Hunter Interview, *supra* note 36, Disc 3 at 8-9.

⁸⁸ Hunter Interview, *supra* note 36, Disc 3 at 9.

companies on their own, without any reference to Jamaica or anywhere else.”⁸⁹ 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.⁹⁰

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].”⁹¹ 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.⁹² 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 1930s,⁹³ and Switzerland, Liechtenstein, and Luxembourg had been since the 1920s.⁹⁴ 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.⁹⁵

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.⁹⁶ 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.⁹⁷ Nevertheless, divided local politics persisted concerning whether the Caymans should preserve some connection with Jamaica;⁹⁸ and the colonial Administrator’s dominance of the Executive Council recalled rule by Justices and Vestrymen.

⁸⁹ Hunter Interview, *supra* note 36, Disc 3 at 9.

⁹⁰ Rose Interview, *supra* note 33, at Disc 3, 12, 17, 18, 20, 21.

⁹¹ Hunter Interview, *supra* note 36, at 9.

⁹² Rose Interview, *supra* note 33, at Disc 3, 12, 17, 18, 20, 21. *See also* Walker, FROM GEORGETOWN, *supra* note 16, at 117 (noting that Rose had “germinated the seeds” of the financial center from a note left by his predecessor).

⁹³ *See* notes 66 to 68 *supra*.

⁹⁴ Farquet, *supra* note 12, at 16-17.

⁹⁵ *See generally* Erin O’Hara & Larry E. Ribstein, THE LAW MARKET (2009) (describing factors involved in competition among jurisdictions).

⁹⁶ Hunter Interview, *supra* note 36, at Disc 3, 10-11.

⁹⁷ 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 32, at Disc 3, 10-12.

⁹⁸ Bodden, PATRONAGE, *supra* note 24, at 94-98.

Consummation of the Companies Law's possibilities required resolving vital constitutional and diversification-financial issues during the 1960s.⁹⁹

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.¹⁰⁰ 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

The progress of decolonization elsewhere in the Caribbean 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.¹⁰¹ 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.¹⁰² As leading Caymanian elected public official Benson Ebanks 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."¹⁰³

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.¹⁰⁴ 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 August 6, 1962.¹⁰⁵ 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."¹⁰⁶ Thus, the Companies Law went

⁹⁹ Bodden, PATRONAGE, *supra* note 24, at 76-106.

¹⁰⁰ Craton, FOUNDED, *supra* note 20, at 305-14; sec. 1, notes.

¹⁰¹ Craton, FOUNDED, *supra* note 20, at 315-317.

¹⁰² Craton, FOUNDED, *supra* note 20, at 315-17, 319; Bodden, PATRONAGE, *supra* note 24, at 107-145; Walker Interview, *supra* note 97, at 6-9; Aileen MacDonald Interview, *supra* note 97, at Disc 3, 11; Benson Ebanks Interview, *supra* note 32, at 19-21.

¹⁰³ Benson Ebanks Interview, *supra* note 32, at Disc 3, 19; Disc 4, 20.

¹⁰⁴ Rose Interview, *supra* note 33, at Disc 4, 2; Craton, FOUNDED, *supra* note 20, at 314-15.

¹⁰⁵ Craton, FOUNDED, *supra* note 20, at 315.

¹⁰⁶ *Introduction* in THE WEST INDIES, *supra* note 48, at lxxi. During 1959-61 Cayman representatives participated in London conferences that crystallized these views. Craton, FOUNDED, *supra* note 20, at 309, 314; Rose Interview, *supra* note 33, at 4.

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.¹⁰⁷ 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.¹⁰⁸ Fears of domination by Jamaica led the conservatives to oppose continuing legal links to an independent Jamaica.¹⁰⁹ 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.¹¹⁰ 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 that were necessary to mobilize political support.¹¹¹ 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.¹¹² Reflecting Britain's policy preferences, both Rose and the out-going Governor, Sir Kenneth Blackburne, promoted the benefits of ties with an independent Jamaica, while simultaneously professing respect for leaving the ultimate decision to Caymanians.¹¹³

Although a majority of Caymanian voters supported the NDP, public opinion also favored continued colonial status.¹¹⁴ 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."¹¹⁵ 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.¹¹⁶ 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.¹¹⁷ Blackburne claimed that the volume of applause following the debate supported maintaining Cayman's colonial status.¹¹⁸ 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

¹⁰⁷ Rose Interview, *supra* note 33, at 2-17; Craton, *supra* note 20, at 315-317.

¹⁰⁸ Craton, FOUNDED, *supra* note 20, at 316.

¹⁰⁹ Craton, FOUNDED, *supra* note 20, at 316.

¹¹⁰ Craton, FOUNDED, *supra* note 20, at 315-316.

¹¹¹ Bodden, PATRONAGE, *supra* note 24, at 36-46, 116-128.

¹¹² Craton, FOUNDED, *supra* note 20, at 315-316.

¹¹³ Craton, FOUNDED, *supra* note 20, at 316-319.

¹¹⁴ Craton, FOUNDED, *supra* note 20, at 316-319.

¹¹⁵ Sampson, *supra* note 13, at 280.

¹¹⁶ Craton, FOUNDED, *supra* note 20, at 315-319; Bodden, *supra* note 24, at 117-145.

¹¹⁷ Craton, FOUNDED, *supra* note 20, at 317.

¹¹⁸ Craton, FOUNDED, *supra* note 20, at 317.

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."¹¹⁹ Some ties remained to Jamaica as Cayman continued the official use of Jamaican currency¹²⁰ (although U.S. dollars also circulated unofficially on the island through the payment of seamen's wages in dollars¹²¹) and Jamaican appellate judges.¹²²

Caymanians' broad public support for a direct link to Britain under increased self-government facilitated collaborative promotion of the offshore financial center.¹²³ 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."¹²⁴ The NDP platform also opposed "introduction of income tax" and "invited foreign investment",¹²⁵ 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.¹²⁶

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.¹²⁷ Although Rose first used the "invitation power" as a means of blocking NDP leader Panton'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.¹²⁸ 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.¹²⁹ The 1962 governmental changes facilitated development of the collaborative process involving the nascent Civil Service and the 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.¹³⁰ Bill Walker, then living in Canada but searching for a Caribbean jurisdiction to which to move, visited in the early 1960s and noted that "the potential of the place stuck out a mile" and that it was "just like the Bahamas, but new and better."¹³¹ Meanwhile, the

¹¹⁹ Craton, *FOUNDED*, *supra* note 20, at 316-317

¹²⁰ Craton, *FOUNDED*, *supra* note 20, at 318.

¹²¹ Johnson, *AS I SEE IT*, *supra* note 21, at 176-178.

¹²² Craton, *FOUNDED*, *supra* note 20, at 318.

¹²³ Walker, *FROM GEORGETOWN*, *supra* note 16, at 111 ("For years, I had been following the Caribbean's whole independence movement and then the federation issues ... and I was galvanized by Cayman's decision to remain with Britain. It was a positive and intelligent choice, and it is one of the reasons Cayman has been able to progress to the level it has. The image of being British has given it a great impression of stability.").

¹²⁴ Bodden, *PATRONAGE*, *supra* note 24, at 118.

¹²⁵ Bodden, *PATRONAGE*, *supra* note 24, at 116-145; as quote, 118.

¹²⁶ Rose Interview, *supra* note 33, at 2-17; Bodden, *PATRONAGE*, *supra* note 24, at 67.

¹²⁷ Bodden, *PATRONAGE*, *supra* note 24, at 99-153.

¹²⁸ Craton, *FOUNDED*, *supra* note 20, at 317-18; Bodden, *CAYMAN ISLANDS IN TRANSITION*, *supra* note 17, at 27-28 (arguing that Administrator Rose's refusal to appoint NDP members to the Executive Council and the subsequent dissolution of the NDP made the other party "politically irrelevant" as well and ended party politics).

¹²⁹ Davies, *LEGAL STATUS*, *supra* note 28, at 33.

¹³⁰ Johnson, *AS I SEE IT*, *supra* note 21, at 125-133.

¹³¹ Walker, *FROM GEORGETOWN*, *supra* note 16, at 97.

collaborative process funded Dr. Marco Giglioli's mosquito eradication campaign that was critical to the development of large scale-tourism;¹³² it also installed Cable & Wireless, a leading British telecommunications company, which led to improved communications infrastructure.¹³³ As Walker later noted, "things happened in just the right order."¹³⁴

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.¹³⁵ In general, the sterling area served as "a formal collective arrangement for discriminating against the scarce [U.S.] dollar."¹³⁶ Exchange control both complicated offshore strategies and created demand for them as a means of avoiding the controls.¹³⁷ Jurisdictions within the sterling area had the problem that the 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.¹³⁸ 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.¹³⁹ 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.¹⁴⁰

¹³² Craton, FOUNDED, *supra* note 20, at 343-44.

¹³³ Craton, FOUNDED, *supra* note 20, at 343-346; Johnson, AS I SEE IT, *supra* note 21, at 91-95, 114-124; Walker, FROM GEORGETOWN, *supra* note 16, at 115. 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 111. Cayman continued to invest in communications infrastructure. As Walker later noted, "We have successively been known as the country with the most faxes per capita and the most cell phones per capita of any nation in the world and, although these figures may be urban myth, they do aptly illustrate that we are an economy driven by communications technology and that we're always at the forefront of communications technology despite the relative smallness of our island." *Id.* at 165.

¹³⁴ Walker, FROM GEORGETOWN, *supra* note 16, at 115.

¹³⁵ Johnson, AS I SEE IT, *supra* note 21, at 125-129; Cayman Hansard, 19 March 1985, at 5-6 (describing role of Cayman Exchange Control law in financial centre development). The Cayman Hansard is available online at http://www.legislativeassembly.ky/portal/page?_pageid=4242,7275221&_dad=portal&_schema=PORTAL. Pagination varies across the volumes. Through 1988, each day's sitting is individually paginated. Starting in 1989, each session is consecutively paginated across sittings.

¹³⁶ Benjamin J. Cohen, THE FUTURE OF STERLING AS AN INTERNATIONAL CURRENCY 81 (1971); Cairncross & Eichengreen, *supra* note 69, at 23.

¹³⁷ 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."); Eichengreen, GLOBALIZING CAPITAL, *supra* note 70, 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.").

¹³⁸ Albert Francke III & William S. Robertson III, *Offshore Investment Funds*, in *Investment Partnerships*, *supra* note 137, at 256.

¹³⁹ Francke & Robertson, *supra* note 138, at 256. After 1957, British purchases of non-sterling securities from overseas sterling area residents was prohibited. Cohen, *supra* note 136, at 180.

¹⁴⁰ *Investment Partnerships*, *supra* note 137, at 243.

British efforts at exchange controls were only partially successful, as outward direct investment increased from £102 million to £157 million between 1964 and 1966.¹⁴¹ 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.¹⁴² 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.¹⁴³ 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. . . .”¹⁴⁴ 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.”¹⁴⁵ Moreover, it built on the British legal tradition.¹⁴⁶

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.¹⁴⁷ Since the post-war international financial framework permitted variation in banking regulation, this created an opportunity.¹⁴⁸ Eurodollar volume “roughly tripled” in 1959 and doubled again in 1960.¹⁴⁹ 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.¹⁵⁰ (The IET remained in effect until June 1974.)¹⁵¹ In addition, Federal

¹⁴¹ Cairncross & Eichengreen, *supra* note 69, at 174-75. In 1960, the sterling area had 60% of British foreign investment; by 1970 it had only 38%. Darwin, *supra* note 10, at 305.

¹⁴² Cohen, *supra* note 136, at 179-80; Cairncross & Eichengreen, *supra* note 69, at 22-23. Other European countries including France and Italy also tightened controls in the second half of the 1960s. Einzig, *HISTORY*, *supra* note 14, at 334-35.

¹⁴³ Cairncross & Eichengreen, *supra* note 69, 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 10, at 291; Robert Z. Aliber, *THE INTERNATIONAL MONEY GAME* 7, 65 (5th ed. 1987). Labour feared becoming “the Devaluation Party” in 1960s).

¹⁴⁴ Richard Frye, *Introduction*, in *BANKER’S WORLD*, *supra* note 71, at 12.

¹⁴⁵ Frye, *Introduction*, *BANKER’S WORLD*, *supra* note 71, at 15.

¹⁴⁶ 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.”).

¹⁴⁷ Gibson, *supra* note 73, at 10.

¹⁴⁸ Vlcek, *supra* note 2, at 25.

¹⁴⁹ Sampson, *supra* note 13, at 139.

¹⁵⁰ Frederick G. Fisher III, *THE EURODOLLAR BOND MARKET* 21 (1979); Gibson, *supra* note 73, at 11-12; R.A. Johns & C.M. Le Marchant, *FINANCE CENTRES: BRITISH OFFSHORE DEVELOPMENT SINCE 1979* 13 (1993); Sampson, *supra* note 13, at 139; Hine & Olienyk, *Multinational Banking*, *supra* note 72, at 322; *BANKER’S WORLD*, *supra* note 71, at 30-31. The tax had to be paid each time a foreign security was acquired by a U.S. person, “an

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.¹⁵² 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)¹⁵³ and non-American firms thus entered the rapidly growing Eurodollar market in pursuit of cheaper financing.¹⁵⁴ 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."¹⁵⁵ 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."¹⁵⁶ 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."¹⁵⁷

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 536 overseas branches with assets of \$52.6 billion.¹⁵⁸ By 1980, 126 U.S. banks had nearly a thousand foreign branches.¹⁵⁹ 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."¹⁶⁰ The appearance of the Euromarkets in currencies weakened domestic efforts at financial regulation throughout the world,¹⁶¹ creating space for offshore business strategies that

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 70, 129.

¹⁵¹ 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).

¹⁵² Eichengreen, *GLOBALIZING CAPITAL*, *supra* note 70, 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).

¹⁵³ Aliber, *supra* note 143, at 289-90.

¹⁵⁴ Gibson, *supra* note 73, 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.)

¹⁵⁵ Sampson, *supra* note 13, at 142. Britain's "welcome" to foreign banks was also important. Stopford & Turner, *supra* note 73, at 227.

¹⁵⁶ *BANKER'S WORLD*, *supra* note 71, at 31-33.

¹⁵⁷ Sampson, *supra* note 13, at 284.

¹⁵⁸ Gibson, *supra* note 73, at 12; Fisher, *supra* note 150, 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 143, 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.

¹⁵⁹ Aliber, *supra* note 143, at 263.

¹⁶⁰ Johns & Le Marchant, *supra* note 150, at 21.

¹⁶¹ Gibson, *supra* note 73, at 45; Hine & Olienyk, *Multinational Banking*, *supra* note 72, at 323.

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.¹⁶² 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. Cayman was lucky to have the opportunity, but their success was due to more than luck—Caymanians seized the opportunities with which they were presented as well as seeking to create more such opportunities. 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.¹⁶³

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 residency.¹⁶⁴ 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.¹⁶⁵ Walker later described Cayman on his arrival as having “cows wandering through Georgetown, only one bank, only one paved road, and no telephones.”¹⁶⁶ There were just three other lawyers on the islands and “almost no Caymanian law, a dearth of legislation”, no attorney general (“instead a magistrate on contract”).¹⁶⁷ Within two years he applied his transatlantic legal experience, collaborating in the governmental process to bring in two pivotal pieces of

¹⁶² Einzig, HISTORY, *supra* note 14, 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.).

¹⁶³ 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 12, 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.

¹⁶⁴ Aileen MacDonald Interview, *supra* note 97, at 24-27; Ebanks, *supra* note 32, 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).

¹⁶⁵ Walker, FROM GEORGETOWN, *supra* note 16, at 102-119.

¹⁶⁶ Sampson, *supra* note 13, at 281.

¹⁶⁷ Walker, FROM GEORGETOWN, *supra* note 16, at 109, 111.

legislation: the Banks and Trust Companies Regulation Law (copied from the Bahamas) and the Trusts Law (drafted with English barrister, Milton Grundy).¹⁶⁸

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.¹⁶⁹ Walker's contributions to the legislation brought to bear practical expertise in the service of the government's collaborative policy making.¹⁷⁰ 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.¹⁷¹ Financial Secretary Vassel Johnson "spearheaded" the development of the OFC, insisting it "must be under government control," a crucial step for building regulatory infrastructure.¹⁷² 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 1959–1962.¹⁷³ The process included a small but growing Caymanian elite, "a tightly knit group".¹⁷⁴ 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.¹⁷⁵

Diversification of laws designed to attract the offshore investor confirmed the collaborative process in which the "Government liked to work with committees and get lots of input."¹⁷⁶ Walker described the 1966 Trusts Law, drafted by London trust expert Milton Grundy, as an "exempted trust using principles from the 'Anstalt trust' from Liechtenstein," plus the "British law . . . adjusted . . . to fit the needs of Cayman."¹⁷⁷ 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.¹⁷⁸ Treasurer Vassel Johnson helped push for the law, as part of creating "the right atmosphere" for a development strategy based on finance.¹⁷⁹ The trusts business was "designed not really to evade taxes but, more often than not, to preserve property from generation to generation and keep children from spending

¹⁶⁸ Timothy Ridley, Personal Communication to authors, October 14, 2012; Walker, FROM GEORGETOWN, *supra* note 16, at 118..

¹⁶⁹ Boise & Morriss, *supra* note 46, at 431-34.

¹⁷⁰ Walker, FROM GEORGETOWN, *supra* note 16, at 116-119; Johnson, AS I SEE IT, *supra* note 21, at 126, 132-133; Craton, FOUNDED, *supra* note 20, at 353.

¹⁷¹ Walker Interview, *supra* note 97, at 5-27.

