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## TAX-FREE AND THE OFFSHORE IMAGINARY

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## TAX-FREE AND THE OFFSHORE IMAGINARY

*Allison Tait\**

The slow disasters of the Anthropocene thrive on the so-called “offshore,” for it is here that the workings of power and capital are unhindered in their global flow—secrecy greases the wheels of commerce through the land grabs, money laundering, illicit economies, and resource extraction that make the world go round. It is a capitalist archipelago of free trade zones, offshore banks, tax havens, bought citizenship, and other states of exception.<sup>1</sup>

-Mimi Sheller, *Caribbean Futures*

Much of the legal geography of wealth and wealth inequality—the cartography of capitol distribution and financial concern—is easily expressed in coordinates that define neighborhoods and visible in structured spaces of both confinement and opportunity. There are elite zip codes, million-dollar blocks, and pockets of poverty across the landscape. Some geographic localizations of family money tend, however, more toward the offsite, the clandestine, and most particularly the offshore. For high-wealth families and individuals—and the financial institutions that cater to them—the dream of finding offshore islands and locating off-map comes with many benefits since remote siting promises not just the spatial privacy of geographic isolation but also freedom from the governmental regulation that prevails onshore.<sup>2</sup>

Historically, the desire for an offshore existence implicates a dream of private islands that implicates territorial control and political sovereignty. This “idealization (and gendering) of the island as a place of ownership,

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<sup>1</sup> Mimi Sheller, *Caribbean Futures in the Offshore Anthropocene: Debt, Disaster, and Duration*, 36(6) ENV'T & PLAN. D: SOC'Y & SPACE 971, 976 (2018).

<sup>2</sup> See *infra* Part I.

where any man can be a king, has a long history in Western literature” and, in this historically male—and colonial—imaginary, “an island is a blank canvas, on which solitary, independent individuals can paint whatever they desire most.”<sup>3</sup> The romanticization of offshore spaces is also very practical, however, in that the offshore island is a geographic fantasy turned into a profit-making reality of territorial accumulation, resource exploitation, and financial deregulation indulged in by radical capitalists who see the vast potential to escape government interference and expand personal profit. The concept of offshore, and the imaginary that sustains it, is the dream of colonial discovery and the commandeering of geographic space that exists theoretically in contrast to historic sovereignties with their burdensome governmental systems, fraught economies, ailing infrastructures, and even lackluster weather.<sup>4</sup>

In this way, offshore is nothing more than a conceptual orientation and prioritization of geographies. It is “a relational space par excellence . . . [that exists] only insofar as it both provides a barrier between and mediates connection to the onshore.”<sup>5</sup> And, because offshore only exists in relation to an onshore power that has centered its location and needs, “[m]ost offshore geographies are imperial geographies, in history and function”<sup>6</sup> and can “be understood as extracting sovereignty itself.”<sup>7</sup> Offshore is a space that stands in contradistinction to the onshore, the space of difference and “the exploitation of difference for profit.”<sup>8</sup> The offshore is “a capitalist

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<sup>3</sup> As such, the island is idealized as the perfect site for autonomous actors to exert their freedom as they try out new ideas. Philip E. Steinberg et al., *Atlas Swam: Freedom, Capital, and Floating Sovereignties in the Seasteading Vision*, 44(4) ANTIPODE 1532, 1534 (2012); see also Isabelle Simpson, *If I’m Not a Ship, I’m a Boat That Could Be: Seasteading and the Post-Social Political Imagination*, 57–58 (Apr. 2016) (Master thesis, Concordia University), [https://spectrum.library.concordia.ca/id/eprint/981163/1/Simpson\\_MA\\_S2016.pdf](https://spectrum.library.concordia.ca/id/eprint/981163/1/Simpson_MA_S2016.pdf).

<sup>4</sup> JOHN URRY, OFFSHORING 46 (2014) (“Tax havens are places of escape and freedom, a paradise of low taxes, wealth management, deregulation, secrecy and often nice beaches.”).

<sup>5</sup> Shaina Potts, *Offshore*, in KEYWORDS IN RADICAL GEOGRAPHY: ANTIPODE AT 50, 199 (Antipode Editorial Collective et al. eds., 2019).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

archipelago of free trade zones, offshore banks, tax havens, bought citizenship, and other states of exception.”<sup>9</sup>

This Article, then, is about how geographies of select financial institutions are imagined and constructed as off-grid, offsite, and offshore, at least in relation to the landscape of conventional institutions, and how these geographic imaginaries of banking construct complicated archipelagos of both privilege and poverty. The Article provides a brief history of offshore financial centers to begin, then charts the development of “offshore onshore,” particularly in certain American states. The Article concludes with a discussion of the ways in which offshoring, as both a strategy for asset management and a legal fantasy, compounds problems of legal exceptionalism, financial deregulation, asset secrecy, and, ultimately, wealth inequality.

### I. A BRIEF HISTORY OF OFFSHORE TAX HAVENS

Offshore financial centers are described, in a technical manner, “as places with sufficient autonomy to allow individuals and corporations to register and maintain assets there while paying low or no taxes and avoiding the more stringent regulations they would be bound by in other countries.”<sup>10</sup> Building out a definition of these centers, Mark Hampton has suggested that offshore financial centers have historically provided four necessary spaces within their geography that enable the global financial services industry: secrecy space, fiscal space, regulatory space, and political space.<sup>11</sup> That is to say, these micro-states have traditionally offered banking secrecy, low tax regimes, responsive legislatures, and political stability. These islands are also called tax havens, secrecy jurisdictions, or “paradis fiscals,” paradises in the sense that “[t]o have one’s money parked offshore is to be in paradise, by contrast with the high-tax life onerously experienced onshore.”<sup>12</sup>

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<sup>9</sup> Sheller, *supra* note 1, at 976.

<sup>10</sup> Vanessa Ogle, *Archipelago Capitalism: Tax Havens, Offshore Money, and the State, 1950s–1970s*, 122(5) AM. HIST. REV. 1431, 1432 (2017).

<sup>11</sup> Mark P. Hampton, *Creating Spaces. The Political Economy of Island Offshore Finance Centres: The Case of Jersey*, 84 GEOGRAPHISCHE ZEITSCHRIFT 103, 106 (1996) (Ger.).

<sup>12</sup> URRY, *supra* note 4, at 46.

Historically, the offshore financial centers have included the Channel Islands, Isle of Man, Malta, Cayman Islands, British Virgin Islands (BVI), The Bahamas, Bermuda, Vanuatu, Cook Islands, Mauritius, and Seychelles.<sup>13</sup> In a pattern that has repeated itself multiple times, “various major states engender and facilitate their own treasure islands, often with geographical ties or excellent transportation or symbolic links to their ‘homeland’ . . . [such that] the colonial or post-colonial power is key to supporting or guaranteeing each façade.”<sup>14</sup> Notably, many of these offshore financial centers, island micro-nations, were part of the British empire when the offshore growth began and the offshore story is inextricably linked with British imperialism.<sup>15</sup>

Over the span of the twentieth century, beginning with concerted and strategic development after World War I in the 1920s these small islands, microstates, were transformed primarily by the United Kingdom and the United States into offshore financial centers.<sup>16</sup> The first phase, generally speaking the period between the two World Wars, saw the emergence of these financial centers and what Vanessa Ogle calls “archipelago capitalism . . . on a mostly moderate scale.”<sup>17</sup> Ogle notes that offshore centers during this period offered a range of opportunities: minimal taxes, “flags of convenience registries, which allowed a ship whose owner lived in one country to be registered under and subject to the laws of another country,” and “special economic zones, which provided incentives designed to attract foreign investment.”<sup>18</sup> Flags of convenience, which allowed shipping companies and owners to evade U.S. law, including tax and labor law, got their real start in the 1930s “when Standard Oil and other petroleum shippers

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<sup>13</sup> Esther C. Suss, Oral Williams & Chandima Mendis, *Caribbean Offshore Financial Centers: Past, Present and Possibilities*, 88 INT’L MONETARY FUND 4 (May 2002).

