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Law Writing, Immigration, and Globalization in the British Virgin Islands

BILL MAURER*

In this article Mr. Bill Maurer addresses a fundamental tension at work in the British Virgin Islands: while British Virgin Islanders (BVI Islanders) proudly term themselves a "law and order" people and seek to distinguish themselves from other Caribbean peoples, the territory remains as wedded as ever to its British rulers and the West. Mr. Maurer first notes that when a colonial people begins to view itself as essentially different from its rulers, it may begin a concomitant move toward self-rule. He shows that while the BVI exhibits many attributes of such a territory, BVI Islanders consider their ties to Britain a critical element of their uniqueness and thus self-rule is never seriously discussed.

The author illustrates this paradox by describing the passage and effects of the BVI's International Business Companies Ordinance, a law that established the BVI as a tax haven. He argues that while BVI Islanders are proud to call the law their first truly local one, in fact the local legislature was forced as a result of this law to submit to increased foreign regulatory scrutiny and to enact recommendations set out in a Coopers and Lybrand study commissioned by the British. He next points out that while BVI Islanders support most aspects of the Ordinance, they have sharply criticized the implementation of a Crown-appointed board designed to oversee the dependent territories' financial services sector and guard against drug money laundering and other illicit activities. Mr. Maurer views this controversy as further evidence of the BVI's search for a national identity within the locally-accepted confines of colonial rule.

* Department of Anthropology, Stanford University. This paper has benefited from the comments of Jane Collier, Liliانا Suarez Navaz, David Engel, Eve Darian-Smith, Ruth Buchanan, Alfred Aman, Felice Levine, and James Shepherd. A greatly expanded version of this paper, focusing on the production of a quasi-nationalist subjectivity in the discourse of BVI uniqueness, is to be published in *LAW AND SOCIETY REVIEW*. I would also like to thank Michael O'Neal, the H. Lavity Stoutt Community College, and the BVI Public Library for assistance while in the field. The research on which this essay is based was supported by grants from the National Science Foundation (SES-9208273) and from the MacArthur Foundation through the Center for International Security and Arms Control, Stanford University.

Mr. Maurer concludes that as long as Britain remains the reference point for the BVI's claims to autonomy and legislative authority, BVI self-rule will remain out of reach.

I. INTRODUCTION

The Legislative Council of the British Virgin Islands (BVI) figures centrally in a discourse of national identity that casts British Virgin Islander culture as founded on “law and order.”¹ “Writing their own laws” is an important trope in this discourse and works to create distinctions between British Virgin Islanders (BVI Islanders) and the large number of immigrants from other Caribbean islands who have contributed to the territory’s development as a tourist destination and tax haven. Paradoxically, the piece of legislation hailed as the Islands’ first self-authored law, one which furthered its ambitions as a tax haven, was an ordinance that guaranteed both the BVI’s integration as a distinct unit in the global economy and its continued colonial rule. At the same time, this law led BVI Islanders to retrench already-existing stereotypes of immigrants by encouraging the idea that immigrant laborers, though necessary to maintain the economy, are a potential threat to the security of tax haven enterprises and thus to the Islands’ stability. This paper is a contribution to debates about the invigoration of nationalist sentiment occurring alongside and often in conjunction with globalizing forces in the special context of the BVI.

The BVI is a British dependent territory in the northeastern Caribbean, approximately thirty-five miles east of Puerto Rico. It consists of forty-odd islands and cays. Most of the population lives on the islands of Tortola (on which the capital city, Road Town, is located), Virgin Gorda, Anegada, and Jost Van Dyke. The “native” inhabitants are descendants of African slaves and freepeople; English Quakers and planters; and an assortment of Portuguese, Jewish, and French traders, fishermen, and merchants. About 18,000 people live in the British Virgin Islands, half of whom are native-born, and half of whom are immigrants who have come mostly from other eastern Caribbean islands and Guyana. The BVI has been under unchallenged British rule since 1773. Currently, the territory is governed