¹⁷² Russell, HONOUR, *supra* note 4, at 168.

¹⁷³ Rose Interview, *supra* note 65, Disc 3, at 21.

¹⁷⁴ Sampson, *supra* note 13, 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.)

¹⁷⁵ Davies, LEGAL STATUS, *supra* note 28, 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 66 *supra*.

¹⁷⁶ Walker, FROM GEORGETOWN, *supra* note 16, at 118.

¹⁷⁷ Walker, FROM GEORGETOWN, *supra* note 16, at 116.

¹⁷⁸ Sampson, *supra* note 13, at 281.

¹⁷⁹ Sampson, *supra* note 13, at 281.

inherited money.”¹⁸⁰ 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.”¹⁸¹

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,¹⁸² took the same approach as the ring-fenced model established in Curaçao in the 1950s.¹⁸³ 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.¹⁸⁴ Caymans’ more numerous Category B entities, unlike many competing offshore jurisdictions, required some minimal local office representation, and local supervision,¹⁸⁵ helping to build infrastructure. Firms paid annual fees that steadily increased.¹⁸⁶ The policy launched five years earlier with the Companies Law thus was “making a valuable contribution to the building of the financial industry.”¹⁸⁷

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.¹⁸⁸ 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”,¹⁸⁹ 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 (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.¹⁹⁰

¹⁸⁰ Walker, FROM GEORGETOWN, *supra* note 16, at 116.

¹⁸¹ Whiting, LABOUR PARTY AND TAXATION, *supra* note 69, at 138.

¹⁸² 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/>.

¹⁸³ Boise & Morriss, *supra* note 46, at 405 (Antilles had first ring-fenced tax regime in 1954).

¹⁸⁴ 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).

¹⁸⁵ StratInfo, *supra* note 184, at 10; Craton, FOUNDED, *supra* note 20, at 353.

¹⁸⁶ Craton, FOUNDED, *supra* note 20, at 353.

¹⁸⁷ Johnson, AS I SEE IT, *supra* note 21, at 127.

¹⁸⁸ Sullivan, *Bahamas*, *supra* note 66, at 535

¹⁸⁹ Sampson, *supra* note 13, at 282.

¹⁹⁰ Sullivan, *Bahamas*, *supra* note 66, at 546; Walker, FROM GEORGETOWN, *supra* note 16, at 125; Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at 32. 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 83, 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

Many of these firms shifted operations to Cayman—as one observer put it, “the Cayman government should build a statue to Sir Linden Pindling as one of the great benefactors to the Cayman Islands!”¹⁹¹ As the Bahamas began “the revocation of expatriate work-permits and everybody fled. They packed up their files and companies and money and left and we, under fortunate circumstance, were ready.”¹⁹² Mosquito control funded by OFC-generated revenues and increased air service allowed tourism to expand as well.¹⁹³

In Jamaica, British Guiana, the Bahamas, and elsewhere across the Caribbean, independence movements aggravated racial divisions.¹⁹⁴ 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.”¹⁹⁵ 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.¹⁹⁶ The Caymans’ constitutional autonomy within a British colonial framework offered those exiting the Bahamas not only professional opportunities but also the expectation of more 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.”¹⁹⁷ 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.”¹⁹⁸

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

during a session of the House of Assembly. Sullivan, *supra*, at 546. *See also* Craton, BAHAMAS, *supra* note 93, at 276-79 (describing growing tensions in the Bahamas in late 1960s, including “purge” of “white, or near-white, candidates” from Pindling’s party).

¹⁹¹ Walker, FROM GEORGETOWN, *supra* note 16, at 127-129 (citing Sir Etienne Dupuch). *See also* Sampson, *supra* note 13, at 281. Pindling continued to be invoked as a negative example. *See, e.g.*, Cayman Hansard, 21 November 1991, at 1153 (MLA D. Ezzard Miller arguing “this country might need a Moses but what it does not need is one from the mold of Milo Butler, Lyndon Pindling and the Bay Street Boys. The people of this country know that the success of the Cayman Islands was certainly helped along and spurred by the rising of that kind of a Moses in the Bahamas.”).

¹⁹² Walker, FROM GEORGETOWN, *supra* note 16, at 115.

¹⁹³ Davies, Legal Status, *supra* note 28, at 35; Sampson, *supra* note 13, at 281.

¹⁹⁴ Walker, FROM GEORGETOWN, *supra* note 16, at 115, 127-128, 136; Sullivan, BAHAMAS, *supra* note 66, at 548 (referring to an environment of “intense racial polarization” in the Bahamas during election campaign of 1968.)

¹⁹⁵ Sampson, *supra* note 13, at 281.

¹⁹⁶ Bodden, *supra* note 58, at 36-46.

¹⁹⁷ Francke & Robertson, *supra* note 138, at 242, 252.

¹⁹⁸ Walker, FROM GEORGETOWN, *supra* note 16, at 117.

increased steadily: The 1960 Companies Law promoter MacDonald's registered firms grew from 20 to "hundreds" in a few years.¹⁹⁹ Following the Bahamas' 1967–68 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."²⁰⁰ Growth continued into the 1980s.²⁰¹ 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;²⁰² the decline of exchange controls altered the international financial landscape;²⁰³ the infusion of petrodollars into the Eurodollar market vastly expanded the scope of

¹⁹⁹ Walker, FROM GEORGETOWN, *supra* note 16, at 115.

²⁰⁰ Walker, FROM GEORGETOWN, *supra* note 16, at 136; Walker Interview, *supra* note 97, disc 3 at 13; Craton, PINDLING, *supra* note 83, 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....").

²⁰¹ Cayman Hansard, 11 February 1981, at 2 (Governor noting in Throne Speech that bank licenses and company registrations grew at 11% and 15% respectively during 1980); 3 (noting insurance fees projected to increase from 1980 to 1981 from CI\$50,000 to CI\$720,000); 17 March 1982 at 4 (Governor noting during Throne Speech that banks and trust company registrations rose 21% in 1981, companies registered rose 18%, and insurance licenses rose to 264, with financial sector providing 20% of government revenue).

²⁰² 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).").

²⁰³ 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 of capital movements")

international finance;²⁰⁴ and entrepreneurs in finance spread new products around the world.²⁰⁵ 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.²⁰⁶ (All British exchange controls were formally ended in 1979.²⁰⁷) Cayman relaxed its enforcement of exchange controls in 1972, choosing to administer them “in a very liberal manner”²⁰⁸ and, ultimately, to seek to suspend them (with London’s agreement).²⁰⁹ 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 1974.²¹⁰ 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”,²¹¹ increasing British interest in its Caribbean territories’ fiscal self-sufficiency. Cayman was in the right place to exploit “all these synergies working together, the collapse of traditional offshore markets and the rise in Eurodollar and Eurobond markets that were searching for a stable offshore jurisdiction”.²¹²

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.”²¹³ 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.”²¹⁴ This shift “had a profound effect on bankers’ ways of doing business and

²⁰⁴ 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).

²⁰⁵ 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.”).

²⁰⁶ 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).

²⁰⁷ 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”). Cayman responded by formally repealing its own dormant exchange controls. Cayman Hansard, 17 February 1981 at 7 (Financial Secretary Vassel Johnson noting repeal in 1980 was in response to UK action).

²⁰⁸ Cayman Hansard, 10 November 1977, at 24.

²⁰⁹ Cayman Hansard, 10 November 1977, at 24.

²¹⁰ Johnson, *AS I SEE IT*, *supra* note 21, at 177-179, 185-188. The Cayman dollar was originally intended to be tied 1:1 to the U.S. dollar, but when the U.S. devalued the dollar, the rate changed to 1:1.25. Johnson, *AS I SEE IT*, *supra* note 21, at 179.

²¹¹ Anthony Payne, *Britain and the Caribbean*, in *EUROPE AND THE CARIBBEAN* 13, 18 (Paul Sutton, ed. 1991).

²¹² Walker, *FROM GEORGETOWN*, *supra* note 16, at 137.

²¹³ 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.

²¹⁴ Ackrill & Hanna, *Barclays*, *supra* note 206, at 163-64.

they soon found very distinct attractions in it.”²¹⁵ 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 42,000.²¹⁶ 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.²¹⁷

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.²¹⁸ 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.²¹⁹ Although Cornfeld’s empire soon collapsed, he had identified both an important market need, liquid investments that protected against inflation and devaluation,²²⁰ and the product that met this need, offshore mutual funds.²²¹ 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 1969.²²² 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.²²³ 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.²²⁴ In addition, the increased internationalization of business activity meant there was a greater need for

²¹⁵ Ackrill & Hanna, *Barclays*, *supra* note 206, at 163-64.

²¹⁶ Ackrill & Hanna, *Barclays*, *supra* note 206, at 215.

²¹⁷ See also Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at 140 (Caymanian bar’s “capable corporate attorneys” were “absolutely essential” to Islands’ success).

²¹⁸ Bert Cantor, THE BERNIE CORNFELD STORY 49-57 (1970) (describing origins of IOS).

²¹⁹ Aliber, *supra* note 143, at 272.

²²⁰ 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 143, at 276.

²²¹ Aliber, *supra* note 143, at 273 (market need and product), 275 (collapse caused by tight money and “extravagant” mismanagement).

²²² Aliber, *supra* note 143, 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).

²²³ Johns & Le Marchant, *supra* note 150, at 3.

²²⁴ Gibson, *supra* note 73, at 16.

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.²²⁵

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.”²²⁶ Throughout this process, Caymanian officials remained conscious of the need to build a regulatory structure sufficient to maintain the growing offshore business. As Financial Secretary Vassel Johnson stated in his December 1971 budget address,

Growth in the off-shore sector may reach the point where the Cayman Islands rank among major tax-havens; however, this position will not come about automatically; it will depend on the exerted effort on the part of this Government to maintain control conducive to orderly growth in areas of rapid development; it will depend on stability, and last but by no means least it will depend on how well Government can establish itself in the driver’s seat of this country.²²⁷

They also remained conscious of the need to be competitive. For example, debates in the Legislative Assembly over fee increases for offshore company registration regularly centered on the impact on Cayman’s position relative to other jurisdictions.²²⁸

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.²²⁹ 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.²³⁰ 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

²²⁵ Johns & Le Marchant, *supra* note 150, at 3.

²²⁶ Johns & Le Marchant, *supra* note 150, at 17-18.

²²⁷ Cayman Hansard, 10 December 1971, at 7.

²²⁸ *See, e.g.*, Cayman Hansard, 8 December 1975, at 39-45; 29 February 1991, at 53-54 (Opposition MLA objecting to fee increases because “we are not now as competitive with some of our Caribbean neighbors as we would like to be.”); 27 February 1991, at 176 (Government supporter arguing need to “monitor carefully” BVI, Turks and Caicos, and the Bahamas as competitors); Cayman Hansard, 25 November 1991, at 1194 (opposition MLA arguing against fee increases because will cause shift to BVI “because of the difference in cost”); 19 October 2009, at 225 (discussing whether fee increases would make Cayman uncompetitive). *See also* note 320 *infra*.

²²⁹ Johns & Le Marchant, *supra* note 150, at 15.

²³⁰ Sampson, *supra* note 13, at 285.

market.”²³¹ 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”²³² with Cayman a peripheral secondary center.²³³ Financial services professionals, particularly the lawyers, and Caymanians were “very aware that they face constant competition in the tax-haven business”²³⁴ 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,²³⁵ formally requesting action on increased self-government from the Foreign and Commonwealth Office (“FCO”).²³⁶ 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.²³⁷

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, wealth, class or education.”²³⁸ 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).²³⁹ Substantively, Lord Asquith found the Assembly united in favor of an increase in elected ExCo Members, a measure that reduced, but did not eliminate, the Governor’s power.²⁴⁰ However, sentiment remained strong to maintain the association with Britain. As MLA Annie Bodden put it in her 1974 comments in response to the Throne Speech, “I want to see that beautiful British [flag] on the top of all our flag poles, on the ships. I don’t want to see any red and green and yellow, or whatever the colours Jamaica’s is, or Honduras or Cuba. I want to see the British flag, and I hope the day will never dawn that we try to be foolish enough to talk that we can get our independence.”²⁴¹

²³¹ Ackrill & Hannah, *Barclays*, *supra* note 206, at 306 (quoting Sir John Thompson, A world banking group, Barclays Bank Briefing, 20, Dec. 1972, at 1). b

²³² Johns & Le Marchant, *supra* note 150, at 17-18.

²³³ Johns & Le Marchant, *supra* note 150, at 17-18.

²³⁴ Sampson, *supra* note 13, at 285.

²³⁵ Bodden, *supra* note 58, at 129-160.

²³⁶ Craton, *FOUNDED*, *supra* note 20, at 319.

²³⁷ Craton, *FOUNDED*, *supra* note 20, at 315-22.

²³⁸ Craton, *FOUNDED*, *supra* note 20, quoted at 320. Caymanian historian Roy Bodden, who is often critical of the financial sector’s role in Caymanian society, similarly argues that Cayman had a “social fabric” that was “held together by the realization that what exists is a synergistic and symbiotic relationship, which must be maintained if both groups are to continue to prosper.” Bodden, *CAYMAN ISLANDS IN TRANSITION*, *supra* note 17, at 22.

²³⁹ Davies, *LEGAL STATUS*, *supra* note 28, at 12-13.

²⁴⁰ Craton, *FOUNDED*, *supra* note 20, 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.

²⁴¹ Cayman Hansard, 13 March 1974, at 6.

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.²⁴² The new Constitution left the London-appointed Governor charged with foreign affairs, national security, and traditional executive powers such as the pardon.²⁴³ 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.²⁴⁴ 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.²⁴⁵ These executive officers joined the twelve elected Members of the Legislative Assembly, where the Governor presided and had the tie breaking vote.²⁴⁶ The majority could have created its own office of speaker to take over this function, but did not do so for many years.²⁴⁷ The practice of debating the Governor's Throne Speech also began at this time.²⁴⁸

The 1972 Constitution enabled the Legislative Assembly to elect four of the seven Members to the Executive Council, where the Governor still presided.²⁴⁹ The elected ExCo members held portfolios (allocated by the Governor) responsible for social services; agriculture, lands, and natural resources; communications and other infrastructure; and tourism, aviation, and trade.²⁵⁰ Serving both in the Assembly and on ExCo, these elected Members helped to consolidate the collaborative policy-making process.²⁵¹ 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 1972.²⁵² 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

²⁴² Craton, FOUNDED, *supra* note 20, at 320. This was reflected in the Governor's Throne Speech in August 1972. See Cayman Hansard, 7 August 1972, at 3-4 (praising the “careful and progressive development of participation by elected representatives of the people” in the new Constitution and Caymanians for not accepting “the popular belief that anything carrying the ‘colonial’ label is bad” but instead being “prepared to work out slowly and carefully and with wisdom, what is really best for the Caymanian people.”).

²⁴³ Craton, FOUNDED, *supra* note 20, at 321; Russell, HONOUR, *supra* note 4, at 174.

²⁴⁴ Russell, HONOUR, *supra* note 4, at 180. Financial Secretary Vassel Johnson later noted that he had gone to London in 1970 to “arrange a meeting with the officials of the Treasury, the Bank of England and the Foreign and Commonwealth Office to relate our particular situation in the Cayman Islands, and to pleas with the British Government to leave our financial industry alone.” Cayman Hansard, 19 March 1985, at 2.

²⁴⁵ Craton, FOUNDED, *supra* note 20, at 321; Russell, HONOUR, *supra* note 4, at 174.

²⁴⁶ Craton, FOUNDED, *supra* note 20, at 321-22; Russell, HONOUR, *supra* note 4, at 174.

²⁴⁷ Craton, FOUNDED, *supra* note 20, at 321; Bodden, PATRONAGE, *supra* note 24, at 268; Russell, HONOUR, *supra* note 4, at 174, 186. The formal effort to have a local Speaker began in 1987, with a private member motion by MLA Ezzard Miller. Cayman Hansard, 12 February 1987, at 14. That motion failed 3-5, with 2 abstentions. *Id.* at 43. A second effort in 1989 by MLA McKeeva Bush was defeated when the elected members split 6-6 (the official members abstained) and the governor cast the deciding vote against the motion based on established parliamentary procedure. Cayman Hansard, 26 May 1989, at 547-559; 29 May 1989, at 561-578.

²⁴⁸ Cayman Hansard, 8 August 1972, at 21-22.

²⁴⁹ Craton, FOUNDED, *supra* note 20, at 321.

²⁵⁰ Craton, FOUNDED, *supra* note 20, at 321; Russell, HONOUR, *supra* note 4, at 174.

²⁵¹ Craton, FOUNDED, *supra* note 20, at 320-322.

²⁵² Ebanks, *supra* note 32, at disc, 3, 9-10.

much alone—largely no doubt because we don’t need any kind of grant.”²⁵³ 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.²⁵⁴ 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”.²⁵⁵

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.²⁵⁶ 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.²⁵⁷ 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.”²⁵⁸ Governor Russell actively promoted the financial sector in speeches in the United States.²⁵⁹ Walker used his Canadian and UK connections: “I had a lot of investment contacts, in Toronto through the Investment Dealers Association, and through the Cambridge old-boys’ network, and I was never backward about calling them and looking for business.”²⁶⁰ Then Deputy Financial Secretary John Lemuel Hurlston later summed up the collaborative process: 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.”²⁶¹ This rapidly brought in additional funds—government revenue in 1974 was 48% ahead of the estimates.²⁶²

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

²⁵³ Sampson, *supra* note 13, 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.”).

²⁵⁴ Russell, HONOUR, *supra* note 4, at 178. Even critics of the financial industry agree that Britain supported the industry in part to reduce the financial burden of maintaining the jurisdiction. *See, e.g.,* Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at xix,

²⁵⁵ Russell, HONOUR, *supra* note 4, at 177.