<sup>14</sup> URRY, *supra* note 4, at 56.

<sup>15</sup> *Id.*

<sup>16</sup> Ogle, *supra* note 10, at 1436.

<sup>17</sup> *Id.* These three phases are identified by Ogle in her article. This was also the beginning of the Swiss story of secrecy banking as well. See generally GABRIEL ZUCMAN ET AL., *THE HIDDEN WEALTH OF NATIONS: THE SCOURGE OF TAX HAVENS* 8–33 (2015).

<sup>18</sup> Ogle, *supra* note 10, at 1433.

registered tankers in Panama to avoid the effect of U.S. neutrality laws.”<sup>19</sup> Subsequently, a decade or so later, Standard Oil helped by the U.S. Secretary of State, Edward R. Stettinius, Jr.—who had also started a corporate fund to underwrite Liberian development in a profit-sharing arrangement with the Liberian government—helped to write the flag of convenience registry laws for Liberia, turning that country into what is still one of the most popular maritime registries.<sup>20</sup>

The two common threads and overarching themes in all this development were “low or nil tax regimes and light regulation and government oversight.”<sup>21</sup> Moreover, the development of these sites of secrecy, light governance, and financial deregulation that served an elite class of primarily Western wealth holders, were the product of “deliberate government decisions and support.”<sup>22</sup> The architects as well as the implementers of these regulatory frameworks were “lawyers, accountants, former diplomats and politicians who were now engaged in business, and former spies and people with ties to intelligence services acting at the behest of business groups as well as in their own interest.”<sup>23</sup> These islands were incubators for the neo-liberal politics and policies that would arrive onshore decades later and, as such, they were “a regular and integral rather than exceptional element of twentieth-century liberal-democratic capitalism.”<sup>24</sup> Put otherwise, “[s]ecrecy jurisdictions have been at the heart of the globalization project from the beginning”<sup>25</sup> and offshoring from its inception

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<sup>19</sup> Rodney Carlisle, *The “American Century” Implemented: Stettinius and the Liberian Flag of Convenience*, 54(2) BUS. HIST. REV. 175, 179 (1980).

<sup>20</sup> *Id.* at 175.

<sup>21</sup> Ogle, *supra* note 10, at 1433.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* See also Potts, *supra* note 5, at “Summary” (“Historians, political scientists and journalists of the offshore tend to agree, first, that the offshore is central, not marginal, to globalisation, and second, that it is closely linked to neoliberal capitalism.”).

<sup>25</sup> NICHOLAS SHAXSON, TREASURE ISLANDS: UNCOVERING THE DAMAGE OF OFFSHORE BANKING AND TAX HAVENS 33 (2012).

was not a byproduct of globalization, neo-liberalization, and deregulation, but rather what was “driving the process.”<sup>26</sup>

The second phase of development for the offshore financial centers corresponded with the end of the second World War and lasted into the 1970s, building on this early work done by governments and private businesses to develop the offshore financial centers.<sup>27</sup> A big factor in the development of these centers at the time was the flow of money out of formerly colonial sites and the financial demands of decolonization. When a number of imperial occupations ended, colonizers were forced to move their money and investments, creating “something of a money panic and a clientele eager to move assets out of the colonial world to havens that would shelter them.”<sup>28</sup> Accordingly, “[w]hen Britain’s formal empire collapsed, it did not entirely disappear. Fourteen small island states decided not to become independent and became instead Britain’s Overseas Territories, with Britain’s Queen as their head of state.”<sup>29</sup> These small island nations drew the interest of bankers and lawyers from both the United Kingdom and United States and ultimately drew capital from the old colonial geographies.<sup>30</sup> The desire of the American and British elite to shelter their assets was strengthened by “postwar welfarist policies” in many of the colonialists home countries, which meant heavy taxation and regulation.<sup>31</sup> In many instances, this meant moving money from one disestablishing colonial site to another growing one. Accordingly, the story of decolonization was imbricated with recolonization.

Jumping in to fill the breach and (re)colonize the islands were land developers and financial institutions with private money-making deals with governments. In one example, Wallace Groves, a lawyer, and entrepreneur from the United States who had spent time in prison for perpetrating fraudulent investment schemes, made a deal with the British government in

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<sup>26</sup> *Id.* at 134.

<sup>27</sup> Ogle, *supra* note 10, at 1439–46.

<sup>28</sup> Ogle, *supra* note 10, at 1439.

<sup>29</sup> SHAXSON, *supra* note 25, at 31.

<sup>30</sup> Ogle, *supra* note 10, at 1438.

<sup>31</sup> Ogle, *supra* note 10, at 1439.



1954 to lease 50,000 acres of land belonging to the Crown in the colonial Bahamas.<sup>32</sup> At the bargain price of one pound sterling per acre, Groves “pledged to dredge a deepwater harbor to create a free port, to provide public utilities, and to build an airstrip.”<sup>33</sup> In return for this, Groves would “obtain wide-ranging rights to license companies active in the port and to control immigration into the area, responsibilities normally reserved for governments.”<sup>34</sup> Another example, in the Turks and Caicos Islands, was Clovis McAlpin, a U.S. private citizen who bargained with the Foreign Office for control of and profit from the territory.<sup>35</sup> These kinds of deals, made with colonizing governments, “made private investors into virtual suzerains of the territories.”<sup>36</sup>

Despite the often one-sided nature of these deals, the British government was drawn in by the immediate need for capital investment and lucrative visions of future benefit.<sup>37</sup> Putting its limited capital to use strategically, the British government was carrying on its own colonial development in tandem with American developers such that in 1971, the British Governor of the Cayman Islands, Kenneth Crook, described the set-up on the island as “basically colonial situation.”<sup>38</sup> And as a colonial system, these islands’ investments bore fast fruit. When the Cayman’s first trust laws were written (by a cadre of British lawyers) in 1966, “cows were still wandering through the town center of the capital, Town George. . . . The town had one bank, one paved road, and no telephone system.”<sup>39</sup> One year later, “Grand Cayman was

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<sup>32</sup> Ogle, *supra* note 10, at 1442.

<sup>33</sup> *Id.* (Once the Port Authority in Freeport was set up, it was run by the Bay Street Boys, a notorious group of White British economic and political players who regularly met at a club on Bay and Charlotte Streets in Nassau, and who also controlled the Bahamian government.).

<sup>34</sup> *Id.* (In August 1955, these terms were spelled out in the notorious Hawksbill Creek Agreement—“one of the most one-sided agreements ever signed by the British Crown,” a newspaper later remarked.).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Ogle, *supra* note 10, at 1443.

<sup>38</sup> SHAXSON, *supra* note 25, at 93.