1. Here, and throughout this article, I place within quotation marks terms that are frequently heard, distinguishing components of British Virgin Islander discourse.

by a locally-elected Legislative Council and an Executive Council presided over by a Crown-appointed Governor and composed of elected officials and an Attorney General appointed by the Governor.² There are two chief sources of revenue and employment: the tourist industry,³ composed of small hotels, yacht chartering, and an increasing number of cruise ships; and the offshore financial services sector,⁴ composed of "tax haven" facilities operating out of twelve or so international banks, myriad trust companies, and so-called "International Business Companies." The official currency is the United States dollar.

This paper is concerned with a paradox: the discourse that stresses BVIslander law and order as a source of cultural uniqueness at the same time furthers continued subordination to colonial power and the world of global finance. The distinctive BVI national identity created around the law becomes just the thing to enable the movement of capital across international borders and to bolster and entrench continued foreign dominance in this late twentieth-century colony. Tax haven status gives the BVI a unique legal and marketable identity. At the same time, it subordinates the BVI to international finance capital and leads regulatory agencies like the United States Drug Enforcement Agency, Internal Revenue Service, and the British Foreign and Commonwealth Office to scrutinize BVI financial activities and government practices.⁵

2. For background information on the BVI, see DELOITTE TOUCHE TOHMATSU INTERNATIONAL, *BRITISH VIRGIN ISLANDS* at ix-3, 37 (International Tax and Business Guide 1992 ed., 1992); ISAAC DOOKHAN, *A HISTORY OF THE BRITISH VIRGIN ISLANDS 1672 TO 1970* (1975); NORWELL HARRIGAN & PEARL VARLACK, *THE VIRGIN ISLANDS STORY* (1975); Bill Maurer, *Recharting the Caribbean: Land, Law and Citizenship in the British Virgin Islands* (1994) (unpublished Ph.D. dissertation, Stanford University); Michael O'Neal, *British Virgin Islands Transformations: Anthropological Perspectives* (1983) (unpublished Ph.D. dissertation, Union Graduate School).

3. For information on the tourist sector, see PIERRE ENCONTRE, *WHY DOES THE TOURIST DOLLAR MATTER?: AN INTRODUCTION TO THE ECONOMICS OF TOURISM IN THE BRITISH VIRGIN ISLANDS* (1989); NORWELL HARRIGAN, *TOURISM AND COMMUNITY RELATIONS* (1972); COURTNEY N. BLACKMAN, *TOURISM AND OTHER SERVICES IN THE ANGLOPHONE CARIBBEAN* (Commission for the Study of International Migration and Cooperative Economic Development Working Paper No. 26, 1990); Christopher D.B. Howell, *Tourism in Tortola, British Virgin Islands: Perceptions Toward Land Carrying Capacity* (1978) (unpublished Ph.D. dissertation, University of Florida); James W. Lett, *Tourism and Culture Change on Virgin Gorda: Perspectives on Patterns and Processes* (1980) (unpublished M.A. thesis, University of Florida).

4. For information on the financial sector in the BVI, see *BRITISH VIRGIN ISLANDS, BRITISH VIRGIN ISLANDS: ECONOMIC SURVEY AND PROTECTIONS* (1970); LAWRENCE J. COMELLA, *BASIC DATA ON THE ECONOMY OF THE BRITISH VIRGIN ISLANDS* (1964); Jeffrey Meyers, *IBC Numbers Growing Fast*, *BVI BEACON*, Apr. 8, 1993, at 8; Maurer, *supra* note 2.