²⁵⁶ Craton, FOUNDED, *supra* note 20, at 341; Ebanks, *supra* note 32, at disc 3, 20-21, disc 4, 3, 6, 11-12, 19.

²⁵⁷ Ebanks, *supra* note 32, at Disc 4, at 14.

²⁵⁸ Walker, FROM GEORGETOWN, *supra* note 16, at 165.

²⁵⁹ Russell, HONOUR, *supra* note 4, at 190-191.

²⁶⁰ Walker, FROM GEORGETOWN, *supra* note 16, at 129.

²⁶¹ Cayman Archives Interview, John Lemuel Hurlston (1996) at disc 3, 15.

²⁶² Cayman Hansard, 12 March 1974, at 2.

promotion of tourism development.²⁶³ Amidst discussion of the Constitution in 1971, however, the collaborative process facilitated enactment of the cadastral system.²⁶⁴ 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 condo construction, attracting wealthier tourists.²⁶⁵ In the Assembly, former-NDP leader Warren Conolly promoted the Tourist Board, which administered license-fee regulations to promote hotel and condo occupancy through 1976.²⁶⁶ 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.²⁶⁷ Collaborative policymaking benefitted further from the 1978 establishment of the Central Planning Authority, which oversaw Cayman’s growing real estate development industry.²⁶⁸ 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,²⁶⁹ 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.²⁷⁰ Moreover, even as the political team in control of the Legislative Assembly changed dramatically in 1976,²⁷¹ the overall commitment to the financial sector did not waver.

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.²⁷² 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,

²⁶³ Johnson, AS I SEE IT, *supra* note 21, at 239. The survey was initially controversial and led to what was the largest demonstration in Cayman on April 20, 1970. Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at 29.

²⁶⁴ Craton, FOUNDED, *supra* note 20, at 340-343. Caymanian property holders soon embraced the new system. *Id.* See also Russell, HONOUR, *supra* note 4, at 175 (describing survey); Walker, FROM GEORGETOWN, *supra* note 16, at 108 (describing pre-survey land conveyancing as “often necessary to go out and meet local elders and get affidavits that would often say things like ‘Yes, that piece of land ran from those two seagrape trees to this small rock wall.’ You’d have to get a couple of these testimonials to finish a conveyance.”).

²⁶⁵ Craton, FOUNDED, *supra* note 20, at 348-349.

²⁶⁶ Craton, FOUNDED, *supra* note 20, at 348.

²⁶⁷ Craton, FOUNDED, *supra* note 20, at 348-349.

²⁶⁸ Craton, FOUNDED, *supra* note 20, at 350-352.

²⁶⁹ Johnson, AS I SEE IT, *supra* note 21, 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 “[t]he 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 138, at 242, 253-54.

²⁷⁰ 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.*

²⁷¹ Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at 30-31. Just four of the elected members returned after the November 1976 election, including none of the members of the Executive Council. The post-November Executive Council included several members who had been persistent critics of the pre-election Council. See Cayman Hansard, 8 September 1976 and 17 November 1976 (listing members).

²⁷² William Brittain-Catlin, OFFSHORE: THE DARK SIDE OF THE GLOBAL ECONOMY 154-55 (2005).

creating a subsidiary providing large local mortgages at attractive rates in 1974.²⁷³ When rumors began to circulate that Doucet was involved with the Mafia, his bank suffered a “crippling liquidity crisis”.²⁷⁴ 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.²⁷⁵

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,²⁷⁶ it is also possible to see the affair as an example of how collaborative policymaking enabled learning from the problem.²⁷⁷ 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.”²⁷⁸ 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”.²⁷⁹ 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.”²⁸⁰ As a result, Cayman was able to build a regulatory structure sufficient “so that Cayman cannot be considered a loophole in the international supervisory system.”²⁸¹

C. Diversification into Insurance

Caymans’ collaborative policymaking also played a role in the jurisdiction’s diversification into captive insurance. Seeing both an opportunity and reputational risk in the development of an offshore market for insurance in 1978, the Cayman government sought

²⁷³ Brittain-Catlin, *supra* note 272, 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.”).

²⁷⁴ Brittain-Catlin, *supra* note 272, at 157.

²⁷⁵ Cayman Archives Interview, Ian Boxall 2002 at Disc 3, 32; Johnson, AS I SEE IT, *supra* note 21, at 158-160, 162-164, 242; Brittain-Catlin, *supra* note 272, 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 261, at disc 3, 19.

²⁷⁶ Brittain-Catlin, *supra* note 272, at 158-59.

²⁷⁷ 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>.

²⁷⁸ Hurlston, *supra* note 261, at disc 3, 18; Russell, HONOUR, *supra* note 4, at 193.

²⁷⁹ Hurlston, *supra* note 261, at disc 3, at 18.

²⁸⁰ Hurlston, *supra* note 261, at disc 3, 18, 19-20.

²⁸¹ Cayman Hansard, 17 February 1988, at 12 (Financial Secretary in Budget Address).

assistance from the British Executive Overseas Service to aid in drafting an insurance law, procuring the help of a recently retired insurance executive.²⁸² In addition, captive insurers told the Cayman government “that they are not prepared to establish in the Cayman Islands if a regulatory system is not established under an acceptable form or legislation.”²⁸³ Cayman engaged in a lengthy consultation process with “many specialists in the fields of insurance, accountancy and Law as well as persons actively engaged in the industry itself.”²⁸⁴ The advisor hired by the government “had very lengthy discussions with a wide range of prominent members of the insurance industries both locally and abroad” and met with companies operating in the “United States, London, Bahamas and Bermuda.”²⁸⁵ Passed in September, the law was amended in November in response to industry suggestions on refining definitions and treatment of existing companies.²⁸⁶

Although 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.²⁸⁷ When U.S. medical malpractice market ‘hardened’ in the early 1980s, Cayman was able to take advantage of the opening.²⁸⁸ 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.²⁸⁹ 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.²⁹⁰ 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.”²⁹¹ Another example was when a group of Boston hospitals lead by Harvard Health Systems had the “pioneering idea of self insuring hospital/physician liability risk. Basically they believed they do it better than the commercial market.”²⁹² When the Bermuda authorities refused to allow the offshore medical malpractice market to develop there, considering it too risky, Caymans’

²⁸² Cayman Hansard, 4 April 1979, at 8; 5 September 1979, at 8 (need for insurance law in part due to offshore industry developing, and concern for Cayman’s reputation if “unreliable” companies opened in Cayman); 9 (describing role of advisor). The bill ultimately prepared covered both domestic and offshore insurance companies, which had previously been operating under the Companies Law. *Id.* at 8.

²⁸³ Cayman Hansard, 5 September 1979, at 9.

²⁸⁴ Cayman Hansard, 5 September 1979, at 14.

²⁸⁵ Cayman Hansard, 5 September 1979, at 9.

²⁸⁶ Cayman Hansard, 9 November 1979, at 14-15.

²⁸⁷ Johnson, AS I SEE IT, *supra* note 21, 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. . . .”); Walker, FROM GEORGETOWN, *supra* note 16, at 138 (“with unrest in Bermuda in the middle 1970s, insurance companies started to look for another jurisdiction.”).

²⁸⁸ 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/>.

²⁸⁹ Boise & Morriss, *supra* note 46, at 441.

²⁹⁰ Johnson, AS I SEE IT, *supra* note 21, at 216-218.

²⁹¹ Johnson, AS I SEE IT, *supra* note 21, at 216.

²⁹² 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).

collaborative policy process enabled the quick grasping of the opportunity by ensuring that the Insurance Law did not restrict the development of this business.²⁹³

Adapting the banking laws' inspectorate to captive insurance suggested further competitive advantage that collaborative policymaking achieved. After the Insurance Law's regulations were fully operational in 1980, Financial Secretary 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.'"²⁹⁴ By 1982, Johnson's successor as Financial Secretary was reporting that 137 people were working in insurance, 71% Caymanians, and the insurance industry was generating CI\$1 million in government revenue.²⁹⁵ Worried about the U.S. and U.K. recessions' impact on insurance, the government moved to "strengthen the Superintendent's Office by appointment of a Deputy who is a qualified insurance accountant"²⁹⁶ and to hold a seminar to promote the industry²⁹⁷ rather than by cutting prices. Later in the 1980s, the government took note of the rising competition from U.S. states creating their own captive insurance laws.²⁹⁸

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.²⁹⁹ 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

²⁹³ Morriss, *Industry Insider*, *supra* note 292, 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.").

²⁹⁴ Johnson, AS I SEE IT, *supra* note 21, at 213-218.

²⁹⁵ Cayman Hansard, 19 November 1982, at 18. A few years later Jefferson reported that in 1984, there were 271 Class B licensed companies, employing 162 personnel, of whom 80% were Caymanian, as well as generating approximately 5,000 visitors to the islands each year. Cayman Hansard, 1 March 1985, at 13 (Financial Secretary giving Budget Address).

²⁹⁶ Cayman Hansard, 19 November 1982, at 18.

²⁹⁷ Cayman Hansard, 29 November 1985, at 9.

²⁹⁸ Cayman Hansard, 17 February 1989, at 12 (Financial Secretary noting in Budget Address that "It is of particular interest to note that at least eight states in the United States have introduced special legislation to attract Captive and Risk Retention Groups onshore. ... Notwithstanding the above mentioned undesirable conditions twenty-nine new Class 'B' Insurer's or Captive Licenses were granted by Government during the year giving a net total of 362 licensed Captive Insurance Companies. These new companies are of high quality and is seen as a vote of confidence in the standard and range of service offered by the offshore market.").

²⁹⁹ Boise & Morriss, *supra* note 46, 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.").

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.³⁰⁰

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.³⁰¹ Through 1976, when Britain ended development aids to Cayman, Cayman's budget stability gave it a significant competitive advantage over other OFCs in securing British development aid.³⁰² 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,³⁰³ 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.³⁰⁴

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 entry for expatriate professionals and other workers much needed for the finance and tourism industries.³⁰⁵ Cayman policymakers established a “system,” historian B.W. Higgs said, that “made Caymanians some of the best-off people in the Caribbean.”³⁰⁶ Or, as one Caymanian put it, “The advantage of being an island is that you get to

³⁰⁰ Stopford & Turner, *supra* note 73, at 124.

³⁰¹ Johnson, AS I SEE IT, *supra* note 21, at 103-226; Doran, *supra* note 17, at 437-439. *See also* Cayman Hansard, 2 March 1977 (Financial Secretary noting that the financial industry provided “approximately 25 percent of the Government's recurrent revenue, and makes a substantial indirect contribution to the economy.”). In the 1977 Budget Address, the Financial Secretary estimated the spending on salaries, work permits, and overheads by banks and trust companies with offices in the Cayman Islands at C\$7.4 million. Cayman Hansard, 10 November 1977, at 3. 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 20, at 56-60.

³⁰² Cayman Archives Interview, A. Peter Lloyd, at disc 3, 7 (1997); Johnson, AS I SEE IT, *supra* note 21, at 103-226.

³⁰³ Johnson, AS I SEE IT, *supra* note 21, at 125-146.

³⁰⁴ *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).

³⁰⁵ Johnson, AS I SEE IT, *supra* note 21, at 240-242, 256-257.

³⁰⁶ Higman, *supra* note 9, at 296. In 2001, MLA Alden McLaughlin, Jr. noted that this law's purpose was to ensure that “Caymanians continued to maintain a prominent place and role in the Island's progress and economy.” Cayman Hansard, 22 March 2001, at 164. This seems to us to be a fundamental problem for small open economies, like Cayman.

choose your own neighbors. We've chosen Miami instead of Jamaica."³⁰⁷ 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.³⁰⁸

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,³⁰⁹ 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*.³¹⁰ Despite considerable differences on other issues during the same session, the Legislative Assembly passed the statute with little controversy.³¹¹ The 1976 law and its 1979 amendments regulated foreign tax and law enforcers' access to confidential financial information.³¹² "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."³¹³ 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.³¹⁴ 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."³¹⁵ Its 1970–74

³⁰⁷ Sampson, *supra* note 13, at 290.

³⁰⁸ *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.

³⁰⁹ *US Grand Jury Indict Castle Bank Manager*, THE NOR'WESTER (Apr. 1977) at 39; Johnson, AS I SEE IT, *supra* note 21, at 154-156; Walker, FROM GEORGETOWN, *supra* note 16, at 138; Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at 160-161; Cayman Hansard, 5 September 1979 (Financial Secretary noting that the 1976 statute was "introduced at the request of the local financial community" in response to Castle Bank case in the United States)..

³¹⁰ [1924] 1 KB 461.

³¹¹ Cayman Hansard, 7 September 1976, at 20-37; 8 September 1976, at 1-5; 12-13.

³¹² Johnson, AS I SEE IT, *supra* note 21, at 154-158.

³¹³ Johnson, AS I SEE IT, *supra* note 21, at 155.

³¹⁴ Doggart, 1997 report, *supra* note 3, at 66-70; Boxall Interview, *supra* note 275, at disc 3, 12; Hurlston Interview, *supra* note 261, at disc 3 12; Walker Interview, *supra* note 99, at Disc 3, 21-22; Ebanks, *supra* note 32, at disc 3, 16; Johnson, AS I SEE IT, *supra* note 21, at 154-166; Johnson, AS I SEE IT, *supra* note 21, 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).

³¹⁵ Whiting, LABOUR PARTY AND TAXATION, *supra* note 69, at 221.

working party on taxation proposed “a veritable battery of capital taxes . . . ‘with the objective of breaking up great concentrations of wealth’”,³¹⁶ and anti-tax haven legislation sponsored by an all party group of MPs was reported to “have considerable appeal” in Labour circles in 1978.³¹⁷ 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.”³¹⁸ Caymanians were aware of this threat. As MLA James Bodden noted in opposing a bill to raise bank license fees in 1974, the financial sector was “very fragile” and could be damaged by “one derogatory editorial in Time magazine”.³¹⁹ A supporter of the increase agreed that the banks could leave “easily” but assured the other members that the banks did not object to the increase while another supporter agreed that Cayman “should not try to kill the goose that laid the golden egg.”³²⁰ Discussions of fee increases often referred to the fees charged by competing jurisdictions.³²¹

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.”³²² The United States created “International Banking Facilities” in New York at the end of the 1970s as a competitive response to OFCs.³²³ 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.”³²⁴ 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 1974.³²⁵ Although these steps reduced

³¹⁶ Whiting, *LABOUR PART AND TAXATION*, *supra* note 69, at 221.

³¹⁷ D.G. Kermode, *DEVOLUTION AT WORK: A CASE STUDY OF THE ISLE OF MAN* 9 (1979).

³¹⁸ Whiting, *LABOUR PARTY AND TAXATION*, *supra* note 69, at 165.

³¹⁹ Cayman Hansard, 21 November 1974, at 5.

³²⁰ Cayman Hansard, 21 November 1974, at 6, 8. A similar discussion occurred in 1981 when a fee increase for the company registry was debated. *See* Cayman Hansard, 18 October 1981, at 24 (MLA Annie Huldah Bodden opposing a fee increase arguing “Now let us be very realistic about it, there are other places in the world that would be glad to get some of the business that we have in this island” and explicitly referencing the “Goose that laid the golden egg”); at 26 (similar point by MLA Capt. Charles Kirkconnell); at 31 (Financial Secretary supporting increase argued “Every care and caution is exercised to ensure we do not upset the status quo. A lot of research is put into any measure which is proposed to ensure that those who will be affected will not be upset by their introduction.”); 22 November 1983, at 2 (Financial Secretary noting in proposing fee increase on banks that “much caution was taken to ensure that the competitive edge which the Cayman Islands have in this area should not be diminished in any way”); 10 December 1985, at 8 (invoking metaphor); 4 December 1991, at 1334 (invoking metaphor).

³²¹ *See, e.g.*, Cayman Hansard, 17 December 1985, at 5 (comparing Cayman bank license fees to “our competitor to the north”); 17 December 1985, at 25 (arguing raised insurance fees left Cayman “very competitive”).

³²² Vlcek, *supra* note 2, at 81.

³²³ 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. Cayman took these seriously as a threat. *See* Cayman Hansard, 17 February 1981 at 5 (Financial Secretary Vassel Johnson stating that “this threat [IBFs] must not be treated casually for we are now at the stage where we must be prepared to offer competition in offshore banking or suffer losses to New York.”); Cayman Hansard, 19 November 1982 at 15 (Financial Secretary T.C. Jefferson commenting on IBF competition and arguing that “The Cayman Islands must ensure that it is competitive, not only in price but in the standard of services offered, and that the Country’s image abroad is not tarnished. If the Cayman Islands fail to be competitive, or, if its facilities are used to harbour unclean money, the considerable benefits now received from hosting banks’ operations will undoubtedly disappear.”).

³²⁴ Palan, *Structural*, *supra* note 323, at 33.

³²⁵ Gibson, *supra* note 73, at 14-15.

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.

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.³²⁶ 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."³²⁷ 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."³²⁸ 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.³²⁹ "The inference could be drawn that government officials had provided themselves an opportunity for private negotiations with applicants."³³⁰ Similar proposals were reported in other jurisdictions.³³¹ 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

³²⁶ 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 154, at 31-33 (describing Operations Tradewinds, Swiss Mail Watch, Pirate, and Haven). *See also* Statement of William Anderson, in *Tax Evasion*, *supra* note 154, at 3 ("The use of tax havens has been of particular concern to the IRS since the mid-1950's."). ADD

³²⁷ Blum Report in *Illegal Narcotics Profits*, *supra* note 326, at 482.