<sup>39</sup> SHAXSON, *supra* note 25, at 90.



connected to the international phone network and the airport was expanded to take in jet aircraft. Money began to pour in.”<sup>40</sup>

By the 1970s, these islands had been sufficiently shaped by the recolonization of land developers and the financial services industry such that a third phase of “dramatic expansion”<sup>41</sup> was possible. This expansion was enabled by banks and other financial services companies becoming embedded into island infrastructures by legislative activity and sheer force of money. Offshore, financial service providers routinely capitalized on the small size and responsive capacity of micro-states, where “critical legislation [could] become law with hardly enough discussion and with a lot of trust being placed on the recommendations of well-paid expatriate consultants.”<sup>42</sup>

Moreover, the decision of the U.S. Federal Reserve in 1969 to allow U.S. banks to establish “shell” branches in these jurisdictions similarly helped to jumpstart this boom period.<sup>43</sup> By 1973, branch banks in the Bahamas and Cayman Islands increased by more than 150%, to 31% of the assets of all foreign branches of American banks, and “by May 1976, more offshore loans had been recorded by American banks in the Caribbean than in London.”<sup>44</sup> Continuing through the 1970s and 1980s, bank and trust companies located in these island jurisdictions, pioneering—in cooperation with the local legislatures—new and permissive rules concerning both banking and trust creation.<sup>45</sup>

As a result of these mutually reinforcing factors, “[b]y the early 1980s the main elements of the modern offshore system were in place and growing explosively . . . [and] a new and increasingly powerful pinstripe army of lawyers, accountants, and bankers had emerged to make the whole system

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<sup>40</sup> *Id.*

<sup>41</sup> Ogle, *supra* note 10.

<sup>42</sup> Davis Fabri & Godfrey Baldacchino, *The Malta Financial Services Centre: A Study in Micro-State Dependency Management?*, in OFFSHORE FINANCE CENTRES AND TAX HAVENS (Mark P. Hampton & Jason P. Abbott eds., 1999).

<sup>43</sup> Ogle, *supra* note 10.

<sup>44</sup> *Id.* at 1452.

<sup>45</sup> *Id.*

work.”<sup>46</sup> Financial vehicles with asset protection and privacy guarantees became standard fare, offered to ultra-rich families around the globe. These same benefits, particularly secrecy, also helped to make many of these islands into destination locales for the mutual fund and hedge fund industries, because of the lack of reporting and registration requirements.<sup>47</sup> These financial centers also “allowed hedge funds to take on greater risks” through soft “regulations covering their speculative position.”<sup>48</sup> Accordingly, as of 2000, the Cayman Islands were “the center of the world’s hedge fund industry, with 45 percent of all hedge funds registered there.”<sup>49</sup>

For most if not all of these islands, the financial services industry is at this point the most lucrative on the island, and, for example, on the British Channel Island of Jersey 90% of government revenues derive from the financial services industry, which employs “up to 20% of the local labor force.”<sup>50</sup> Moreover, the financial service professionals and the governments that support them are very successful at what they do. The British Virgin Islands and Guernsey were in the top ten of financial secrecy jurisdictions according to the 2022 list compiled by the Tax Justice Network.<sup>51</sup> The Cayman Islands, Jersey, and the Bahamas were all in the top twenty-five.<sup>52</sup> Ultra-high-wealth clients from all parts of the globe bring their money to these islands and the financial institutions offer an ever-increasing range of products, designed to protect assets and provide financial privacy.

Selling various financial services on non-descript websites, most companies offer some version of what Trident Trust, a Cayman Islands company, does—that is to say a “focus exclusively on the administration of trusts, foundations, corporate entities and alternative investment funds . . .

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<sup>46</sup> SHAXSON, *supra* note 25, at 130.

<sup>47</sup> Ogle, *supra* note 10, at 1454.

<sup>48</sup> *Id.*

<sup>49</sup> Ogle, *supra* note 10, at 1454.

<sup>50</sup> Mark P. Hampton & John Christensen, *Offshore Pariahs? Small Island Economies, Tax Havens, and the Re-configuration of Global Finance*, 30 *WORLD DEV.*, no. 9, 2002, at 1657–73.

<sup>51</sup> *Tax Justice Network*, FINANCIAL SECRECY INDEX 2022, <https://fsi.taxjustice.net/> (last visited June 1, 2023).

<sup>52</sup> *Id.*

used by lawyers and accountants, asset managers, financial institutions, family offices and international businesses.”<sup>53</sup> Financial service companies will help clients set up a family office or a private trust fund, vehicles that protect family privacy and offer increased opportunities for both high-risk investing and asset protection. And, because the trust is one of the most useful vehicles for high-wealth families in their collective quest to preserve family wealth and protect it from both public scrutiny and various kinds of creditor claims, companies in offshore sites market a range of trust products as “offshore lawyers . . . sit in their offices all day long, doing little more than dreaming up deviant new flavors of trusts.”<sup>54</sup> In addition, legislatures in these island jurisdictions authorize new trust forms regularly such that clients can take advantage of the ever-evolving roster of trust forms to protect assets and obscure ownership.<sup>55</sup>

As one Cayman Islands company states, touting the benefits of the Caymans STAR (Special Trusts Alternative Regime) trust, which was established by special legislation in 1997:

[T]he traditional law of trusts limits in significant respects, the extent to which trusts can be used to perform certain functions . . . in ways that are not always suited to the commercial and other objectives of the person(s) establishing them. The STAR regime removes many of these limitations, thereby providing greater flexibility to tailor Cayman trusts to meet these desired objectives.<sup>56</sup>

Similarly, the British Virgin Islands, through the Virgin Islands Special Trusts Act (VISTA) of 2003, created the VISTA trust, designed to “solve a commonly perceived dilemma with the use of trusts to hold the shares of underlying companies.”<sup>57</sup> The dilemma was that traditional trust law requires trust settlors to surrender control of the assets in trust in order to receive asset

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<sup>53</sup> *Fund Administration Services*, TRIDENT TRUST, <https://www.tridenttrust.com/services/> (last visited Feb. 9, 2023).

<sup>54</sup> SHAXSON, *supra* note 25, at 46.

<sup>55</sup> *Id.*

<sup>56</sup> Graham Stoute, *A Guide to Cayman Island STAR Trusts*, CAREY OLSEN (Mar. 24, 2017), <https://www.careyolsen.com/briefings/guide-cayman-islands-star-trusts>.

<sup>57</sup> Andrew Miller, *BVI Vista Trusts*, BEDELL CRISTIN (Oct. 22, 2020), <https://www.bedellcristin.com/knowledge/briefings/bvi-vista-trusts/>.

protection.<sup>58</sup> Trust settlors wanted, however, to have it both ways and be able to control the assets in trust—particularly when the assets were business shares—and also receive traditional asset protection.<sup>59</sup> The VISTA legislation and resulting trust form allow for this set-up.<sup>60</sup>

Based on opportunities such as these, island companies make claims about their idiosyncratic trust offerings reflecting the degree to which “[t]he offshore world is an endlessly shifting ecosystem, and each jurisdiction offers one or more offshore specialties. Each attracts a particular type of financial capital, and each develops a particular infrastructure of skilled lawyers, bankers, accountants, and corporate officers to cater to their specific needs.”<sup>61</sup> One company states that “[m]any legal professionals consider the Cook Islands trusts are the world’s best legal vehicle for asset protection and financial privacy.”<sup>62</sup> The pitch continues, an appeal to new holders of global wealth, by noting: “Lawsuits pose significant threats to the assets of hard-working individuals. Therefore, people use offshore asset protection trusts, such as this one, as solid additions to wealth management plans.”<sup>63</sup>

Nevis, one of the smallest Caribbean islands, prides itself on offering what its institutions and officials claim to be the most privacy and protection possible for trust settlors.<sup>64</sup> Nevis “specialises in letting its clients create corporations with greater anonymity than almost anywhere else on earth.”<sup>65</sup> Justifying its strong stance on financial privacy, Nevis’s Premier, Mark Brantley, told one reporter: “[w]e feel very strongly that people are entitled

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Although competition between jurisdictions exists, as these examples make clear, Zucman claims that, “[r]ather than competing with one another, tax havens have in fact a tendency to specialize in the various stages of wealth management.” ZUCMAN ET AL., *supra* note 17, at 25.