³²⁸ Nathan Statement, *Illegal Narcotics Profits*, *supra* note 326, 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.

³²⁹ Blum Report in *Illegal Narcotics Profits*, *supra* note 326, at 481.

³³⁰ Blum Report in *Illegal Narcotics Profits*, *supra* note 326, at 481.

³³¹ Blum Report in *Illegal Narcotics Profits*, *supra* note 326, at 481-2.

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 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.³³²

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. As Walker put it, a constant need for “small reinventions of the wheel keeping on our toes to stay ahead of the other jurisdictions.”³³³ 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 policymaking 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. That it was able to continue this despite significant changes in the domestic political environment is further evidence of the strength of the collaborative model.

IV. Collaborative Policymaking and Policing, 1980-1996

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.”³³⁴ As Queen Elizabeth II noted in her Throne Speech on her visit to the Islands in 1983, “efforts will continue to maintain the high level of cooperation and confidence between Government and the private sector so that economic development may continue at a steady

³³² Sampson, *supra* note 13, at 289. *See also* Russell, HONOUR, *supra* note 4, at 184-85.

³³³ Walker, FROM GEORGETOWN, *supra* note 16, at 143. *See also* Cayman Hansard, 12 April 1979, at 20-21 (Financial Secretary comparing Cayman to competitor jurisdictions including Switzerland, Panama, New Hebrides, Netherlands Antilles, Isle of Man, Luxembourg, Liechtenstein, Hong Kong, Bermuda, British Virgin Islands, and the Bahamas and arguing for need to support industry).

³³⁴ Mary Lawrence, *New law's controls firm but gentle*, THE NOR'WESTER (July 1980) at 39. Similarly, in his budget speech, Financial Secretary T.C. Jefferson noted that “We are all aware that Cayman has many detractors and that the hard work of many years in promoting the good name of these Islands can quite easily be undone by one imprudent or careless act.” Cayman Hansard, 18 November 1983, at 7.

pace.”³³⁵ Caymanians continued to see opportunities in other jurisdictions’ missteps³³⁶ and to warn against complacency.³³⁷

By 1980, Cayman was roughly equal to Hong Kong and Bahrain in Eurodollar volume.³³⁸ 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

³³⁵ Cayman Hansard, 17 February 1983, at 2. One example of this collaborative effort is the passage of the 1983 Partnership Bill, which replaced the common law of partnerships with a statutory approach and to incorporate the previous limited partnership statute within the new general statute. Despite the MLAs’ willingness to debate at considerable length relatively small provisions in other statutes, this one passed with virtually no debate and only amendments correcting typographical errors in the draft bill. *See* Cayman Hansard, 12 September 1983, at 13-14; 13 September 1983, at 24-28. The Financial Secretary introduced the bill by saying that the bill had been circulated to “the Law Society, FINOCO the financial community committee and others deemed desirable” and the suggestions received were incorporated into it. Cayman Hansard, 13 September 1983 at 14. The law was designed to come in to force only after a proclamation from the Governor, allowing time for review. This allowed modifications before it came in to force. Cayman Hansard, 24 February 1984, at 35. Similarly, when Britain passed the British Nationality Act, 1981, the Caymanian Legislative Assembly created a select committee to address the impact on the Caymanian Protection Law, rather than drafting a government bill, allowing for consultation to see “what, if any, changes are necessary and desirable to such legislation in order more effectively to assist the financial and corporate infrastructure”. Cayman Hansard, 24 February 1984, at 8-9. When the legislative assembly decided to draft a bill regulating the company management industry, it formed a select committee, which held nine meetings, and circulated the draft bill prepared by the Attorney General to the legal and business community. There was extensive involvement from the private sector, with one of the nine meetings entirely devoted to “meeting with the representatives of the Law Society who had considered and made detailed recommendations and submissions concerning the draft legislation.” Cayman Hansard, 8 May 1984, at 2. *See also* Cayman Hansard, 8 May 1984, at 44 (sponsor describing process of creating legislation). Notably, just prior to the consideration of the companies management legislation, the legislative assembly had had a heated debate over instituting pensions for legislators, yet there was no dissension or commentary from the opposition on this legislation. Similarly on final passage, there was only discussion of correction of typographical errors and clarifications. Cayman Hansard, 9 May 1984, at 22-26. In 1989, a thorough revision of the Bank and Trust Companies Law was passed with little dissension, after the Financial Secretary noted in his introduction that the bill was the result of extensive consultation with a committee of “private sector practitioners” chaired by the Banking Inspector to recommend changes. Cayman Hansard, 14 March 1989, at 397-411. (The only issue on which there was dissension was an effort by three MLAs to amend the law to allow B license banks to lend money to Caymanians; the opposition to the effort focused on the lack of appropriate regulation for local business for the offshore banks. *Id.*) Similarly, the Companies Law was updated after a review by a similar committee without dissension, just after a contentious fight over the composition of the Finance Committee. Cayman Hansard, 9 July 1990, at 817-819; 18 July 1990, at 961 (final passage).

³³⁶ *See, e.g.*, Cayman Hansard, 16 February 1988, at 11 (MLA Capt. Charles Kirkconnell noting that “The recent increase in bank and trust company fees in the Bahamas and the hostile attitude towards bankers will undoubtedly force them to consider moving their operation. It is my hope that the Cayman Islands will be the obvious alternative. We have everything necessary to attract them: a stable Government, excellent communication, laws that protect bank’s confidentiality, no exchange controls, no excessive bank license fees, and a well-developed financial service sector.”).

³³⁷ *See, e.g.*, Cayman Hansard, 23 February 1988, at 6 (MLA Vassel Johnson warning that “we can lose much of what we have for our yesterdays can return. It can return if we become complacent and reckless in what we say, how, when or where. If we cause the environment to become hostile against investors, if our attitudes create fear. If we think only of personal aggrandizement, for trying out one image on the platform, and another in office.”); 17 February 1989, at 11 (Financial Secretary warning in budget address that changes in regulations elsewhere may reduce Cayman’s attractiveness).

³³⁸ Sampson, *supra* note 66, at 285.

compliance with international standards.³³⁹ 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 avoid the mistakes made elsewhere in the Caribbean.”³⁴⁰ Pierson emphasized how in the past “government worked together with a committee comprised of leading men from the financial community.”³⁴¹ Indeed, as noted earlier, 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.³⁴² 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.”³⁴³ 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.³⁴⁴ As one Member recognized during a 1985 debate in the Legislative Assembly, the financial industry “requires plenty of service from the Government” and civil service regulators in banking, insurance, and company registration were all needed.³⁴⁵ Since these civil servants remained answerable to the Governor, not the Legislative Assembly (and remain so today), this was a significant check on political autonomy.

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. Caymanian concerns often focused on ensuring that they maintained control of the political apparatus, although they were cautious expanding local control too much and frightening investors.³⁴⁶ Caymanians held various positions in the financial sector, such as

³³⁹ See, e.g., Doggart and Voûte, *supra* note 3, at 45-48.

³⁴⁰ Linford Pierson, *Planning is Essential*, THE NOR’WESTER, February 1983, at 33.

³⁴¹ Linford Pierson, *Our road ahead . . . the key issue is planning*, THE NOR’WESTER, June 1983, at 56. See also Cayman Hansard, 6 February 1987, at 4 (Governor noting in Throne Speech the ongoing consultation with private sector “To ensure our Laws remain attractive and in line with modern Banking, Insurance, Trust, Partnership and Company practices”).

³⁴² Mary Lawrence, “The Ever-Changing Insurance Scene,” THE NOR’WESTER, July, 1980, at 41; Pierson, *Our Road*, *supra* note 341, at 56.

³⁴³ *Financial Record for 1904-1981*, THE NOR’WESTER, April 1982 at 47.

³⁴⁴ Cayman Archives Interview, Peter Lloyd, Disc 3, 11, 12 (1997).

³⁴⁵ Cayman Hansard, 20 March 1985, at 4. See also Cayman Hansard, 20 March 1985 at 11 (Financial Secretary arguing that “Any day the Registrar of Companies does not respond to an attempt to register a company within a short period of [time], because the international investor has to take the afternoon flight, you hear a lot about it. You hear about it until you get tired of hearing it.”).

³⁴⁶ See Cayman Hansard, 25 February 1987, at 9-11 (Benson Ebanks describing history of Caymanian concern over losing political control, quoting extensively from Asquith report).

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.”³⁴⁷ 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.”³⁴⁸

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.³⁴⁹ 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 forerunner of [the Islands’] independence.”³⁵⁰ 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.”³⁵¹ *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.³⁵²

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.³⁵³ 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.³⁵⁴ For example, even

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

³⁴⁸ Charles Glidden, *MLA’s: no to political parties*, THE NOR’WESTER, Christmas 1981, at 37, 41

³⁴⁹ Glidden, *supra* note 348, at 37

³⁵⁰ Glidden, *supra* note 348, at 37.

³⁵¹ Mohamed Hamaludin, *Gov. Russell’s farewell charge*, THE NOR’WESTER, February 1982 at 10.

³⁵² Glidden, *supra* note 348, at 37; Cayman Hansard, 1 March 1985, at 9 (Financial Secretary describing 1984 elections as “most heavily contested general elections ever held, resulting in a major change in the membership of this Honorable House.”).

³⁵³ Glidden, *supra* note 348, at 37. *See also* Cayman Hansard, 6 December 1985, at 29 (MLA McKeeva Bush arguing against introduction of racial arguments in politics).

³⁵⁴ Glidden, *supra* note 348, at 41.

after parties appeared, the two member district of Cayman Brac and Little Cayman continued to regularly elect one member each from the two parties suggesting either clever strategic voting (giving the Sister Islands someone in whichever camp prevailed across all three Islands) or something other than ideology as a motivating force. Neither the lack of explicit parties or their appearance meant Legislative Assembly sessions were placid, with heated rhetoric particularly after the change of government following the 1984 election.³⁵⁵ However, even during the periods of the greatest personal rancor in the mid-1980s, there were numerous examples of all members voting in favor of measures sought by the financial industry even as they hurled insults like “I call that a good communist vote” at each other.³⁵⁶

³⁵⁵ See, e.g., Cayman Hansard, 19 March 1985, at 7-8 (dispute between McKeever Bush and James Bodden over Bodden reading a newspaper in the House); 20 March 1985, at 8 (Financial Secretary describing attacks on him during budget debate by an Executive Council member as “there were so many shots taken at me for some time that I thought I was an Elected Member on the Opposition side, and I thought the Fourth Elected Member of Council had confused me as such.”); 6 December 1985 (MLA James Bodden denouncing Legislative Assembly and majority for nepotism and treading on minority rights); Cayman Hansard, 17 December 1985, at 19-20 (MLA James Bodden suspended for calling House “dictatorial”); Cayman Hansard, 6 March 1986, at 14-16 (MLA James Bodden suspended for remarks); Cayman Hansard, 11 September 1986, at 20-23 (walkout by 5 opposition members over procedural ruling by chair); 5 April 1995, at 379 (Speaker complaining that she was finding “Members to be rather nit picking over small words or reading more into words than what is actually said” in raising points of order); 8 June 1995, at 465 (one MLA complaining of “Brutus-like traits” in a Minister’s character and another interjecting “Hear, hear! He is a Brutus!”); 20 June 1996, at 347-353; 24 June 1996 at 381-83 (member’s coat had “cow itch” applied in chamber); 16 September 1998, at 749 (suspension of member for violation of rules); 5 June 2002, at 301 (two MLAs suspended for contempt of chair); 27 February 2008, at 576 (Opposition MLA shouts out “You’re telling a dirty lie!” at Minister); 27 June 2008, at 293-4 (contentious exchange); 24 November 2010, at 545-546 (multiple comments ordered expunged by Speaker).

³⁵⁶ Cayman Hansard, 1 March 1985, at 70 (communist vote comment by MLA James Bodden); Cayman Hansard, 7 March 1985, at 36 (backing government motion to set Court of Appeal); Cayman Hansard, 25 March 1985, at 3-4 (agreement without debate on changing planning law to allow higher construction to lure hotels); 4 September 1985, at 44-48 (Court of Appeal amendments passed without comment by opposition); 3 December 1985 at 15-25 (unanimous vote and cordial debate over modernizing amendments to Company Law); 17 November 1986, at 18-19 (technical amendment to Trusts Law passed unanimously, without debate); 28 April 1987, at 14-16 (partnership law amended with little controversy to gain business; 2 MLAs object to changing law for a particular investor); 28 April 1987, at 26-27 (unanimous trusts law amendment to enhance marketability of Cayman trusts without controversy); 16 September 1987, at 15-16 (opposition joins in support of shipping law); 16 November 1987, at 14-17 (uncontroversial second reading of insurance amendments); 17 November 1987, at 9-16 (cooperation in technical amendments to companies law); 16-17 (passage of insurance amendments without dissent); 26 June 1991, at 516-523 (cooperatively passing exempted limited partnership bill that emerged from consultation with private sector soon after contentious disputes over death penalty and constitution); 8 July 1992, at 595-599, 13 July 1992, at 675 (cooperative passage of amendments to Companies Law sought by private sector); 27 July 1992, at 799-800 and 2 September 1992, at 832-34 (Legislative Assembly agrees to suspend consideration of Merchant Shipping law amendments in response to request for consultation by private sector and then adopts suggested changes); 25 March 1993, at 252-53 (Companies Law amendment passed without controversy after heated 1992 election); 28 June 1993, at 449-457 (cooperative passage of Mutual Funds Law); 19 September 1994, at 461-462, 23 September 1994, at 536 (uncontroversial amendment of Partnership Law “with full support of the financial community”); 21 June 1995, at 608-617 (amendments to Trusts (Foreign Element) Law passed on shorter notice than law required in response to request from financial industry); 19 June 1996, at 316-317, 8 July 1996, at 458-9 (amendments to Legal Practitioners Act “at the request of local attorneys” passed without debate); 4 September 1996, at 602-603, 5 September 1996, at 610-11 (Companies Law amendments passed without debate); 1 September 1997, at 441-443, 3 September 1997 at 457-8 (Special Trusts (Alternative Regime) Bill and amendments to Perpetuities law passed to create “non-charitable purpose trusts” in response to demand from financial services providers); 9 March 1998 at 134 (amendments to trusts law and creation of segregated portfolio companies bills passed without debate on third readings); 5 June 1998 at 383-387, 17 June 1998, at 416-7 (congenial discussion of amendment to Banks and Trust

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."³⁵⁷ The Cayman "Government's revenue comes largely from duty on imported goods which produces 40 percent of total income."³⁵⁸ The second most important was 20% derived from postage and revenue stamps;³⁵⁹ 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."³⁶⁰ Even during the depressed conditions of the early 1980s these revenue sources "produced a balanced budget" and "created reserves which can produce an income."³⁶¹ Benefits went beyond direct revenue. As Financial Secretary T.C. Jefferson noted in his 1982 Budget Address, "In 1981, on top of license fees [of CI\$3.33 million in 1981] paid to the Government, banks and trust companies spent some CI\$26.2 million in the Cayman Islands by way of capital investment and operating costs.

Companies Act); 20 April 2001, at 485-507 (various financial bills debated and passed with little dissent); 9 January 2002, at 1537-1548 (Merchant Shipping amendments); 14 January 2002, at 1630 (SPC legislation passed); 13 December 2004, at 516-517, 519-520 (merchant shipping amendments passed without debate or controversy); 29 September 2006, at 342-344, 346-352 (financial bills moved without controversy); 16 May 2007, at 218-19 (Proceeds of Criminal Conduct Law amendments moved without controversy); 17 September 2007, at 453-460 (Companies Law and Insurance Law amended without controversy); 26 June 2008, at 276-284 (various financial bills moved without controversy or debate); 27 June 2008, at 300-305 (uncontroversial passage); 30 June 2008, at 317-318 (3rd readings and passage uncontroversial); 5 December 2008, at 583-590 (Freedom of Information regulations affirmed unanimously); 17 December 2008, at 738-40, 18 December 2008, at 761-62 (Tax Information Authority Amendment passed without controversy); 20 March 2009, at 1049-1053, 1055-1056 (companies act and exempted limited partnership acts amended as sought by financial community with little controversy); 2 December 2009, at 326-338 (fee increases approved with 2 abstentions on one); 24 February 2010, at 366-368 (act passed to allow international cooperation in keeping with CFATF review); 15 September 2010, at 446-452 (companies and partnership laws amended to meet new Global Forum requirements without debate); 17 March 2011, at 910-13 (creation of terror finance legislation to avoid UK action); 11 April 2011, at 959 (amendment to Companies Law drafted "two rounds of consultations with various associations across the industry"); 5 November 2010, at 489 (agreeing to TIEA legislation); 28 September 2011, at 491-494 (adopting audit oversight legislation to come into compliance with IOSCO standards); 18 November 2011, at 704 (various bills passed without debate or dissent); 31 August 2012, at 236-238, 240-245 (amending financial laws to meet Global Forum recommendations); 29 August 2012, at 215-229 (financial bills amended to meet Global Forum recommendations); 19 November 2012, at 420-422 (Companies Law amendments adopted without debate or dissent); 23 November 2012, at 511-513 (Mutual Funds and Banks and Trusts Companies Laws amended without debate or dissent); 10 January 2013 at 608 (Partnership law amended to meet Global Forum recommendation); 15 March 2013, at 744-45 (amending CIMA's authority to allow compliance with EU Alternative Investment Fund Manager's Directive).

³⁵⁷ Vassel G. Johnson, *'The fruits are now ripening' from Cayman's tax haven system*, THE NOR'WESTER, Christmas 1981 at 48,

³⁵⁸ Johnson, *Fruits*, *supra* note 357, at 48.

³⁵⁹ Revenue stamps relate to the real estate business.

³⁶⁰ Johnson, *Fruits*, *supra* note 357, at 48. The oil transfer operation began in August 1977 and in two months over 4 million barrels of oil were unloaded from super-tankers onto shuttle tankers. Cayman Hansard, 10 November 1977, at 5. By 1978, over 49 million barrels were being transferred. Cayman Hansard, 4 April 1979, at 3.

³⁶¹ Johnson, *Fruits*, *supra* note 357, at 48.

Employment in the banks and trust companies is increasing steadily. At the end of 1981, 709 persons were employed, 73% of whom were Caymanians.³⁶² Moreover, he noted that

considerable employment is generated in accountancy and law firms and in other companies providing financial services. The benefit is felt in every sector of the economy, whether it be retail trade, real estate, or hotels and restaurants. Indeed, the constant flow of bankers and other visitors on financial business must represent a substantial part of total tourism.³⁶³

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.”³⁶⁴

Cayman proved willing to adapt to meet the needs of new customers as well. In 1984, the Legislative Assembly held a special session to pass a bill to facilitate the Hong Kong company, General Oriental Investments, Ltd., reincorporating into Cayman by varying the terms of the general companies law for this one firm.³⁶⁵ Despite some testy procedural exchanges over some wording, there was no substantive disagreement over the need for the measure. Likewise, Cayman moved to secure banks from outside the United States, successfully diversifying the geographical pool on which it drew.³⁶⁶ And Cayman continued to shape institutions to reassure investors by drawing on outside resources—the Court of Appeal created in the early 1980s had as its first four members the President of the Jamaica Court of Appeal, the Chief Justice of the Bahamas, and a member and former member of the Jamaican Court of Appeal.³⁶⁷

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.”³⁶⁸ 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

³⁶² Cayman Hansard, 19 November 1982, at 15. *See also* *id.* at 18 (Financial Secretary discussing large financial impact of law firms in offshore sector).

³⁶³ Cayman Hansard, 19 November 1982, at 15. *See also* Cayman Hansard, 4 December 1985, at 14 (MLA Vassel Johnson asserting that 40% of tourism is related to financial industry).

³⁶⁴ Johnson, *Fruits*, *supra* note 357, at 48. *See also* Cayman Hansard, 29 November 1985, at 5 (noting in Budget Address by Financial Secretary that “we are only too aware of the potential fragility of a sector which is dependent not only on continuing confidence in Cayman as a safe place to do business, but also on the maintenance of favourable economic and monetary conditions overseas, factors which are entirely outside our control or influence.”).

³⁶⁵ Cayman Hansard, 30 July 1984 at 2-31.

³⁶⁶ Cayman Hansard, 1 March 1985, at 10 (Financial Secretary noting in Budget Address that Cayman’s growing “credibility” and familiarity with the Islands was bringing in banks from other areas, with 32% from Europe and 21% from the Middle and Near East and terming this diversification “a general recognition of the standing and strength of our financial industry.”); Cayman Hansard, 14 November 1986, at 3 (licensed banks’ foreign assets up 16.5% from 1984 to 1985, increasing diversity in source countries for banks). *See also* Cayman Hansard, 13 November 1987, at 3 (Financial Secretary reporting in Budget Address that bank assets and number of banks increasing and now included 42 of top 50 banks in world).

³⁶⁷ Cayman Hansard, 7 September 1984, at 16 (Governor announcing appointments). *See also* Cayman Hansard, 7 March 1985, at 36 (MLA James Bodden noting regret that “no Caymanian has the qualifications probably at this time to sit on that Court [of Appeal].”).

³⁶⁸ *Companies now total 14,391*, *THE NOR’WESTER* March 1982, at 41.

Hunters.³⁶⁹ 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.³⁷⁰ From 1981 to 1982 Caymans’ registrations increased “from 516 vessels to 582. Revenue from the Shipping Register also went up, from CI\$87,815.00 in 1980 to CI\$100,660.00 in 1981.”³⁷¹ 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.³⁷² 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.³⁷³ The captive insurance industry continued to grow.³⁷⁴ Cayman was “becoming a jurisdiction of choice for offshore corporate structures” and developed more general special purpose vehicle business out of the aircraft finance business: “The model of aircraft financing and ownership began being used for the ownership of all sorts of assets: oil wells, pipelines, boats, even service fleets. . . .”³⁷⁵ 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)³⁷⁶ and a committee enacted the National Trust Law preserving Cayman heritage sites, which attracted tourists paying hotel fees.³⁷⁷ Expat lawyer Ian Boxall assisted in drafting the National Trust legislation and advised on legal matters for the National Trust.³⁷⁸

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.³⁷⁹ 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.”³⁸⁰ Lloyds Bank of London was one of eleven banks incorporated in

³⁶⁹ Ebanks, *supra* note 32, at Disc 4, 14. Interestingly, the Legislative Assembly acted to close a tax avoidance loophole in 1985, eliminating the ability of individuals to use companies to hold real estate and then avoid stamp duty by transferring the shares rather than real estate. Cayman Hansard, 22 May 1985, at 26-46.

³⁷⁰ *Companies now total*, *supra* note 368, at 41. This required Britain’s cooperation, since the UK had to extend several international conventions to which it was a signatory to cover Cayman. *See* Cayman Hansard, 23 February 1987, at 5 (describing history of registry efforts). This was not easy to procure. *See* *Id.* at 19 (describing convincing UK as “a very difficult task” because of UK view that needed to consider EU interests). As the registry developed, the government worked closely with the private sector. *Id.* at 6 (describing process in 1986 and 1987); Cayman Hansard, 16 September 1987, at 13 (describing cooperation).

³⁷¹ *Companies now total*, *supra* note 368, at 41; Craton, *FOUNDED*, *supra* note 20, at 357.

³⁷² Stephen Porter, Lecture, March 13, 2012, Cayman Islands. *See also* Russell, *HONOUR*, *supra* note 4, at 182, 191-92.

³⁷³ Russell, *HONOUR*, *supra* note 4, at 182. The business ended when deep sea transfer points were built in U.S. waters. *Id.*

³⁷⁴ Cayman Hansard, 14 November 1986 (Financial Secretary noting increases in Budget Address).

³⁷⁵ Walker, *FROM GEORGETOWN*, *supra* note 16, at 157-9.

³⁷⁶ Johnson, *AS I SEE IT*, *supra* note 21, at 290.

³⁷⁷ Johnson, *AS I SEE IT*, *supra* note 21, at 356-365.

³⁷⁸ Boxall, *supra* note 275, at 12.

³⁷⁹ Doggart, 1979 Report, *supra* note 3, at 38.

³⁸⁰ Doggart, 1979 Report, *supra* note 3, at 28.

Florida “regulated by the federal government.”³⁸¹ 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 options, as well as dividend interest income, and net gains from options.”³⁸² 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 Cayman 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.”³⁸³

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*,³⁸⁴ 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.³⁸⁵ 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.³⁸⁶ In 1984, Cayman moved to enhance the reporting requirements of Cayman-licensed banks, as a means of underlining “our commitment to preserving the integrity of the international system rather than simply looking to the banking sector as a revenue earning tool.”³⁸⁷ The United States began the criminalization of money laundering in 1986, as part of the larger effort against illegal drugs.³⁸⁸ 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 first in the 1984 Cayman Narcotics Agreement with the United States and then, after the further negotiations mandated in that agreement, in the 1986 Mutual Legal Assistance Treaty (“MLAT”).³⁸⁹ The MLAT committed Cayman to assist “US authorities in the investigation and

³⁸¹ Doggart, 1979 Report, *supra* note 3, at 28.

³⁸² Doggart, 1979 Report, *supra* note 3, at 25.

³⁸³ Doggart, 1979 Report, *supra* note 3, at 24-28.

³⁸⁴ John Grisham, *THE FIRM* (1992). See Boise & Morriss, *supra* note 46, at 429, n. 329 (discussing the “Grisham effect”); Cayman Hansard, 7 March 1985, at 296 (MLA James Bodden (in opposition) describing initial narcotics agreement as identifying “Cayman as an area where we are not trying to build an economy based on drug money.”).

³⁸⁵ *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’.”)

³⁸⁶ Johnson, AS I SEE IT, *supra* note 21, at 300-306; Craton, *FOUNDED*, *supra* note 20, at 359; Walker Interview, *supra* note 99, at 4; Boxall Interview, *supra* note 275, at 14; Ebanks, *supra* note 32, at 17; Cayman Archives Interview, Peter Lloyd Interview, 29 April, 1997 at 12-14.

³⁸⁷ Cayman Hansard, 1 March 1985, at 11 (Financial Secretary in Budget Address).

³⁸⁸ Vlcek, *supra* note 2, at 49.

³⁸⁹ Cayman Hansard, 1 March 1985, at 4 (Governor describing negotiations and Narcotics Agreement in Throne Speech); Cayman Hansard, 9 September 1986, at 16 (Narcotics Agreement signed July 26, 1984 and committed Cayman to “enter into negotiations concerning a Law Enforcement Treaty between the United States and Cayman, concerning criminal matters” and to reach an agreement within 15 months); Johnson, AS I SEE IT, *supra* note 21, 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

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.”³⁹⁰ Notably, the initial agreement was negotiated by James Bodden’s Unity Team government, while the MLAT was negotiated by its successor after the bitterly contested 1984 election, showing considerable unity concerning the survival of the financial industry, if not with respect to the MLAT itself.³⁹¹ The Government also cited support from the financial community for the treaty in advocating for the implementing legislation.³⁹² Fears that the MLAT would hurt business proved groundless as companies registered grew by 18% from 1986 to 1987, which the 1988 Throne Speech termed “a vote of confidence in our policy of encouraging clean business.”³⁹³ As then MLA J.A. Roy Bodden argued in his response to the Throne Speech,

I see nothing wrong with a little house cleaning, especially when that house cleaning is necessary. I believe that it is better to heed a warning is given early, than for one to have to succumb oneself to embarrassment. I believe that we did

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>. Cayman saw itself as pressured to sign the agreement, as MLA McKeeva Bush noted in 1985, commenting that in early 1980s that it was “almost impossible for a Bank Officer or a Lawyer to travel from this Island to the United States, without risking a Subpoena to appear before a United States Grand Jury.” Cayman Hansard, 10 December 1985, at 19.

³⁹⁰ 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.”); Walker, FROM GEORGETOWN, *supra* note 16, at 182 (discussing the MLAT and noting he was “a big proponent of it”). At the signing ceremony in Grand Cayman, the Minister for the Foreign and Commonwealth Office joined the Governor in signing the treaty, and the Minister referred to the treaty as a “milestone”. Cayman Hansard, 3 July 1986, at 1-3. The negotiations and treaty provisions are described by the Cayman Attorney General at Cayman Hansard, 2 September 1986, at 12-34. The MLAT did not cover “pure tax matters”, that is, it did not cover tax avoidance. *See* Cayman Hansard, 8 September 1986, at 17.

³⁹¹ As MLAs, James Bodden and G. Haig Bodden, key figures in the earlier government, opposed the MLAT, however. *See* Cayman Hansard, 2 September 1986, at 25-33; 5 September 1986, at 17-34; 8 September 1986, at 6-16. The new Government argued for the MLAT explicitly on this ground. *See* Cayman Hansard, 8 September 1986, at 19 (“The present Treaty [the MLAT] has been brought about because when the Narcotic Agreement was signed, a timetable was set for a Law Enforcement Treaty on other types of crime to be concluded with the United States of America.”). The vote on the MLAT implementing legislation was 10-5. Cayman Hansard, 11 September 1986, at 19. When the dissenters attempted to move to refer the matter to a select committee to gather public input, the Governor (as chair) ruled that while the motion could be brought there could be no debate on it under Parliamentary procedure, and the five walked out. Cayman Hansard, 11 September 1986, at 20-23.

³⁹² *See*, Cayman Hansard, 9 September 1986, at 18 (elected ExCo Member Capt. Charles Kirkconnell arguing that “we have received many favorable comments from international financiers. The principle associations which have responsibility for confidential matters and the protection of clean investors have made favourable comments on this Treaty. One association said that the Treaty would assist the Cayman Islands to shed its unclean image and attract more international business and end criticism that we are a haven for drug and other criminal money. We are already experiencing an increase in applications from prestigious international banks. Some of these banks are coming from tax havens which are well know for protecting criminal activity.”). One government supporter noted that some of the criticism of the MLAT appeared in a newspaper, the editor of which was the wife of the President of the Law Society, a Unity Team supporter. *See* Cayman Hansard, 10 September 1986, at 44. However, opponents of the Treaty pointed to concerns raised by the Law Society that “persons with legitimate business in the Cayman Islands may be reluctant to continue to do so on the basis that their private and commercial affairs will be subject to greater disclosure than would be the case in other jurisdictions and certainly greater disclosure than would be the case in the United States, where the right to have judicial review of any investigative process of an enforcement agency remains.” Cayman Hansard, 10 September 1986, at 36-7 (MLA quoting Law Society).

³⁹³ Cayman Hansard, 12 February 1988, at 3.

the right thing [in signing the MLAT]. The journals that I read lead me to believe that the Cayman Islands, if they had ever lost respectability in the banking world, are regaining that respectability and once again we are becoming the model that we should be – clean, clear cut and up front.³⁹⁴

Contradicting the stereotype of the Islands as a place where there was considerable money laundering, 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.”³⁹⁵ Cayman also took steps to build relationships in the UK, hiring the recently retired governor in 1982 to represent it in London, which made Cayman one of just four overseas territories to maintain a London office at the time.³⁹⁶ Further, Cayman strengthened its anti-money laundering laws several times, keeping up with the Financial Action Task Force (“FATF”) and Caribbean Financial Action Task Force (“CFATF”) recommendations.³⁹⁷ The Caymanian Legislative Assembly monitored the UK’s involvement with the OECD’s efforts to control “harmful” tax competition, forming a Select Committee to gather public input into the UK’s review of its relationship with its overseas territories as the UK moved to pressure Cayman to change its laws to meet OECD guidelines.³⁹⁸ As one member of the Legislative Assembly noted, Cayman could “not afford to take a reactive posture” but instead needed “a proactive position” to inform the OECD about “the good things that we are doing rather than waiting for them to take action and then reacting to their position.”³⁹⁹ The government and private sector collaborated on guidance notes to deal with the blacklist.⁴⁰⁰ And Cayman took a seat as a member in the OECD’s Global Forum, able to directly represent its interests.⁴⁰¹

³⁹⁴ Cayman Hansard, 28 February 1989, at 218.

³⁹⁵ Doggart, 1979 Report, *supra* note 3, at 155, 156.

³⁹⁶ Russell, HONOUR, *supra* note 4, at 201; Cayman Hansard, 16 February 1987, at 11 (MLA Capt. Charles Kirkconnell praising Russell’s appointment in London). 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.

³⁹⁷ Cayman Hansard, 19 September 1996, at 661-670 (support for Proceeds of Criminal Conduct Law based on need for legitimacy, FATF/CFATF recommendations and done quickly to allow Minister to discuss at upcoming Commonwealth Finance Ministers’ meeting); 20 September 1996, at 687-696 (strong support for same).

³⁹⁸ Cayman Hansard, 22 June 1998, at 444-459, 24 June 1998, at 474-482, 25 June 1998, at 488-505; 1 April 1999, at 351-356 (describing response); 26 November 1999, at 1271-72 (discussing OECD issues in Budget Speech); 2 March 2000, at 108 (discussing response to OECD).

³⁹⁹ Cayman Hansard, 22 March 1999, at 283. Caymanians continued to argue that “It there is competition in tax, then I cannot see it being harmful”, 26 March 2001, at 207, but they did not let this position prevent them from adapting by complying with FATF recommendations. Not everyone accepted the strategy of being at the forefront of compliance, but these were a small minority. *See, e.g.*, Cayman Hansard, 28 March 2001, at 242-43 (MLA Rolston Anglin arguing against being “overly aggressive and try[ing] to be a Christopher Columbus, going into uncharted territory and lead[ing] the way.”)

⁴⁰⁰ Cayman Hansard, 25 April 2001, at 510-11.

⁴⁰¹ Cayman Hansard, 9 November 2005, at 489-90. In some instances, Cayman may have moved too fast to adopt Global Forum recommendations. *See* Cayman Hansard, 10 January 2013, at 610 (Opposition alleging August 2012 amendments were done without consultation with financial sector and so had problems, requiring further amendments).

In the late 1990s, observed one Cayman resident lawyer, the OECD and “metropolitan” authorities attempted through “blacklists” to “proscribe most of the financial centres.”⁴⁰² The public and private sectors collaborated in resisting these pressures.⁴⁰³ 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.’”⁴⁰⁴ The Cayman Islands had “no local taxes [for international businesses] to worry about.”⁴⁰⁵ 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.⁴⁰⁶

Cayman lawyers competed for and won this “transparent” documents business, with its substantial fees.⁴⁰⁷

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.⁴⁰⁸ 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.⁴⁰⁹ In 1990 McKeeva Bush and other National Team Assembly independents secured the first the creation of the position of Speaker of the Legislative Assembly over the then-government’s objections, and a Caymanian, the “veteran civil servant” Mrs. Sybil McLaughlin, was appointed the next year and served from 1991 to 1996.⁴¹⁰ 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.⁴¹¹ Instead, National Team

⁴⁰² Boxall Interview, *supra* note 275, at Tape 2, side A at 15. *See also* Morriss & Moberg, *supra* note 314, at 39-48.

⁴⁰³ Russell, HONOUR, *supra* note 4, at 206.

⁴⁰⁴ Boxall Interview, *supra* note 275, at Tape 2, side A, at 17.