<sup>61</sup> SHAXSON, *supra* note 25, at 25.

<sup>62</sup> *How to Set Up a Cook Islands Trust*, OFFSHORE CORPORATION (2019), <https://www.offshorecorporation.com/trust/how-to-cook-islands-trust/>.

<sup>63</sup> *Id.*

<sup>64</sup> See Oliver Bullough, *Nevis: How the World’s Most Secretive Offshore Haven Refuses to Clean Up*, GUARDIAN (July 12, 2018), <https://www.theguardian.com/news/2018/jul/12/nevis-how-the-worlds-most-secretive-offshore-haven-refuses-to-clean-up>.

<sup>65</sup> *Id.*

to some semblance of financial privacy. . . . Why shouldn't you be entitled to a secret?"<sup>66</sup> And all of the jurisdictions market opportunities for various kinds of tax avoidance. As one wealth manager tells his offshore clients: "[w]hat I do for you is zero. . . . Actually three zeros. Zero income tax, zero capital gains tax, zero inheritance tax."<sup>67</sup>

One writer has described the entire offshore ecosystem this way: "You follow a white rabbit down a hole, the tunnel dips suddenly and, before you know it, you find yourself falling down a very deep well into a new world. It's a beautiful place, if you're rich enough to enjoy it. If you're not, it's inaccessible. This is the place that I call Moneyland."<sup>68</sup> And, by all accounts, in Moneyland both clients and companies are thriving. In current best estimates, \$7.6 trillion is stashed in island tax havens, an astronomical amount equal "to 8 percent of total global financial wealth—more than what the poorer half of the world's population owns in total."<sup>69</sup> Islands of wealth, catering to the financial desires of a global elite, these archipelagos of profit persist—true to their colonial histories—as "'adventure playground[s]' for certain regulatory and tax regimes"<sup>70</sup> despite increasing calls for global governance and transparency in the form of asset registries or other information stores.<sup>71</sup>

## II. WHAT OFFSHORE LOOKS LIKE ONSHORE

If offshore financial centers have served and continue to serve as sites of deregulation and financial freedom while also acting as integral locales for enabling a certain dialectical capitalism, they are not alone. There have also always been onshore zones of financial secrecy and deregulation as well, existing in both cooperation and competition with the offshore sites.<sup>72</sup>

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<sup>66</sup> *Id.*

<sup>67</sup> OLIVER BULLOUGH, MONEYLAND: THE INSIDE STORY OF THE CROOKS AND KLEPTOCRATS WHO RULE THE WORLD 234 (2019).

<sup>68</sup> *Id.*

<sup>69</sup> Ogle, *supra* note 10, at 1435.

<sup>70</sup> *Id.* at 1456.

<sup>71</sup> Thomas Piketty, *Foreword* to GABRIEL ZUCMAN, THE HIDDEN WEALTH OF NATIONS xi (2015).

<sup>72</sup> ZUCMAN, *supra* note 71, at 25.

Onshore can indeed be identified as the point of origin for the deregulatory move because “all offshore spaces exist only because they operate as part of ‘onshore’ strategies.”<sup>73</sup>

Switzerland, for example, with its strong secrecy laws in banking, has been the iconic onshore tax haven where “respectable Swiss society has set the gold standard, providing . . . a ‘theatre of probity’ initially developed in the nineteenth century.”<sup>74</sup> Likewise, the City of London has both historically and presently been a strong secrecy jurisdiction, “a medieval commune representing capital” as well as the center of “Britain’s offshore spiderweb.”<sup>75</sup> Increasing over the twentieth century, however, the story of expansion has been a story that is intimately connected to the dramatic development of secrecy jurisdictions in the United States. American states set in place conditions to attract high-wealth clients and their wealth management needs starting in the 1980s when a number of states repealed the Rule Against Perpetuities.<sup>76</sup> Repeal of this mainstay rule of trust regulation meant that trusts would not be required to terminate after a perpetuities period of about one hundred years.<sup>77</sup> Instead, trusts could last in perpetuity thereby fixing in time certain forms of settlor control, keeping principal untouchable by spendthrift descendants, and circumventing a number of “taxable events.” South Dakota, in a concerted attempt to attract trust business, abolished the Rule Against Perpetuities in 1983—two years after South Dakota’s governor abolished the state’s “anti-usury” laws that set an upper limit to the interest rates lenders could charge.<sup>78</sup> And, as one newspaper article has commented: “A rule created by English judges after centuries of consideration was erased by a law of just 19 words. Aristocracy

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<sup>73</sup> Potts, *supra* note 5, at 200.

<sup>74</sup> URRY, *supra* note 4, at 48.

<sup>75</sup> SHAXSON, *supra* note 25, at 85–86.

<sup>76</sup> See DEBORAH S. GORDON, KAREN J. SNEDDON, CARLA SPIVACK & ALLISON A. TAIT, EXPERIENCING TRUSTS AND ESTATES 512–13 (2021) [hereinafter EXPERIENCING TRUSTS].

<sup>77</sup> *Id.*

<sup>78</sup> They protected consumers from loan sharks, but they also prevented Citibank from making a profit from credit cards. So, when Citibank promised Janklow 400 jobs if he abolished them, he had the necessary law passed in a single day. Oliver Bullough, *The Great American Tax Haven: Why the Super-Rich Love South Dakota*, GUARDIAN (Nov. 14, 2019), <https://www.theguardian.com/world/2019/nov/14/the-great-american-tax-haven-why-the-super-rich-love-south-dakota-trust-laws>.

was back in the game.”<sup>79</sup> Delaware followed suit three years later and by 2022, over half of the states had enacted legislation to modify the traditional rule and allow for perpetual or “dynasty” trusts.<sup>80</sup>

The repeal of the Rule Against Perpetuities was, on its own, sufficient to drive capital to these states, but the lure became even stronger for the ultra-rich in the late 1990s when the same states started authorizing domestic self-settled asset protection trusts in a clear attempt to compete with the trust innovation happening offshore. In the 1980s, the Cook Islands had amended that jurisdiction’s governing law to allow for self-settled asset protection trusts in an attempt, which would prove immensely successful, to attract foreign capital.<sup>81</sup> What was new about these asset protection trusts was that they allowed the settlor to be a beneficiary and even a trustee of an irrevocable trust and still obtain the asset protection features long associated with third-party established discretionary spendthrift trusts, a development at total odds with conventional trust rules for asset protection.<sup>82</sup> Other island jurisdictions soon followed suit in allowing these Foreign Asset Protection Trusts (FAPTs),<sup>83</sup> and this innovation contributed to the “great Offshore Boom” that “came like a tidal wave.”<sup>84</sup>

Eager to compete for a part of this lucrative trust business, American states then entered the game. Alaska became the first state to enact legislation

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<sup>79</sup> *Id.*

<sup>80</sup> See EXPERIENCING TRUSTS, *supra* note 76, at 512–13.

<sup>81</sup> Stewart Sterk, *Asset Protection Trusts: Trust Law’s Race to the Bottom*, 85 CORNELL L. REV. 1035, 1048 (2000).

<sup>82</sup> This development is in contravention of the traditional rules for asset protection which hold that, in order for a beneficiary’s interest to be protected, the trust must be created by a third party. See GEORGE T. BOGERT, TRUSTS § 40, at 155–56 (6th ed. 1987); see also Henry J. Lischer, *Domestic Asset Protection Trusts: Pallbearers to Liability?*, 35 REAL PROP. PROB. & TR. J. 479 (2000). The Uniform Trust Code reiterated this rule, stating that individuals cannot shield assets from creditors, including spouses, by placing them in a trust for their own benefit, and “even if the trust is discretionary, spendthrift, or both, the settlor’s creditors can reach the maximum amount that the trustee could under any circumstances pay to the settlor or apply for the settlor’s benefit.” UNIF. TR. CODE § 505 (UNIF. L. COMM’N 2000).

<sup>83</sup> See *Foreign Asset Protection Trusts*, LODMELL & LODMELL, <https://www.lodmell.com/asset-protection/foreign-trusts> (last visited July 23, 2017).

<sup>84</sup> Jay Adkisson, *A Short History of Asset Protection Trust Law*, FORBES (Jan. 26, 2015), <https://www.forbes.com/sites/jayadkisson/2015/01/26/a-short-history-of-asset-protection-trust-law/#605ecd2f3fb4>.



allowing Domestic Asset Protection Trusts (DAPTs) in 1997.<sup>85</sup> And the story of this trust legislation being written contains the same notes and themes as the process in the more traditional offshore locales, with lawyers devising new legal strategies for the protection of client wealth and then passing the legislation in partnership with local legislators.<sup>86</sup> In the case of Alaska, it was Jonathan Blattmachr, a prominent New York estate planning lawyer with ties to Milbank, Tweed, Hadley & McCloy, who essentially drafted Alaska’s dynasty trust statute in order to compete with the offshore jurisdictions, believing that his clients would not “want to have their assets in a place they couldn’t find on a map.”<sup>87</sup> Several months after Alaska took this step, Delaware did the same, hoping “to maintain Delaware’s role as the most favored domestic jurisdiction for the establishment of trusts.”<sup>88</sup> Since Alaska and Delaware paved the way for these new asset protection trusts, “scores of trust and estate lawyers have remade state-level trust legislation in their own images for the benefit of their industry”<sup>89</sup> and at least seventeen other states have passed legislation authorizing these trusts.<sup>90</sup>

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<sup>85</sup> Johnathan G. Blattmachr & Jamie M. Delman, *Alaska: The First Frontier of DAPTs*, AMERICAN BAR ASSOCIATION (Apr. 1, 1997), <https://www.americanbar.org/content/dam/aba-cms-dotorg/products/inv/book/415567490/chap1-5431122.pdf>.

<sup>86</sup> *Id.*

<sup>87</sup> Kalena Thomhave, *How One Man Helped Make America a Global Tax Haven*, MOTHER JONES (Sept. 30, 2022), <https://www.motherjones.com/politics/2022/09/america-tax-avoidance-states-haven-delaware-south-dakota-alaska-nevada-wyoming/>.

<sup>88</sup> Robert H. Sitkoff & Max M. Schanzenbach, *Jurisdictional Competition for Trust Funds: An Empirical Analysis of Perpetuities and Taxes*, 115 YALE L.J. 356, 382 (2005), “Alaska and Delaware have not been shy in expressing their respective desire to become the leading trust jurisdiction—not only domestically but also as an alternative to the offshore jurisdictions which have garnered so much world-wide business in the last several years.” John K. Eason, *Home from the Islands: Domestic Asset Protection Trust Alternatives Impact Traditional Estate and Gift Tax Planning Considerations*, 52 FLA. L. REV. 41, 53 (2000).

<sup>89</sup> Thomhave, *supra* note 87.

<sup>90</sup> Connecticut, Hawaii, Indiana, Michigan, Mississippi, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Wyoming, and West Virginia have also enacted legislation validating DAPTs. *American Academy of Estate Planning Attorneys*, DOMESTIC ASSET PROTECTION TRUSTS, <https://www.aaepa.com/2019/01/domestic-asset-protection-trusts/#:~:text=Seventeen%20states%20now%20allow%20for,%2C%20West%20Virginia%2C%20and%20Wyoming> (last visited June 1, 2023). Following the 1986 creation of the GST exemption, states have similarly raced to change or abolish the rule against perpetuities and compete for dynasty trust business. Roughly \$100

Repeal of the Rule Against Perpetuities coupled with the availability of these new asset-protection trusts has been an irresistible combination for many high-wealth families and individuals looking to safeguard the family fortune. The combination likewise has propelled a handful of American states into the competitive fray and decidedly increased the flow of business into the states willing to partner with trust companies in order to rewrite time-honored trust rules. Reflective of the same conditions that facilitated financial service institutions to dominate the island geography, the American states that were early adopters were lightly populated, in need of industry to bring money into the state, and run by both “part-time legislature[s] heavily lobbied by trust lawyers” as well as government administrations “committed to welcoming as much of the world’s money as possible.”<sup>91</sup> Not only lacking in true engagement with democratic process, “the rush by state legislatures to repeal the rule against perpetuities and pass dynasty trusts has been the result of lobbying by the wealthy, their lawyers, bankers, and trust managers, at times in the face of popular rejection of these innovations.”<sup>92</sup>

Finally, a crucial piece in the puzzle of attracting capital to small American states with preferential banking and trust rules for the ultra-rich, was an unexpected but important loophole in compliance regulations. In 2010, resulting from the beginning of a string of scandals and concerns involving offshore accounts, the U.S. Congress enacted the Foreign Account Tax Compliance Act (FATCA), which mandated reporting from foreign financial institutions about any American-owned assets the institutions were holding and managing.<sup>93</sup> At the same time, other jurisdictions taking a page from the compliance playbook created a global agreement called the Common Reporting Standard (CRS), which similarly instituted new reporting requirements.<sup>94</sup> FATCA and the CRS struck fear into the hearts of the ultra-rich and made offshore wealth management less secure and

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billion in trust assets has migrated into states that have provided for dynasty trusts. Sitkoff & Schanzenbach, *supra* note 88, at 359.

<sup>91</sup> Bullough, *supra* note 78.

<sup>92</sup> Carla Spivack, *Democracy and Trusts*, 42 ACTEC L.J. 311, 331 (2017).

<sup>93</sup> *Foreign Account Tax Compliance Act (FATCA)*, IRS (July 27, 2022), <https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca>.

<sup>94</sup> *Common Reporting Standard (CRS)*, ORG. FOR ECON. GROWTH & DEV., <https://www.oecd.org/tax/automatic-exchange/common-reporting-standard/> (last visited Feb. 9, 2023).

secretive than it had previously been. Ironically, however, these new rules were boons for American states since the United States made no commitment to the CRS and was exempt from FATCA reporting, which only governed countries outside of the United States. Compliance loopholes in place, “[t]he U.S. was on its way to becoming a truly world-class tax haven”<sup>95</sup> and, as one industry commentator remarked, “[t]hat giant sucking sound you hear? It is the sound of money rushing to the USA to avoid [CRS] reporting.”<sup>96</sup>

Trust companies in these states, accordingly, market themselves as attractive alternatives to offshore companies. One Wyoming trust company advertises that it is “the onshore alternative for offshore trusts.”<sup>97</sup> The company elaborates that this is because of “changes in federal law” with respect to reporting and that “[FATCA] has constricted the benefits of offshore trust jurisdictions to the point that moving an offshore trust to Wyoming may prove beneficial.”<sup>98</sup> A South Dakota company, likewise, declares that the days of offshore trusts are over: “Establishing a DAPT in a top rated trust state like South Dakota is extremely advantageous . . . . Offshore asset protection has lost a lot of momentum. . . .”<sup>99</sup> And even the wealth management offices of BNY Mellon wrote, in a white paper entitled *Onshoring Your Offshore Trust to the U.S.*, that “[t]he past few years have seen a significant change on the part of wealthy global families, reversing the trend from shunning to seeking a U.S. situs for their trusts.”<sup>100</sup>

Directly marketing themselves as beneficial alternatives to the traditional offshore sites, the trust and wealth management companies in these states playing to the presumed desire of clients to safeguard their family fortunes and build their family legacies. Trust companies in U.S. states—like those in the offshore jurisdictions—continually invent new trust products

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<sup>95</sup> Bullough, *supra* note 78.