⁴⁰⁵ Boxall Interview, *supra* note 275, at Tape 2, side A, at 17.

⁴⁰⁶ Boxall Interview, *supra* note 275, at Tape 2 Side B, at 17.

⁴⁰⁷ Boxall Interview, *supra* note 275, at Tape 2 Side B, at 17 (emphasis in original).

⁴⁰⁸ Craton, FOUNDED, *supra* note 20, at 305, 306, 319; Glidden, *supra* note 348, at 37; Bodden, PATRONAGE, *supra* note 24, at 36, 44,

⁴⁰⁹ Craton, FOUNDED, *supra* note 20, at 371-72; Bodden, PATRONAGE, *supra* note 24, at 251-266.

⁴¹⁰ Bodden, PATRONAGE, *supra* note 24, at 263-271; Craton, FOUNDED, *supra* note 20, at 313, 321-22; Cayman Hansard, 5 September 1990, at 1210-1220. The final vote was 7-5 with the official members abstaining.

⁴¹¹ Truman M. Bodden, *UK Dependent Territory Succeeds: An Analysis of Cayman's Successful Development*, available at <http://www.ucciconference.ky/papers/Bodden%20-%20UK%20Dependent%20Territory%20Succeeds%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.⁴¹² Affiliation with the UK continued to be seen in largely positive terms. As elected ExCo Member Benson Ebanks noted in 1990,

We have had two items of stock and trade up to now which succeeding legislators have used to bring these islands to its present stage of prosperity and those two terms are our people and the stability which the Union Jack, fluttering in the wind and all that it stands for, gives us. Our stability has rested and continues to rest on our connection with the United Kingdom.⁴¹³

Britain remained supportive of the financial industry: As Queen Elizabeth II noted in her 1994 Throne Speech delivered in Grand Cayman during a Royal Visit, “The Financial Sector remains the key to a successful future for these islands. My Government is determined to maintain a financial services industry of high quality and integrity, through strict adherence to prudent policies, augmented by the introduction of the new Mutual Funds Legislation.”⁴¹⁴ However, some tensions continued as well. When Britain moved to abolish the death penalty in her overseas territories through an order in council,⁴¹⁵ this provoked a negative reaction in Cayman both over the substance of the decision and over the lack of consultation.⁴¹⁶

The financial regulatory system continued to evolve as well. A Mutual Funds Law brought a new line of business, with registrations growing quickly and 615 funds registering in the first year of the new statute.⁴¹⁷ Traditional businesses continued to grow as well, with both captive insurance, banks, and company registrations growing in the early 1990s.⁴¹⁸ In 1995, the

%20An%20Analysis%20of%20Caymans%20Successful%20Development.pdf at 1; Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at 91.

⁴¹² Craton, FOUNDED, *supra* note 20, at 321-22, Bodden, PATRONAGE, *supra* note 24, at 272-288.

⁴¹³ Cayman Hansard, 12 June 1990, at 414.

⁴¹⁴ Cayman Hansard, 26 February 1994, at 2.

⁴¹⁵ Britain had to operate differently with respect to different territories due to differences in constitutional structure. 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.”).

⁴¹⁶ Cayman Hansard, 20 June 1991, at 407-423, 21 June 1991, at 443-450 (debate over Private Member’s motion asking UK to reverse decision; motion defeated 6-8 with one abstention). The debate turned on whether a dependent territory could make such a request. MLA McKeeva Bush argued that “we cannot allow the United Kingdom to push on us every whim and fancy which many conform with their obligations under the European convention.” Cayman Hansard, 21 June 1991, at 446. The Attorney General countered that “it is not compatible with the Cayman Islands position as a Dependent Territory that it seeks to get the U.K. Government’s decision reversed in this way.” *Id.* at 447.

⁴¹⁷ Cayman Hansard, 9 November 1994, at 602. Cayman also looked to gain a share of the cruise ship marriage market with an amendment to the Marriage Law, reducing the waiting period for a license. Cayman Hansard, 16 November 1994, at 663. There was some controversy over the morality of this step, although the amendment passed 12-3 with 3 absences. *Id.* at 663-667.

⁴¹⁸ Cayman Hansard, 9 November 1994, at 602 (30% increase in company registrations over prior year, 31 new banks, and 40 new captives).

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.”⁴¹⁹ A formal consultative mechanism, the Private Sector Consultative Committee (“PSSC”) built on earlier informal consultations to respond to the growing international pressure on OFCs.⁴²⁰ 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.⁴²¹ Extending collaborative policymaking to policing, CIMA signaled a regulatory innovation that aimed to secure Caymans’ future competitive advantage.⁴²² In 1996, the Cayman Islands Stock Exchange was organized as “an enhancement to the array of services” already available, to “combine the appropriate degree of regulatory control with significant private sector participation” by creating a company in which the government was the sole shareholder.⁴²³

When the FATF listed Cayman in 2000 as noncompliant, the Government moved quickly to address the FATF’s concerns.⁴²⁴ Steps included meeting with the private sector to formulate a strategy, and seeking advice from U.S. counsel on how to respond.⁴²⁵ Just two days after the initial listing, four pieces of new legislation were passed to provide CIMA with expanded authority to cooperate internationally and otherwise become in compliance with the FATF requirements.⁴²⁶ In 2002, Cayman faced additional stress from the European Savings Directive, whose application to Caymanian institutions the Leader of Government Business would “ring the death knell” of the industry.⁴²⁷ Cayman pursued an aggressive strategy of negotiation and threats of litigation to secure the best terms it could with respect to the Directive.⁴²⁸ Despite the change in governments in 2005 (and Hurricane Ivan in 2004), Cayman negotiated bilateral agreements with 25 EU members that avoided the “death knell” and quickly adopted the implementing legislation without controversy as one of the first post-election bills.⁴²⁹ On top of the increasing

⁴¹⁹ Doggart, 1979 Report, *supra* note 3, at 154.

⁴²⁰ Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at 150-154, 153 (describing PSSC evolution and involvement of “representatives from the major banks, the larger legal firms specializing in corporate law, trust and estate planners, company management, and the Department of Finance, as well as one or two government ministers and, on occasion, one or two members of the Legislative Assembly.”); Cayman Hansard, 21 June 1995 at 612 (describing committee as consisting of “the President of the Cayman Bar Association, the President of the Cayman Islands Law Society, the President of the Cayman Islands Insurance Managers Association, the President of the Cayman Islands Bankers Association, the President of the Cayman Islands Society of Professional Accountants, the President of the Chamber of Commerce”, and others.). *See also* Cayman Hansard, 3 November 2010, at 457 (discussing creation of Financial Services Legislative Committee with public and private members); 15 September 2010, at 448 (Premier assuring Leader of Opposition that “the Government does not move on this kind of legislation ... without talking about those Bills, the parameters of those Bills, the need for those Bills, and have our Legislative Committee from the Financial Services Council go through the Bills.”).

⁴²¹ Craton, FOUNDED, *supra* note 20, at 359.

⁴²² Craton, FOUNDED, *supra* note 20, at 359-60; Doggart, 1979 Report, *supra* note 3, at 153-54.

⁴²³ Cayman Hansard, 14 March 1996, at 253-260; 20 March 1996, at 300-301.

⁴²⁴ Cayman Hansard, 12 July 2000, at 630-653 (discussion in Legislative Assembly).

⁴²⁵ Cayman Hansard, 12 July 2000, at 632.

⁴²⁶ Cayman Hansard, 14 July 2000, at 676-706.

⁴²⁷ Cayman Hansard, 7 November 2002, at 625.

⁴²⁸ Cayman Hansard, 12 March 2003, at 24-5 (describing efforts).

⁴²⁹ Cayman Hansard, 22 June 2005, at 35-42, 23 June 2005, at 56.

demands of outside governments, Cayman also faced some financial stress as consolidation in the financial industry reduced the number of banking licenses.⁴³⁰

D. Increasing Political Fractures

As Cayman's government grew in size over the 1980s, no doubt in part because more resources were available from the financial sector's growth, some political stress lines began to appear over control of those resources. As just one measure of the growing level of contention, the Speaker noted that the number of questions asked of the government by backbench members rose from 185 in 1980 to 857 in 1992.⁴³¹ In particular, one of the most controversial events in Cayman's constitutional history to that point developed in a dispute over control of spending after the back bench began to reject the Executive Council leadership on the budget.⁴³² In December 1989, the Finance Committee (which at that time consisted of all elected members of the Legislative Assembly with the Financial Secretary as chair) reallocated funds from the Executive Council's priorities. As the backbench outnumbered the Executive Council members in the Finance Committee, they were able to make these changes.⁴³³ The Executive Council reacted to its loss of control of the budget by proposing to change the Standing Orders governing the Legislative Assembly to add the Attorney General and the Administrative Secretary (both official members) to the Committee and replace the Financial Secretary as chair with the presiding officer of the Legislative Assembly (at that time, the Governor), making the Financial Secretary an ordinary member of the Finance Committee. The effect of these changes would be to give the Executive Council members three additional votes in the Finance Committee (the two new members and the Financial Secretary, who had previously been limited to casting a vote when there was a tie and bound to vote to preserve the status quo). Since ExCo members were bound by collective responsibility in both the Legislative Assembly and the Finance Committee, they were required to vote as a bloc to support the Government position. With a Legislative Assembly membership of fifteen, this required the Executive Council to win just one vote from among the six backbench members to prevail. By comparison, under the earlier order, the five elected ExCo members needed two backbenchers' votes (if all members of the Finance Committee were voting). After considerable and quite heated wrangling over both substance and procedure, the amendment passed on an eight to seven vote.⁴³⁴ The dispute continued, prompting

⁴³⁰ Cayman Hansard, 13 November 2002, at 693.

⁴³¹ Cayman Hansard, 18 September 1992, at 1143.

⁴³² Cayman Hansard, 2 September 1992, at 850 (MLA Truman Bodden terming dispute as "one in which we had probably more controversy than in most other areas during the time that I have been in politics.").

⁴³³ The description of the controversy is drawn from the debate in the Cayman Hansard, 11 June 1990, at 373-383; 12 June 1990, at 398-414; 13 June 1990, at 434-446; 14 June 1990, at 478-481; 15 June 1990, 488-508; 19 June 1990, at 513-531; 20 June 1990, at 533-553; 22 June 1990, at 579-599; 25 June 1990, at 601-621; 26 June 1990, at 623-645; 27 June 1990, at 649-670; 29 June 1990, at 691-715; 3 July 1990, at 717-740. Benson Ebanks gave his account of the problems in the Finance Committee when the Government lost control of it in a July 3 speech. Cayman Hansard, 3 July 1990, at 728-736. MLA Haig Bodden explained how the change allowed a minority Executive Council to override a majority of the elected members. Cayman Hansard, 4 July 1990, at 753-55.

⁴³⁴ The result was essentially determined by the Governor's ruling that the 3 Official Members were bound by collective responsibility and allowed to vote. *See* Cayman Hansard, 3 July 1990, at 736-738 (ruling). Since the majority included the votes of the three Official Members, the vote without their participation would have been 5 to 7 and the motion would have failed. *Id.* at 738 (vote). The final vote on the actual amendment is at Cayman Hansard, 4 July 1990, at 759 (8-5 vote with two members absent). The opposition then sought to have the Governor not give assent to the change, as was required before it could go into effect, and solicit public input. Cayman Hansard, 4 July 1990, at 760-65. The Legislative Assembly, not surprisingly, rejected the call for a referendum by an 8-7 vote. Cayman Hansard, 6 July 1990, at 809. The defeated back benchers argued this led to a sharp boost in government

the Government to seek a “Constitutional Study”, which passed on a narrow 8-7 vote after the Governor ruled (as presiding officer) that the Official Members could vote.⁴³⁵

The majority of the backbench then sought a referendum to change the number of votes necessary to replace the Executive Council from two-thirds (10) to a simple majority (8).⁴³⁶ Although the motion calling for the bill passed due to the absence at the time of voting of two government supporters, the backbench recognized that the bill itself would fail and so its supporters appealed to the Foreign and Commonwealth Office to order a referendum rather than pressing for a vote.⁴³⁷ Later that year, a compromise allowed unanimous agreement on appointment of a select committee to examine the constitution.⁴³⁸ During the constitutional discussions, British officials pressed Cayman to adopt a party system to support a ministerial form of government.⁴³⁹

The result of the Select Committee was a divided report with two dissenting statements.⁴⁴⁰ Backbench MLA McKeeva Bush attempted to suspend the debate on any reforms pending the general election to be held in 1992, but the government rejected this.⁴⁴¹ The Government continued to successfully persuade one of the backbench members to vote with it, giving it a narrow majority (eight votes of fifteen) by utilizing the three official members.⁴⁴² A key point of dispute was over the creation of a post of Chief Minister, with the back bench dissenters on the select committee arguing that more checks on power were needed and that such a position should not be created until after political parties were established.⁴⁴³ The dissenters also sought to restore the previous structure of the Finance Committee as consisting of all elected members with the Financial Secretary as chair and to embed this in the constitution.⁴⁴⁴

debt. Cayman Hansard, 2 September 1992, at 852 (MLA Truman Bodden arguing “this country would not be in the debt that it is in today [but for the change] because nearly all of the debt of the country, the majority of it, was added after Finance Committee became in control of a minority of Elected Members.”).

⁴³⁵ Cayman Hansard, 24 July 1990, at 1051-1073.

⁴³⁶ Cayman Hansard, 25 July 1990, at 1090-1097; 26 July 1990, at 1102-1124.

⁴³⁷ Cayman Hansard, 26 July 1990, at 1124.

⁴³⁸ Cayman Hansard, 15 November 1990, at 1314-1318. The process of constitutional reform requires brief mention. As outlined by the Governor in his 1991 Throne Speech, the UK-appointed constitutional commission conducted consultations during 1990 in Cayman and was formulating a proposed new constitution. The Legislative Assembly’s own select committee would then consider the input it had gathered and the draft proposed by the commission and make its own recommendations to the UK. The final decision on the form of any constitutional changes would be made by the UK, although it promised to make only changes that it was satisfied were “the evident desire of the majority of the people of Cayman.” Cayman Hansard, 15 February 1991, at 13.

⁴³⁹ Cayman Hansard, 3 September 1992, at 874; 4 September 1992, at 896. In addition, back bench MLA McKeeva Bush, later the first Premier, argued that a party system would be needed for accountability under a full ministerial system; he also cautioned that this would be “one step closer” to independence. *Id.* at 10 September 1992, at 1016, 1020.

⁴⁴⁰ Cayman Hansard, 28 October 1991, at 1068-1084 (report and dissents).

⁴⁴¹ Cayman Hansard, 28 October 1991, at 1063-1068.

⁴⁴² Cayman Hansard, 21 February 1992, at 92 (MLA Roy Bodden noting “The First Elected Member for Cayman Brac has ensured that [Backbench is neutralized]. His vote has effectively neutralized seven Backbenchers so all of the mileage we can make is by saying that we have been beating our heads against the wall and will continue to do so but in one stroke, in one yea, Capt. Maybry neutralizes our seven positions.”).

⁴⁴³ Cayman Hansard, 2 September 1992, at 842-43. This continued to be a theme in debates over constitutional structure. *See, e.g.*, Cayman Hansard, 1 March 2000, at 96 (MLA Linford A. Pierson arguing that cannot have a chief minister and ministerial system without “a proper party system” to provide discipline).

⁴⁴⁴ Cayman Hansard, 2 September 1992, at 849.

A key result of the controversy was the election of the National Team in the 1992 elections, replacing the Government with the former backbench.⁴⁴⁵ The new government sought only “gradual change” in the constitution⁴⁴⁶ and achieved this with a less ambitious new constitution adopted by the Privy Council which expanded the Executive Council to five elected members. (Notably it did not include a Bill of Rights, which some had sought.)⁴⁴⁷ The National Team was reelected in 1996.⁴⁴⁸ In November 1997, one team member (McKeeva Bush) resigned as a member of the Executive Council and was replaced by another, Julianna O’Conner-Connolly.⁴⁴⁹ Bush returned to the Executive Council in November 2000 after the members of the National Team were returned to office along with seven new members.⁴⁵⁰ A year later, Bush participated in a controversial motion (which one MLA referred to in the heat of the moment as “a coup”⁴⁵¹) that led to the removal of two of his fellow Executive Committee members (Kurt Tibbetts and Edna Moyle) and installed Bush as Leader of Government Business at the head of a new political party, the United Democratic Party (“UDP”) on the grounds that Tibbetts had been ineffective as leader.⁴⁵² The two members removed went on to form the People’s Progressive Movement (“PPM”), which became the second modern Caymanian political party.⁴⁵³

Constitutional issues continued to be a divide in Caymanian politics. The new government moved to reform the constitution based on the 2002 review by the UK, ironically making changes that would prevent any future group of members from repeating their maneuver.⁴⁵⁴ The four members of the PPM then walked out of the debate.⁴⁵⁵

These disputes highlighted important stresses in the political system. Prior to the appearance of the UDP and PPM, the governing teams lacked party discipline and instead represented ad hoc coalitions largely negotiated after elections among the winners (although some campaigned together, particularly within multimember constituencies). The practice of collective responsibility ensured some cohesion among the Government members, but as the 1989–90 crisis demonstrated, did not ensure that the Government had support from a majority of the elected members. While the 2000 “coup” revealed additional weakness in the political system’s claim to legitimacy, the Governor’s decision to allow the ouster of Tibbetts and Moyle by the newly formed UDP and not to seek an election demonstrated a strong preference for

⁴⁴⁵ See Cayman Hansard, 17 March 1993, at 146 (National Team minister McKeeva Bush attributing victory in part to position on constitution); 19 March 1993, at 196 (National Team minister Truman Bodden same); 17 September 1993, at 514 (MLA G. Haig Bodden stating “I believe that in Cayman no Government is going to get away with any constitutional changes unless the public agrees. Our public is very sensitive about their Constitution and anyone who tampers with it – anyone – is likely to go. We just saw it happen, we saw a whole Government removed and for no other reason than they tampered with the composition of our Finance Committee and tried to put in a new Constitution before a General Election.”); 23 September 1993, at 602 (National Team minister (and former Financial Secretary) Thomas Jefferson arguing election was a rejection of prior government’s efforts to change constitution).

⁴⁴⁶ Cayman Hansard, 20 September 1993, at 540.

⁴⁴⁷ Cayman Hansard, 2 March 1994, at 17.

⁴⁴⁸ Cayman Hansard, 27 November 1996, at 3-6. [note: in 1997 Hansard PDF]

⁴⁴⁹ Cayman Hansard, 5 November 1997, at 501-03. Bush later noted that he had been “removed” from the Executive Council. 11 March 1999, at 207.

⁴⁵⁰ Cayman Hansard, 15 November 2000, at 7; 9 April 2001, at 404 (7 new members).

⁴⁵¹ Cayman Hansard, 8 November 2001, at 1232. The Speaker ordered the Member to withdraw the phrase. Id.

⁴⁵² Cayman Hansard, Revocation and Re-Election of Honourable Ministers to Executive Counsel, 2001; 8 November 2001, at 1231-1264.

⁴⁵³ Cayman Hansard, 20 June 2002, at 321-22 (describing formation of PPM).

⁴⁵⁴ Cayman Hansard, 19 June 2002, at 307-313 (describing government’s proposed changes).

⁴⁵⁵ Cayman Hansard, 21 June 2002, at 347.

stability. With the formation of the UDP and PPM, particularly given the circumstances of the UDP's taking power, Caymanian politics moved into uncharted waters.

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;⁴⁵⁶ 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.⁴⁵⁷ 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.⁴⁵⁸ In addition, the Cayman legal profession and powerful law firms with international reputations promoted the rule of law. The financial sector continued to grow into the 2000s, although ongoing bank consolidations reduced the contribution of banking licenses to the revenue.⁴⁵⁹ The various governments continued to seek new areas for growth, launching an effort to create special economic zones in 2011 with Opposition support.⁴⁶⁰

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 then-Premier McKeeva Bush on corruption charges led to a no confidence vote in which members of Bush's party including his deputy, Julia O'Connor-Connolly, joined the opposition to oust him.⁴⁶¹ As the

⁴⁵⁶ Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at 92-93. For example, the post of Leader of the Opposition was created in 2003. Cayman Hansard, 30 June 2003, at 438.

⁴⁵⁷ 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).

⁴⁵⁸ Craton, FOUNDED, *supra* note 20, at 326.

⁴⁵⁹ Cayman Hansard, 4 May 2007, at 39 (citing growth in company registrations); 30 April 2008, at 7-8, 22-23 (same).

⁴⁶⁰ Cayman Hansard, 28 September 2011, at 471-491.

⁴⁶¹ Cayman Hansard, 18 December 2012, at 592597 (Motion of Lack of Confidence passes 11-3). The corruption issue first surfaced in the Assembly in September 2011, when the Leader of the Opposition brought a letter from the Governor to MLA Ezzard Miller to the attention of the members, which confirmed that an ongoing investigation

governor had after the 2001 UDP “coup”, the Governor opted for stability by not calling for an immediate election as Bush requested but instead allowing a rump-UDP government to continue with tacit support from the Opposition.⁴⁶² (The May 2013 election then brought in a PPM government that also included two of the five independent members.)⁴⁶³ 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.”⁴⁶⁴

A. Creating CIMA

A critical step amidst the evolution from team to party politics, was the further insulation of the financial regulatory system from 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.⁴⁶⁵ 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.⁴⁶⁶ 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, which passed the Legislative Assembly without controversy and with no debate,⁴⁶⁷ as “a further demonstration of our commitment to maintain the integrity and stature of Cayman as a leading international financial centre.”⁴⁶⁸ Working with assistance from the Bank of England, the Caymanian government created the new regulator.⁴⁶⁹ 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

into Bush by the Royal Cayman Islands Police Service existed. Cayman Hansard, 7 September 2011, at 263. The Speaker ordered some of McLaughlin’s statements expunged from the record. Id.

⁴⁶² Shuma Roberts, *Cayman Islands governor appoints new premier*, Reuters (December 19, 2012) available at

⁴⁶³ Brent Fuller, *New government ready to roll*, CAYMANIAN COMPASS, 30 May 2013 available at <http://www.reuters.com/article/2012/12/19/us-cayman-premier-idUSBRE8BI1AM20121219>. <http://www.compasscayman.com/caycompass/2013/05/30/New-government-ready-to-roll/>. O’Connor-Connolly also joined with the PPM and was made Speaker (a position without a vote). Id. Former Premier Bush became the official Leader of the Opposition.

⁴⁶⁴ *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).

⁴⁶⁵ Craton, *FOUNDED*, *supra* note 20, at 358-359; Johnson, *AS I SEE IT*, *supra* note 21, 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).

⁴⁶⁶ 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). Cayman’s response is described in a statement by the Financial Secretary in Cayman Hansard, 5 July 1991, at 685-686.

⁴⁶⁷ Cayman Hansard, 20 September 1996, at 696-697, 702-704. Similarly, amendments in 1997 to add Sir Vassel Johnson to the CIMA board passed without discussion. 9 June 1997, at 312, 11 June 1997, at 332.

⁴⁶⁸ Cayman Hansard, 7 March 1997, at 5 (Throne Speech by governor describing CIMA).

⁴⁶⁹ Cayman Hansard, 20 September 1996, at 696.

considered by the UK and USA as a pathfinder for cooperation and legislation.”⁴⁷⁰ 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.”⁴⁷¹ More particularly, CIMA “requires . . . internal procedures to comply with . . . the Basle Committee Statement” prescribing global banking standards to combat money laundering.⁴⁷² By 1998, CIMA had begun on-site reviews of banks, trust companies, insurance companies, and mutual funds.⁴⁷³

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.”⁴⁷⁴ CIMA also adapted institutional independence to the government’s preexisting collaborative policymaking. Thus, 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.”⁴⁷⁵

When Michael Austin became Chairman in 2002, CIMA became truly independent as it was now separated from the government, which it had not been while the Financial Secretary remained its Chairman. This independence was “another step toward the credibility that we [Cayman Islands] need.”⁴⁷⁶ Even more importantly, the new independence “significantly enhanced its ability to meet international standards of supervision, accountability and transparency, while giving the benefit of more clearly defined functions, duties, powers and obligations.”⁴⁷⁷ The addition of foreign directors to CIMA’s board, including U.S. economists Richard Rahn and Warren Coats, soon thereafter, also enhanced the agency’s independence from local politics. Similarly, the appointment of former Maples & Calder managing partner Timothy Ridley as Chairman in 2004 further established the agency as independent.

Consistent with global responsiveness implemented through collaborative policymaking, 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

⁴⁷⁰ Timothy Ridley, *Money Laundering, Combative Legislation and Cross-Border Disclosure and Enforcement*, 2 J. Money Laundering Control 232, 232 (1997).

⁴⁷¹ Ridley, *Money Laundering*, *supra* note 470, at 232.

⁴⁷² Ridley, *Money Laundering*, *supra* note 470, at 232.

⁴⁷³ Cayman Hansard, 16 November 1998, at 1084.

⁴⁷⁴ Ridley, *Money Laundering*, *supra* note 470, at 233.

⁴⁷⁵ Hon. George McCarthy, *Chairman’s Statement*, 22 April 1998, CAYMAN ISLANDS MONETARY ANNUAL REPORT 1997, at 8.

⁴⁷⁶ Cayman Hansard, 27 February 2002, at 114 (quoting MLA Rolston Anglin).

⁴⁷⁷ Cayman Hansard, 29 August 2005, at 153.

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.⁴⁷⁸

So too, the international connections CIMA directors brought to the process enhanced the agency's effectiveness in dealing with regulators in the U.S. and the U.K. In particular, these steps helped Cayman deal with increased pressure from the Labour government in Britain, which took steps to reframe the relationship between Britain and her overseas territories in a report and a White Paper published in the late 1990s.⁴⁷⁹ Cayman also benefited from reduced outside pressure after the 2000 election in the United States⁴⁸⁰ and with the installation of the Conservative-Liberal Democrat Coalition government in 2010.⁴⁸¹

The Assembly approved CIMA's stronger independent enforcement authority even as party politics took root.⁴⁸² 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.⁴⁸³ 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."⁴⁸⁴ 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."⁴⁸⁵ Regarding the economy, the planning document "balanced-integrated" strategy included the call to: "Amend Monetary Authority Law. Amend Banks & Trust Companies Law."⁴⁸⁶ 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 2012.⁴⁸⁷

B. Maintaining Competitive Advantage Through Stability

CIMA promoted the prosperity underpinning the social stability essential to Cayman competitive advantage.⁴⁸⁸ World Bank data for 2010 ranked the Cayman Islands 8th in "gross

⁴⁷⁸ *Managing Director Statement, 22 April 1998*, CAYMAN ISLAND MONETARY AUTHORITY ANNUAL REPORT 1997, at 9.

⁴⁷⁹ Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at 73, 77 (noting "intransigence" by UK with respect to the financial sector beginning in the 1990s); 105-108 (describing larger context). The report and White Paper were, respectively, *Contingent Liabilities in the Dependent Territories* (May 1997) and *Partnership for Progress and Prosperity* (March 1999); Cayman Hansard, 26 November 1999, at 1271-1273 (discussing White Paper issues in Budget Speech).

⁴⁸⁰ Cayman Hansard, 29 March 2001, at 254 (noting impact of change in US position on OECD efforts).

⁴⁸¹ Cayman Hansard, 18 November 2011, at 675 (Premier stating that "we do have a better relationship with this [Coalition] Government.")

⁴⁸² Bodden, PATRONAGE, *supra* note 24, at 301-305; T. Bodden, UK, *supra* note 411, at 1; Ridley, Remarks, *supra* note 483, at 1; Cayman Hansard, 6 October 1999, at 1166-72 (discussing process of making CIMA autonomous).

⁴⁸³ Remarks by Mr. Timothy Ridley, Deputy Chairman CIMA, Claridges Hotel, London, UK, 22 June 2004 at 1.

⁴⁸⁴ Ridley, Remarks, *supra* note 483, at 1.

⁴⁸⁵ Cayman Islands Government, *The Key to the Future A Guide to the Nation Strategic Plan 1999—2008*, at 17.

⁴⁸⁶ *The Key to the Future*, *supra* note 485, at 45.

⁴⁸⁷ Bodden, PATRONAGE, *supra* note 24, at 314.

⁴⁸⁸ See Remarks by Mr. Timothy Ridley, Chairman, Cayman Islands Monetary Authority, City-Cayman Luncheon, The Mansion House, 26 January 2005, at 1-10.

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 as Jamaica, which was ranked 111th.⁴⁸⁹ 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.”⁴⁹⁰ 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.”⁴⁹¹ Despite Caymanians’ comparative wealth, the political corruption and budget deficits identified elsewhere with party politics required constructive policies rather than “problematic economic planning.”⁴⁹²

CIMA’s collaborative policymaking 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.⁴⁹³ 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 policymaking 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.”⁴⁹⁴ 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.”⁴⁹⁵

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

⁴⁸⁹ T. Bodden, UK, *supra* note 411, at 1.

⁴⁹⁰ T. Bodden, UK, *supra* note 411, at 4.

⁴⁹¹ T. Bodden, UK, *supra* note 411, at 1.

⁴⁹² Trufflenet, *Independent Analysis For Public Consultation On The Overseas Territories* 15 (February 2012) available at <http://www.provochamber.com/PDF/otsconsultationreport.pdf>.

⁴⁹³ See Morriss & Henson, *supra* note 1, at 449-450.

⁴⁹⁴ Ridley, Remarks, *supra* note 483, at 3.

⁴⁹⁵ Ridley, Remarks, *supra* note 483, at 3.

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 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.⁴⁹⁶

The incident led to a vote of no confidence in the Attorney General, who left the Islands so that he could not be questioned.⁴⁹⁷ 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.⁴⁹⁸ 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 2008,⁴⁹⁹ 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.⁵⁰⁰ Moreover, the lingering controversy influenced the Terrorism Bill 2003, with the opposition dissenting over the bill’s provision of authority to the Governor to authorize wiretaps and the Government removing the provision before final passage.⁵⁰¹ It also led to a restructuring of the Financial Reporting Unit (“FRU”), creating a new “Financial Reporting Authority”, one which proved controversial within the Legislative Assembly with the PPM arguing that the UDP proposal did not go far enough in ensuring the independence of the new agency⁵⁰² and voting against the final bill,⁵⁰³ a significant breach in the usual solidarity over measures to protect the financial industry. The Government and Opposition also differed over the Government’s approach to the EU Savings Directive negotiations in 2003–2004⁵⁰⁴ and the Government’s Tax Information Authority Bill 2005, with the PPM arguing that less authority to sign future agreements should be delegated to the government.⁵⁰⁵ The incident may have also given extra impetus to the Legislative Assembly’s own bid to increase its autonomy.⁵⁰⁶ Despite these tensions, the parties were able to cooperate to pass without incident a

⁴⁹⁶ Russell, HONOUR, *supra* note 4, at 233. *See also* Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at 37-39, 165-172.

⁴⁹⁷ Cayman Hansard, 10 February 2003, at 848-905. It also led to a later private member’s motion to seek to recover the government’s costs of the investigation from the UK. Cayman Hansard, 22 October 2009, at 243-45.

⁴⁹⁸ Russell, HONOUR, *supra* note 4, at 233. Interestingly, a Question was asked in the Legislative Assembly on March 25, 18985 about whether “any electronic eaves-dropping devices have been placed on telephones in the Cayman Islands with Government approval?”, to which the Official Member Responsible for Internal and External Affairs answered “No.” Cayman Hansard, 25 March 1985, at 1.

⁴⁹⁹ *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).

⁵⁰⁰ Russell, HONOUR, *supra* note 4, at 233.

⁵⁰¹ Cayman Hansard, 17 July 2003, at 452, 24 July 2003, at 552-555.

⁵⁰² Cayman Hansard, 25 September 2003, at 770-780.

⁵⁰³ Cayman Hansard, 29 September 2003, at 802.

⁵⁰⁴ Cayman Hansard, 28 November 2003, at 1078-79; 13 February 2004, at 1285-1294; 8 March 2004, at 1311-1315.

⁵⁰⁵ Cayman Hansard, 10 February 2004, at 530-545.

⁵⁰⁶ Cayman Hansard, 6 November 2006, at 384-391.

major amendment relating to insolvency to the Companies Law produced by a public-private review of the statute after an unfavorable U.S. court decision⁵⁰⁷ and to amend the Monetary Authority Act to allow CIMA to join the International Organization of Securities Commissions (“IOSCO”).⁵⁰⁸ And when in power both parties pushed Tax Information Exchange Agreements needed to remove Cayman from the OECD grey list and to “send the message that we are not a tax haven, but on the contrary, we continue to be a responsible member of the International Community that adheres to relevant international standards of compliance with respect to tax co-operation.”⁵⁰⁹

Despite some growing pains in the adjustment to the new party-based political system, however, the collaborative governance model continued to function even as politics became more explicitly partisan.⁵¹⁰ The 2005 elections, delayed because of the impact of Hurricane Ivan in fall 2004, brought the PPM to power, reducing the UDP to four seats in West Bay and one in Cayman Brac and Little Cayman. The two members ousted from the Executive Council in the 2001 “coup” became Leader of Government Business (Kurt Tibbetts) and Speaker (Edna Moyle).⁵¹¹ The PPM government also restarted the constitutional review with the UK FCO, although with minimal cooperation at first from the UDP.⁵¹² Eventually the two parties were able to agree on a set of constitutional reforms.⁵¹³ This removed the Financial Secretary as a member of the Legislative Assembly and ended the voting power of the remaining official members (the Attorney General and the Deputy Governor).⁵¹⁴ However, even as internal political stresses grew, both PPM and UDP governments were generally able to continue the government’s close working relationship with the private sector.⁵¹⁵

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

⁵⁰⁷ Cayman Hansard, 17 September 2007, at 453-457.

⁵⁰⁸ Cayman Hansard, 10 December 2007, at 654-658. CIMA ultimately joined IOSCO. Cayman Hansard, 10 September 2010, at 357.

⁵⁰⁹ Cayman Hansard, 29 June 2009, at 24-25. *See also* 26 August 2009, at 112-120 (agreeing to various TIEAs). *See also* Cayman Hansard, 3 November 2010, at 455-456 (discussing signing of tax agreements, creation of Global Forum); 15 June 2010 at 19 (discussing plans for Tax Information Authority).

⁵¹⁰ *See, e.g.*, Cayman Hansard, 26 August 2009, at 119 (discussing Private Sector Consultative Committee created by UDP government). Conflict grew over the UDP government’s grant of Caymanian status to a large number of individuals in the early 2000s. Cayman Hansard, 18 September 2003, at 627-744. Conflict continued over whether to move to single member districts, with the PPM favoring them and the UDP opposed (although the UDP did propose to convert only the PPM-stronghold of George Town to single member districts for the 2005 election.) Cayman Hansard, 3 October 2003, at 853-854, 19 November 2003, at 896-927; 20 November 2003, at 929-958; 21 November 2003, at 959-984; 24 November 2003, at 985-1008; 26 November 2003, at 1010-1045 (single member districts for George Town debate).