<sup>96</sup> BULLOUGH, *supra* note 67, at 255.

<sup>97</sup> *Why Wyoming?*, FRONTIER ADMIN. SERV. (2019), [wyoprivatetrust.com/about-us/why-wyoming](http://wyoprivatetrust.com/about-us/why-wyoming).

<sup>98</sup> *Id.*

<sup>99</sup> *Domestic Asset Protection Trust*, S.D. TR. CO. (2019), [www.sdtrustco.com/why-south-dakota/asset-protection/](http://www.sdtrustco.com/why-south-dakota/asset-protection/).

<sup>100</sup> Joan K. Crain & Myriam Soto, *Onshoring Your Offshore Trust to the U.S.*, BNY MELLON WEALTH MANAGEMENT 8 (July 2020), [https://www.bnymellonwealth.com/assets/pdfs-strategy/thought\\_onshoring-your-offshore-trust-to-the-us.pdf](https://www.bnymellonwealth.com/assets/pdfs-strategy/thought_onshoring-your-offshore-trust-to-the-us.pdf).

with names meant to appeal to their target audience: Dynasty Trusts,<sup>101</sup> Legacy Trusts,<sup>102</sup> and a “Bloodline Trust.”<sup>103</sup> One company even boldly markets a “Have Your Cake and Eat It Too” Trust (HYCET Trust™).<sup>104</sup> A South Dakota trust company, pushing its services to a global clientele, lists the trust opportunities available for “international families,” including a “South Dakota Non-Resident Alien (NRA) Domestic Dynasty Trust,” a “South Dakota Stand-By Domestic Dynasty Trust,” and a “South Dakota Pre-Immigration Domestic Trust.”<sup>105</sup> And, as the trust company reminds prospective clients: “[A]ll the benefits of South Dakota, including most of the unique and creative trust strategies for the wealthy, can be enjoyed by families across the country and globally without the necessity of having the family reside in the state.”<sup>106</sup> Regardless of the marketing tactic used by the trust company, what these trusts all offer is new possibilities and opportunities for ultra-rich families and individuals to shield their fortunes from view, the advantage of secrecy while receiving robust protection from creditors.

The competition for elite, global clients has scaled up rampantly and, as commentators have noted, this competition for financial services and trust business is a “race to the bottom”<sup>107</sup> being played out around the globe, both onshore and offshore, across island landscapes and prairie states. And American states are succeeding. Recent studies have shown:

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<sup>101</sup> *The Dynasty Trust*, WILMINGTON TR. CORP., <https://web.archive.org/web/20160812093835/https://www.wilmingtontrust.com/wtcom/index.jsp?fileid=3000303> (last visited July 16, 2017).

<sup>102</sup> Christopher Cline, *Why Use Legacy Trusts*, ABBOT DOWNING, <https://perma.cc/MCZ3-NCWL> (last visited July 16, 2017).

<sup>103</sup> *The Benefits of Bloodline Trusts Special Report*, BEGLEY L. GRP., <https://perma.cc/UC2R-H9AY> (last visited July 16, 2017) (explaining that a bloodline trust is designed to keep money in the family protecting the inheritance of your children and their descendants).

<sup>104</sup> *Have Your Cake and Eat It Too: HYCET Trust*, FALCON RAPPAPORT & BERMAN LLP, <http://jmvlaw.com/hycet-trust/> (last visited Aug. 2, 2023).

<sup>105</sup> *Services for International Families*, S.D. TR. CO., <https://sdtrustco.com/international-families/> (last visited Jan. 23, 2023).

<sup>106</sup> *Why South Dakota*, S.D. TR. CO., <https://sdtrustco.com/why-south-dakota/> (last visited Jan. 23, 2023).

<sup>107</sup> See, e.g., Stewart E. Sterk, *Asset Protection Trusts: Trust Law’s Race to the Bottom*, 85 CORNELL L. REV. 1035 (2000).

[T]he United States to be the global leader in trust law liberality: seventeen of the twenty jurisdictions which have the most liberal trust laws are American states and that the “trust laws of many American states are more liberal than those of most offshore island jurisdictions.”<sup>108</sup>

The study further notes that this liberalization of trust law has resulted in no small part from “states having followed an offshore dynamic in adopting highly permissive positions in order to draw users from out of state to resident service providers.”<sup>109</sup> Whether the jurisdiction is a regulatory oasis in the prairie or ocean, what remains constant is that these micro-geographies all present as havens of regulatory freedom, located in territories that are remote from major urban areas, burdensome state governments, and direct agency oversight. In being so sited, these tax havens and jurisdictions of financial secrecy form extensive, imagined archipelagoes of privilege and accumulation and constitute a geography of both historical and continuing colonialist impulse.

### III. THE CIRCULATION OF WEALTH ACROSS GEOGRAPHIES

In this map of banking and wealth management institutions, personal finance, and consumer borrowing, there are clear patterns in the flows of wealth between and across offshore and onshore geographies. It is a renewed cycle of colonial patterns and profits in which the financial industry reaps the benefits of monopolizing the land and resources of these micro-nations or micro-jurisdictions, without contributing to their coffers, creating patterns of inequality that compound pre-existing inequalities, ones that are often racialized and gendered.

To begin with, great amounts of money is made for the financial industry in these offshore sites—for the banks, the bank leaders, and shareholders—and for the private clients who benefit from banking within a state of exception. Banks take in profits generated in large part by the state of exception rules governing wealth management, just as corporate leadership derive personal benefit from the legal frameworks that privilege their institutions. And private clients, those global capitalists who work, play, and spend elsewhere, outside of the micro-state, they benefit as their wealth

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<sup>108</sup> Adam Hofri-Winogradow, *The Statutory Liberalization of Trust Law Across 152 Jurisdictions: Leaders, Laggards and the Market in Fiduciary Services*, 53 U.C. DAVIS L. REV. 2313, 2354 (2020).

<sup>109</sup> *Id.*

is protected, increased, and amplified. The offshore states are, then, nodes of operation where financial governance systems enable and encourage certain transactions, transactions that enable assets to flow into the offshore site from different, onshore locales before being reconfigured and accumulated assets flow back out, back to the onshore accounts and addresses to be spent and spectacularized.