⁵¹¹ Cayman Hansard, 18 May 2005, at 4-5, 9 (Tibbetts, Moyle); 30 November 2005, at 545 (delay).

⁵¹² Cayman Hansard, 23 March 2005, at 722-723; 23 March 2006, at 722 (UDP did not attend meeting with FCO). The process created by the PPM is described at Cayman Hansard, 27 April 2007, at 21-22. *See also* 27 June 2008, at 288 (UDP did not participate).

⁵¹³ Cayman Hansard, 11 February 2009, at 807-814. The final vote to present the constitution in a referendum was unanimous. 23 February 2008, at 902. The major issue that was not resolved was a conflict over the reach of the Bill of Rights. *See* Cayman Hansard, 23 February 2008, at 874.

⁵¹⁴ Cayman Hansard, 18 June 2010 at 36.

⁵¹⁵ *See, e.g.*, Cayman Hansard, 28 April 2006, at 13 (describing consultations with private sector over revenue measures); 7 October 2009, at 188 (describing “revenue enhancement group” of public and private members).

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.”⁵¹⁶

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 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.”⁵¹⁷

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

⁵¹⁶ Yves Genier, *The Cayman Islands establish themselves as the offshore capital for hedge funds*, LE TEMPS, Wednesday 19 September 2007, at 1, 2.

⁵¹⁷ Genier, *supra* note 516, at 3, 4.

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.”⁵¹⁸ Unfortunately, as then-Premier McKeeva Bush noted in 2010 “This is 2010. This is not 1966.”⁵¹⁹ Cayman was no longer under the radar and now had to engage in setting global financial standards to survive.

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.⁵²⁰ Winds reached between 155–200 mph and the storm surge was over eight feet.⁵²¹ Ninety-five percent of structures in Grand Cayman were damaged.⁵²² The destruction totaled 183% of the previous year’s GDP, an astounding amount.⁵²³ And it consumed \$36.5 million in post-storm spending, approximately 8.5% of the 2005/06 budget.⁵²⁴ 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 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.⁵²⁵

⁵¹⁸ Genier, *supra* note 516, at 5-8. Even Caymanian critics of the financial industry see it as well-regulated. *See, e.g.*, Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at xxiii (industry “meticulously regulated” today).

⁵¹⁹ Cayman Hansard, 21 June 2010, at 87.

⁵²⁰ 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>

⁵²¹ ECLA, *Hurricane Ivan*, *supra* note 520, at 18.

⁵²² Cayman Hansard, 12 September 2005, at 161.

⁵²³ *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>

⁵²⁴ Cayman Hansard, 10 October 2005, at 190.

⁵²⁵ ECLA, *Hurricane Ivan*, *supra* note 520, at 31. *See also* Walker, FROM GEORGETOWN, *supra* note 16, at 200 (“The Government, Cable and Wireless, CUC [the utility] and many private individuals worked tirelessly to get the

Since Ivan, Caymanian firms and the government have taken additional steps to enhance the robustness of the financial infrastructure.⁵²⁶ 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.⁵²⁷ 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.”⁵²⁸ 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.⁵²⁹ The final report, however, was signed by Miller and Shaw alone, although it represented the work of multiple experts.⁵³⁰

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.⁵³¹ It rejected imposing direct taxation as a possible means of enhancing government revenue.⁵³² Since the commission’s final report was issued on February 26, 2010, the Cayman government has continued to struggle with revenue issues⁵³³ and has not, as yet, adopted the level of cuts and restructuring recommended by the commission.⁵³⁴ As Cayman fell into deficit financing, its constitution forced it to turn to the UK for approval,

systems back up; Monday morning was total devastation and by Thursday we, the bank and the country, were open for business.”).

⁵²⁶ 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.”)

⁵²⁷ This was not the beginning of financial issues for the government, however. As early as 2001, there were public worries that the government was spending more than it took in. See, e.g., Cayman Hansard, 4 April 2001, at 350 (quoting *Caymanian Compass* editorial that “It was costing the Cayman government more to operate than it was taking in.”).

⁵²⁸ 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”). See also Cayman Hansard, 18 November 2009, at 298-299 (discussing appointment of commission).

⁵²⁹ Miller Commission, *supra* note 457, at 3.

⁵³⁰ Miller Commission, *supra* note 457, at 3.

⁵³¹ Miller Commission, *supra* note 457, at 3-4 (summarizing major conclusions and recommendations).

⁵³² Miller Commission, *supra* note 457, at 4 (“Major” recommendation one was “Do not impose direct taxation.”).

⁵³³ See Mitchell, *supra* note 457; *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>.

⁵³⁴ 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-/>.

reducing the government's autonomy.⁵³⁵ The dispute over these issues is one expression of what William Walker termed "a rift between the sometimes diverging needs and wants" of the local and expatriate populations that began to emerge as the expatriate population grew. "Throughout the '60s and '70s, we all lived in each other's pockets, we circulated to the same parties, we saw each other everywhere, we did business together and so we lived well together, Caymanian and expatriate alike. It was impossible to separate yourself. . . ." By the late 1980s, however, "the ability to separate oneself became easier."⁵³⁶ Similarly, Caymanian historian Roy Bodden worried that young Caymanians lacked access to careers in the financial sector and that this would ultimately lead to problems.⁵³⁷

Public disagreements over budget cuts marked the relationship between then-Premier McKeeva Bush and then-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).⁵³⁸ 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.⁵³⁹ Because the Caymanian constitution requires UK approval of deficit budgets, the Islands found themselves in a difficult negotiating position with Britain.⁵⁴⁰ 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.⁵⁴¹ In summer 2012

⁵³⁵ See, e.g., Cayman Hansard, 2 October 2009, at 138 (describing correspondence with UK over budget); 2 December 2009 at 331 (discussing budget deficits); 25 March 2010, at 566 (discussing budget deficits); 15 June 2010 at 11 (discussing need for FCO approval of budget); 10 June 2011, at 26-27 (discussing FCO permission); 15 June 2011, at 42 (Opposition discussing Government's failure to control budget leading to need for FCO approval); 5 November 2012, at 267-276 (discussing FCO role in budget process); 14 November 2012, at 358, 372 -378 (explaining dispute with FCO over budget).

⁵³⁶ Walker, FROM GEORGETOWN, *supra* note 16, at 186.

⁵³⁷ Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at xxv. Bodden also identified immigration as "potentially the most divisive issue facing the Caymanian community" in the early 21st century. *Id.* at 99.

⁵³⁸ 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); Cayman Hansard, 10 June 2011 (Premier stating "I do not have administrative responsibility over civil servants.") See also Cayman Hansard, 5 October 2009, at 167 (MLA Ezzard Miller complaining about "veiled threat" in Governor's statement that "Good governance is also fundamental to the Islands' future"). Earlier, however, Bush had referred to Taylor as "cooperative" in addressing the financial issues. Cayman Hansard, 6 December 2010, at 603.

⁵³⁹ *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.").

⁵⁴⁰ Russell, HONOUR, *supra* note 4, at 231 (forecasting such issues would arise). See also Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at 114 (arguing (before financial crisis) that "the financial oversight on the part of the administering power in relation to the Cayman Islands amounts to an intrusion into a realm in which the Cayman Islands have an excellent record.").

⁵⁴¹ 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.").

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.⁵⁴² The financial industry opposed the proposed payroll tax, which the government ultimately withdrew.⁵⁴³ Some Caymanians worried the UK would misuse its budget authority to undermine the financial services industry,⁵⁴⁴ and it would not be difficult to imagine a British Prime Minister hostile to the offshore industry, such as former Prime Minister Gordon Brown,⁵⁴⁵ using this as a lever to make Cayman less competitive.

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.⁵⁴⁶ The UK’s appointment of Helen Kirkpatrick as Governor, effective September 2013, also signaled continued metropolitan concern over finances. Kirkpatrick had previously been the acting Home Office Permanent Secretary and Accounting Officer in the UK, and had extensive experience in local government finance.⁵⁴⁷ 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 revenue measures might create. To take but one example, the money-losing Cayman Airways⁵⁴⁸ 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 policymaking”.

Further complicating matters, multiple and lengthy investigations into Premier McKeeva Bush over corruption charges led to his arrest in December 2012.⁵⁴⁹ Although of this writing Bush has not been charged, he was removed from office on a no-confidence vote in which a

⁵⁴² 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>

⁵⁴³ 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/>.

⁵⁴⁴ Cayman Hansard, 9 November 2012 at 337 (MLA Ellio Solomon arguing FCO seeking to destroy” financial services industry through budget).

⁵⁴⁵ Brown “raised the issue of tax evasion repeatedly at meetings of the G8 and the G20” while in office. Patrick Wintour and Phillip Iman, *Offshore tax evasion crackdown expected to raise £10bn*, THE GUARDIAN (Friday 12 November 2010) available at <http://www.theguardian.com/politics/2010/nov/13/offshore-tax-evasion-crackdown-billions>.

⁵⁴⁶ *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).

⁵⁴⁷ *Cayman’s new governor announced*, Cayman Net News (June 19, 2013) available at <http://caymannetnews.com/2013/06/19/caymans-new-governor-announced/>.

⁵⁴⁸ Miller Commission, *supra* note 528, 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).

⁵⁴⁹ 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>.

majority of his own party joined the opposition in voting against him.⁵⁵⁰ Bush charged that his removal was the result of a “vendetta” by the Governor.⁵⁵¹

After the no-confidence motion, the Governor then appointed Bush’s former deputy, Julianna O’Connor-Connolly, as Premier and she led a minority government until the May 2013 elections.⁵⁵² The PPM won the elections and in the post-election negotiations brought O’Connor-Connolly into the party and two of the five independents into the government. Former Premier Bush won reelection along with two supporters and formed the official Opposition. The outcome of the investigation into the former Premier and the continuing budgetary issues pose serious challenges for the continuation of the collaborative policy making process and the Caymanian constitutional order more generally. The political turmoil also raised questions among some observers about whether CIMA’s independence would continue.

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 new government resolves the budget problems through a combination of budget cuts, revenue 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* admiringly 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.⁵⁵³ In this optimistic scenario, the collaborative policymaking 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 new government proves unable to resolve the fiscal issues and conflict of financial questions with the UK increases. These stresses make Cayman unable to rise to the challenge posed by the US FATCA and the various “son of FATCA” initiatives.⁵⁵⁴ As a result, the finance sector falls into decline, with other OFCs gradually luring business away from Cayman by pointing to the instability caused by the combination of fiscal problems, increased

⁵⁵⁰ *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>; Cayman Hansard, 18 December 2012, at 592597 (Motion of Lack of Confidence passes 11-3).

⁵⁵¹ 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>.

⁵⁵² 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/>.

⁵⁵³ *MPs vote against*, *supra* note 550.

⁵⁵⁴ Salman Shaheen, *UK to impose son of FATCA on Crown Dependencies, despite government’s denials*, International Tax Review (23 November 2012) available at <http://www.internationaltaxreview.com/Article/3121964/EXCLUSIVE-UK-to-impose-son-of-FATCA-on-Crown-Dependencies-despite-governments-denials.html>; G5 Letter to the European Commission, 9 April 2013, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208068/g5_letter_to_european_commission_090413.pdf (advocating FATCA approach).

British interference caused by a growing Caymanian dependence on UK funding assistance, and continuing disputes among local political factions.⁵⁵⁵ 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.⁵⁵⁶ 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.⁵⁵⁷ Cayman’s political system continues to have significant areas of instability: the issue of single member districts, which garnered a majority of votes but not of registered voters in a 2012 referendum, remains a point that is likely to be revisited and significant powers of the Governor over the civil service seems likely to continue to create tension with the Legislative Assembly.

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 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.”⁵⁵⁸ As one Legislative Assembly member noted in 1987,

⁵⁵⁵ 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 190 to 193 *supra*.

⁵⁵⁶ 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>.

⁵⁵⁷ Bodden argues that “the success and future of the Cayman Islands lies in the ability to maintain the synergistic and symbiotic relationship between established Caymanians and their expatriate (status-holding) counterparts.” Bodden, *CAYMAN ISLANDS IN TRANSITION*, *supra* note 17, at 41.

⁵⁵⁸ Sampson, *supra* note 13, at 284. See also Cayman Hansard, 11 March 1976, at 18 (remarks of MLA John Jefferson in the Throne Speech debate that “Now let us go back to the days before any investor came to these shores, there was rope making, people went to the swamps to get bark from the trees, it was sold to Jamaica along with the

“It is important that we keep our islands financially independent so that we can determine and control our economic development without having to abide by the dictates of others.”⁵⁵⁹

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. As Roy Bodden noted, “Cayman has volunteered to regulate itself and has established a record of meticulousness and discretion.”⁵⁶⁰ As MLA Anthony Eden noted in 2009, “we have complied with every international requirement for transparency” but “they keep stretching the goalpost.”⁵⁶¹ Cayman continues to strive to cross that goal line; in March 2013 the government announced it would attempt to sign a Model 1 Intergovernmental Agreement with the United States under the US Foreign Account Tax Compliance Act.⁵⁶² 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.”⁵⁶³ Moreover, these attributes provide what one Caymanian legislator termed Cayman’s “financial and economic independence” —what he termed “all the independence we need”.⁵⁶⁴

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.⁵⁶⁵

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

rope. They went to the Cays to catch turtle and sharks, they were sold to the United States. In this country, people couldn’t hardly live, because of the mosquitos, as much as twenty and thirty cattle died during the mosquito season. Mr. President, those conditions don’t exist today, and thank God they don’t exist.”).

⁵⁵⁹ Cayman Hansard, 11 February 1987, at 31.

⁵⁶⁰ Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at 138.

⁵⁶¹ Cayman Hansard, 22 October 2009, at 251.

⁵⁶² Cayman Hansard, 15 March 2013, at 721.

⁵⁶³ Vlcek, *supra* note 2, at 5.

⁵⁶⁴ Cayman Hansard, 1 March 2000, at 97.

⁵⁶⁵ Roy Bodden makes a similar point, arguing that “Over the course of the past two decades since it emerged as a major financial centre, Cayman has had to make major adjustments to its *modus operandi* to maintain credibility and standing. Each time challenges were encountered, the jurisdiction, like a chameleon, changed operational practices to meet the required criteria.” Bodden, CAYMAN ISLANDS IN TRANSITION, *supra* note 17, at 129.

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.”⁵⁶⁶ 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.

⁵⁶⁶ Russell, HONOUR, *supra* note 4, at 193.

Appendix: Key Dates in Cayman's Development

Date	Event
1959	- Cayman Islands legislative connection to Jamaica ends - UK Labour Party issues <i>Tax Dodgers</i>
1960	- Companies Law passed by Legislative Assembly
1962	- Jamaica and Trinidad & Tobago withdraw from Federation of West Indies - Cayman Islands elect to retain link with Britain rather than affiliate with Jamaica
1963	- US Interest Equalization Tax imposed
1964	- William Walker moves to Cayman
1965	- US Voluntary Foreign Credit Restraint Program begins
1966	- Exchange Control Law, Trusts Law, and Banks and Trust Companies Law passed by Legislative Assembly
1968	- The Bahamas achieves majority rule
1970	- Legislative Assembly votes for increased self government powers
1971	- Earl of Oxford and Asquith conducts constitutional review
1971	- Collapse of Bretton Woods exchange regime - UK government issues <i>Competition and Credit Control</i> White Paper
1972	- New constitution grants increased self government - Caymanian Protection Law passed by Legislative Assembly - Cayman dollar created, linked to British pound - Cayman Islands relaxes exchange controls
1973	- UK Labour Party issues <i>Plugging a tax loophole</i> paper
1974	- Doucet – Interbank scandal - Cayman dollar linked to US dollar
1974	- US Interest Equalization Tax repealed
1976	- Confidential Relationships (Preservation) Law passed by Legislative Assembly
1979	- Insurance Law passed by Legislative Assembly
1979	- End of UK exchange control
1982	- Cayman opens UK office
1984	- Narco Agreement signed with United States
1986	- Mutual Legal Assistance Treaty signed by UK, U.S., and Cayman
1987	- Financial Action Task Force created
1989	- Legislative Assembly Finance Committee overrules government, provoking a political crisis
1990	- Post of Speaker created in Legislative Assembly - Mutual Fund Law passed by Legislative Assembly
1991	- BCCI collapses

Date	Event
1992	- John Grisham's <i>The Firm</i> is published
1992	- National Team government elected
1993	- Constitution amended
1995	- Financial Services Supervisory Department created by Cayman government to replace Banking Inspectorate
1996	- CIMA created
1998	- CIMA begins onsite inspections of financial institutions
1999	- UK government issues <i>Partnership for Progress</i> White Paper for Dependent Territories
2000	- FATF lists Cayman as "non compliant" (blacklist)
2001	- Cayman removed from FATCA blacklist
2001	- UDP & PPM formed after National Team fractures
2002	- McKeeva Bush leads no confidence maneuver that ousts Leader of Government Business Kurt Tibbets
2002	- CIMA becomes independent
2002	- Legislative Assembly votes no confidence in Attorney General over use of British intelligence agencies in Cayman
2002	- EU issues first Savings Directive aimed at OFCs
2002	- Constitution revised
2004	- Hurricane Ivan
2005	- Tax Information Authority Law passes Legislative Assembly
2009	- New constitution issued
2009	- Miller Commission appointed
2012	- UDP government floats idea of "community enhancement fee" (aka income tax) for high income expatriates
2012	- Premier McKeeva Bush arrested
2012	- Vote of no confidence carries
2012	- UDP splits
2012	- Deputy Premier Julianna O'Connor-Connolly becomes premier at head of a minority government
2013	- PPM government elected
2013	- Julianna O'Connor-Connolly switches parties
2013	- UK appoints Helen Kirkpatrick as Governor