What is left offshore, after the assets have completed their circuit and returned back onshore after an offshore stint, is a different picture. It is possible, as some scholars remark, the welcoming of the financial services industry is just one more stage in the evolution of an island economy. Looking at Jersey, two researchers have noted: “Over time, islanders have been employed in many different economic activities: farming, shipbuilding, fishing, salted fish, cider-making, knitting, tourism, and now, offshore finance. Perhaps [. . . offshore finance is] but one part of this long history of island ‘opportunistic pragmatism.’”<sup>110</sup> However, in many offshore financial centers, “the interests of these small states have been subsumed to the needs of global capital.”<sup>111</sup>

One example of this subsumption is that, even when profits do stay in the offshore location, they are not necessarily distributed evenly. In the Caribbean centers, the primary beneficiaries “from offshore activities [are] rich white bankers, lawyers, and accountants.”<sup>112</sup> This phenomenon repeats in other offshore jurisdictions as well, with the profits from financial services primarily enriching bank executives and other top-level employees in the industry, thereby “widening [the] income gap between OFC employees (often British immigrants) and indigenous islanders.”<sup>113</sup> This kind of unequal enrichment, which often runs along race lines, “can be seen both from increasing reliance on welfare payments and from the rising level of subsidies paid to preexisting industries, such as agriculture.”<sup>114</sup> And underscoring the fact that the financial services populating these offshore sites are not a source

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<sup>110</sup> Mark P. Hampton, *Creating Spaces. The Political Economy of Island Offshore Finance Centres: The Case of Jersey*, GEOGRAPHISCHE ZEITSCHRIFT, 84 JAHRG, H. 2, 103, 112 (1996).

<sup>111</sup> Hampton & Christensen, *supra* note 50, at 1663–64.

<sup>112</sup> SHAXSON, *supra* note 25, at 161.

<sup>113</sup> Hampton & Christensen, *supra* note 50, at 1634.

<sup>114</sup> *Id.*

of wealth building or opportunity for residents, most offshore financial centers specifically prohibit residents from using the banking services on offer to the global elite. Nothing more effectively expresses how the banking houses and boutique trust firms that dot the island landscapes are a source of onshore profit, a waystation for assets, and one particular point of activity in a wider circuit of earnings and wealth.

Other problems arise as well. For example, the benefits that supposedly accrue to these “treasure islands” through “tourism, registration fees, tax revenue from incomes paid to the lawyers, bankers, trust company managers, and so on”<sup>115</sup> have not always materialized. Because the financial firms that come and settle in the offshore sites are not usually local concerns, the profits that do materialize do not necessarily benefit the residents of the islands. There are generally few statistics about how much of the profits accrued by firms stay in the locality, but—writing about Jersey—researchers comment that “[i]t is possible that a high level of leakage out of the island’s economy occurs as profits are repatriated to the parent institution or group.”<sup>116</sup> Moreover, low rates of taxation in the offshore centers means that tax revenue from the companies that settle there is not significant, and global banking has not necessarily meant a strong increase in the local tourism industries.

Finally, a critical issue with the offshore centers being colonized by the financial services industry is the “crowding out”<sup>117</sup> effect, in which the financial services industry takes up all the resources available, leaving little space or support for other industries. This crowding out is the result of aggressive development by outsiders—those roving real estate speculators, lawyers, and investors who saw opportunity after the collapse of colonial rule or who “found” new territory waiting to be developed.<sup>118</sup> Eager for promised

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<sup>115</sup> *Id.* at 1657. See also Hampton, *supra* note 110, at 2103, 2109 (“The benefits of hosting an OFC include: government revenues from fees, licenses and profit tax; the operating expenditure of OFC firms in the local economy; direct employment and training opportunities for islanders; and linkages to other sectors such as hotels, restaurants, office supplies etc.”).

<sup>116</sup> M.P. Hampton & J.E. Christensen, *Treasure Island Revisited. Jersey’s Offshore Finance Centre Crisis: Implications for Other Small Island Economies*, 31 ENV’T & PLAN. A: ECON. & SPACE 1619, 1634 (1999). They also mention that “[i]f this occurs in Jersey, then it is also likely to occur in other island OFCs.” *Id.*

<sup>117</sup> See Hampton & Christensen, *supra* note 50, at 1664–67.

<sup>118</sup> See *infra* pages 318–24; see also Hampton & Christensen, *supra* note 116, at 1620.



revenue and results that benefit the offshore jurisdiction, many of the local offshore governments have enthusiastically encouraged such development and facilitated the growth of financial industry services in the home territories.<sup>119</sup> This facilitation has not always considered the “adverse impacts that such booming growth might impose upon the pre-existing industries.”<sup>120</sup>

The crowding out effect has the effect of producing a potentially dangerous overreliance on one industry. The financial services industry, in particular, is highly mobile and “notoriously footloose”<sup>121</sup> while it is also an industry that comes, at regular intervals, under regulatory scrutiny such that there is the potential for great shifts in the case of new rules. In the case of industry departure or downsizing, these island economies will experience “direct job losses, falling government revenues, and lower spending effects from the once booming OFC sector.”<sup>122</sup> And in the case of total departure and withdrawal from the offshore center, financial firms might leave the island with nothing left, industry-wise, other than “empty office buildings standing for offshore finance.”<sup>123</sup> Accordingly, offshore financial centers are “locked into offshore, and it is hard for them to move into other areas, to reskill the population, to acquire new knowledge bases and to escape the links with big banks.”<sup>124</sup> They are caught in a state of perpetual “dependency management,” managing the one industry that has captured the entire state and that feed off its resources.

Looking at American states competing for offshore business, those states that consider themselves the “new offshore onshore,” the scenario looks very similar, as do the flows of capital. These states—American micro-jurisdictions in terms of population—have been attractive to the financial services industry for the same reasons as their offshore counterparts, in that they offer Hampton’s four spaces of secrecy (secrecy space, fiscal space,

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<sup>119</sup> Hampton & Christensen, *supra* note 50, at 1663.

<sup>120</sup> *Id.*

<sup>121</sup> Hampton & Christensen, *supra* note 50.

<sup>122</sup> *See id.*

<sup>123</sup> Hampton & Christensen, *supra* note 116.

<sup>124</sup> URRY, *supra* note 4, at 54.

regulatory space, and political space).<sup>125</sup> And states have welcomed financial services to their jurisdictions with the hope of generating revenue through “clean”<sup>126</sup> industries with long-term prospects. Whether or not the benefits accrue to these states, however, is an open question and the obstacle to wealth-building in these micro-geographies are the same that confront the traditional offshore sites.

At the outset, there are the questions about promised revenue generation—the basis for enacting responsive legislation and welcoming banks and credit card companies with open arms. In Wyoming, for example, trust companies managed around \$31 billion in assets in 2022. Because, Wyoming has no corporate (or personal income) tax—and the legislature has repeatedly “rebuffed sporadic calls for even a small tax on the profits of companies that create trusts”<sup>127</sup>—the financial services boom does not “benefit society at large by increasing state tax revenue.”<sup>128</sup> Likewise, South Dakota has no state corporate tax and, despite an increase in the total assets held in trust in that state from \$57.3 billion to \$355.2 billion over the ten-year period between 2010 to 2020, not a penny of state tax revenue resulted.<sup>129</sup> To this point, one study found that “the only states that experienced an increase in trust business after abolishing the Rule [against Perpetuities] were those that did not levy an income tax on trust funds attracted from out of state.”<sup>130</sup> Financial services companies may still be subject to state fees for operation. However, in South Dakota, the sum of these fees in 2019 was “a paltry \$1.5 million out of total state revenues of

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<sup>125</sup> See Hampton, *supra* note 110, at 106–08.

<sup>126</sup> Bullough, *supra* note 78.

<sup>127</sup> Debbie Cenziper & Will Fitzgibbon, *The ‘Cowboy Cocktail’: How Wyoming Became One of the World’s Top Tax Havens*, WASH. POST (Dec. 20, 2021), <https://www.washingtonpost.com/business/interactive/2021/wyoming-trusts-finance-pandora-papers/>.

<sup>128</sup> Spivack, *supra* note 92, at 334.

<sup>129</sup> Christopher M. Reimer, *The Undiscovered Country: Wyoming’s Emergence as a Leading Trust Situs Jurisdiction*, 11 WYO. L. REV. 165, 166 (2011) (“Modern trust statutes, along with a number of other factors including low or non-existent state income taxes, the abolishment or expansion of the Rule Against Perpetuities, and the passage of asset protection laws, have launched a handful of states to the top of the list of beneficial trust situs jurisdictions. Alaska, Delaware, Nevada, New Hampshire, and South Dakota join Wyoming as leading trust situs jurisdictions.”).

<sup>130</sup> Spivack, *supra* note 93, at 335.

\$2.2 billion . . . [although the] trust companies also [paid] a share of a bank franchise fee that brought the state another \$14 million in 2020.”<sup>131</sup> As one former Wyoming Republican House member, Bunky Loucks, remarked: “It’s friendly for business is the bottom line.”<sup>132</sup>

As with other offshore financial centers, the primary people who are enriched by this state explosion in boutique banking for ultra-rich clients then is the bankers. As Carla Spivack and Steward Sterk both point out, “[t]he story of the genesis of the Alaska dynasty trust illustrates . . . that “[j]urisdictions seeking to become trust havens . . . appear content to draw business to local financial institutions and lawyers, even without direct benefit to the public fisc.”<sup>133</sup> Even this profit, however, may be negligible or uneven. In a comprehensive study of trust jurisdictions, Adam Hofri-Winogradow found that “reforms allowing self-settled spendthrift trusts and abolishing the rule against perpetuities, do nothing to increase the fees fiduciaries earn per trust, [or] the fees attorneys, accountants and return preparers earn by providing trust-related services.”<sup>134</sup> And as Hofri-Winogradow comments: “Given that self-settled spendthrift trusts leave settlor-beneficiaries’ creditors, including spouses, tort victims and governments, empty handed and perpetual trusts leave the public fisc wanting, if even the professionals who lobbied for them are not enriched by them, it is unclear what merits, if any, they have.”<sup>135</sup>

Furthermore, benefits that are supposed to come in the form of job creation and money spent by financial services employees in the local economy are also a mixed bag. In South Dakota, despite the promise of job creation by public officials, the number of “financial services jobs in the state actually dropped slightly over a ten-year period, from about 30,500 in 2009 to 29,000 in the pre-pandemic year of 2019.”<sup>136</sup> The number of lawyers in

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<sup>131</sup> Howard Gleckman, *South Dakota Turned Into a Tax Haven. But Why?*, FORBES (Oct. 14, 2021, 3:03 PM), <https://www.forbes.com/sites/howardgleckman/2021/10/14/south-dakota-turned-itself-into-a-tax-haven-but-why/?sh=5004f3a12f25>.

<sup>132</sup> Cenziper & Fitzgibbon, *supra* note 127.

<sup>133</sup> Spivack, *supra* note 92, at 334.

<sup>134</sup> Hofri-Winogradow, *supra* note 108, at 2352.

<sup>135</sup> *Id.* at 2352–53.

<sup>136</sup> Gleckman, *supra* note 131.

the state rose over the same period, but still lagged behind the national rate of increase.<sup>137</sup> The entirety of corporate profits may then flow back to corporate headquarters or corporate owners—most often outside the state—and fail to enrich citizens of the state, even those who work within (or seek to work within) the industry.

Much like the “billionaire colonialism” that John D. Rockefeller was charged with when he began to purchase large swaths of land in Wyoming in the early twentieth century, a cadre of financial services executives has landed in states like Wyoming and South Dakota, bringing varied results. Top financial executives may be making large salaries; however, it is unclear that this slice of the corporate profits trickle down to most industry workers or to other parts of the local community. Poverty in Teton County, Wyoming is high and, as Justin Wolfers points out in *Billionaire Wilderness*, housing insecurity looms large because of “a perfect storm” of conservation interests “combined with the flood of ultra-wealthy people drawn there by the Wyoming’s tax haven status who wield unmatched economic power.”<sup>138</sup> And again the wreckage of this perfect storm is racialized, falling hardest on the immigrant communities that live and work in the area as they are pushed to outlying geographies in the state, the only place where they can afford housing. They are consequently quite literally white-washed from the “pure” and elitist landscape of wealth and environmental beauty.<sup>139</sup>

Consequently, wealth is, for the most part, funneled in and out without ever reaching the local communities in significant or meaningful ways. There is no tax revenue to fund schools or public benefits programs within the state; there is an enclosure and high-priced privatization of space creating housing precarity for low-income families; and the most highly remunerated jobs in the financial services jobs go to out-of-state professionals as well as in-state professionals who were already within top income brackets. What is left in this reimagination of trickle-down economics is the prospect of a potential increase in low-skill jobs—catering parties for the ultra-rich who come to Wyoming to enjoy mountainous beauty and the tax climate, taking care of

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<sup>137</sup> *Id.*

<sup>138</sup> JUSTIN FARRELL, *BILLIONAIRE WILDERNESS* 249 (2020).

<sup>139</sup> *Id.* at 253 (discussing *The Slums of Aspen* and the historical link between racism and ecological landscape).

their lawns, or working service jobs at exclusive clubs populated by the same high-wealth families and individuals.

#### IV. CONCLUSION

Offshore banking institutions not only populate but help shape financial geographies. Sited with high-wealth clients in mind, these off-grid institutions eschew main street storefronts and settle into offshore locations in order to cater directly to their specific clientele. Offshore in the sense of being situated at a distance from conventional institutions—those located on conventional avenues of financial commerce, taking conventional postures with respect to middle-class clients—these elite-centered institutions are also offshore in the regulatory sense. In seeking increased profit through offshore siting and deregulation, these banks aspire to obtain myriad benefits from various forms of deregulation. Against a backdrop of wealth-creation and financial entitlement, however, offshore financial institutions primarily generate benefits for the elite, preserving the great wealth of their clients and increasing their own corporate profit by innovating new ways to safeguard family fortunes from creditors, including taxing authorities.

What is fundamental is understanding that these “offshoring worlds are pervasive and not accidental or incidental” and have been labeled by some scholars as “part of a strategy of class warfare.”<sup>140</sup> Money flows and flees, capital roams, and assets travel. The flight patterns are not fully random, however, and it is not until the geography of high-wealth offshore banking is examined that the true extent of high-wealth benefit and exceptionalism appear. Speaking of offshore as both a strategy and a state of mind, one writer comments, “[o]ffshore can feel like an adolescent fantasy of the world, where white men sort things out over Scotch whiskey and see the rest of the world as a consumable resource.”<sup>141</sup> In this sense, it does not matter where the offshore is located because, as Gilles Deleuze noted, “the essence of the deserted island is imaginary and not actual, mythological and not geographical.”<sup>142</sup> Nevertheless, this particular imaginary—the offshore and off-grid imaginary of family money—has a very discernible and distinct

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<sup>140</sup> URRY, *supra* note 4, at 10.

<sup>141</sup> SHAXSON, *supra* note 25, at 184.

<sup>142</sup> GILLES DELEUZE, *DESERT ISLANDS AND OTHER TEXTS 1953–1974*, at 12 (2002).

geography, expressed not just through fantasies of deregulation but also in specific latitudes and longitudes.