5. See generally *Tax Evasion Through the Netherlands Antilles and Other Tax Haven Countries:*

II. THE BVI'S PLACE IN THE MODERN POLITICAL LANDSCAPE

One evident contradiction that BVI nationalism must deal with is the fact that the “territory”—the term itself is used by BVI islanders to describe the land in which they live—is a colony. Although the BVI is politically dependent and, by all accounts, its people and government wish it to be so, the BVI as a political entity gains its meaning within a teleological narrative of development and progress toward the nation-state. While the end of the narrative—political independence and self-rule—may forever be deferred in the case of the BVI, still it retains its currency and shapes a local discourse of identity written in terms of the law. Thus, while BVI government officials generally favor continuing the Islands’ colonial relationship to Britain, they often use a discourse that emphasizes the development of self-rule, as set out below.⁶

A. *The BVI and Nationalism*

In his most recent book on the idea of nationhood in the colonial world, Partha Chatterjee argues that scholars and historians of nationalist thought must begin to separate “the claims of nationalism as a political movement” from a “spiritual” domain of nationalist thought through which colonized peoples cast themselves as essentially different from their European colonizers before launching campaigns for self-rule.⁷ Chatterjee contrasts the spiritual domain, which he refers to as the “inner” domain of anti-colonial nationalism, with the “material” one. The material domain of social life is concerned with “outside” living, that is, the economy, statecraft, science, and technology. Chatterjee suggests that “the greater one’s success in imitating Western skills in the material domain . . . the greater the need to preserve the distinctness of one’s spiritual culture.”⁸ This argument compels us to broaden our understanding of nationalist discourse beyond a

Hearings Before Subcomm. of the Comm. on Government Operations, 98th Cong., 1st Sess. (1983); ANTHONY GINSBERG, *TAX HAVENS* (1991); RICHARD A. GORDON, *TAX HAVENS AND THEIR USE BY UNITED STATES TAXPAYERS—AN OVERVIEW* (1981); INTERNAL REVENUE SERVICE, U.S. DEPARTMENT OF THE TREASURY, *TAX HAVEN INFORMATION BOOK* 28-30 (1984).

6. See discussion *infra* part II.A. This argument is further developed in Bill Maurer, *Writing Law: History, Nation, and Paradoxes of Self-Rule in the British Virgin Islands*, L. & SOC’Y REV. (forthcoming 1995).

7. PARTHA CHATTERJEE, *THE NATION AND ITS FRAGMENTS* 5-6 (1993).

8. *Id.* at 6.

simple equation of nationalism with a desire for political independence. BVI people are coming to an understanding of themselves as members of a distinct national community, as one people sharing a place, culture, and polity. At the same time they leave uncontested their colonial relationship with the United Kingdom. In the BVI, however, it has been statecraft and legislation—two of those aspects of social life Chatterjee calls “material” and most western—which BVI Islanders have used in order to fashion for themselves an “inner” uniqueness.⁹

When modern peoples come to view themselves as essentially different from others, and especially the others who may be ruling over them, they can make a forceful case for self-rule. Their heritage and culture, which make them unique, make them less susceptible to government by others not partaking in their distinct essence. Outside rulers, who could not possibly understand their subjects’ ways or motivations, consequently could not expect them to follow without question ruler-authored laws.¹⁰

Ideas about national difference also serve certain capital interests. In the BVI, the self-authoring of law has encouraged the marketing of the BVI as a unique and distinct jurisdiction in the worlds of tourism and transnational finance. At the same time, the unique laws of the BVI that facilitate offshore financial services subvert BVI claims to autonomy by further entrenching the territory within the world of global capital and by encouraging increased surveillance by the metropole.

B. The Legislative Council and National Identity

One reason the legislature has derived such prominence in the political life of the BVI is that it is the only part of government whose jurisdiction maps directly onto the physical territory of the BVI. As executive power is vested not only in the Executive Council but also in the Governor and through him the British Foreign and Commonwealth Office, executive jurisdiction has links to other dependent territories and to the UK.¹¹

9. *Id.*

10. For a discussion of the process by which arguments for national sovereignty are linked to arguments for the self-authoring of law and the creation of distinct “national selves” as the basis for self-rule, see Jane Collier, *Nationalism and Studies of Law*, 16 *POLAR: POL. & LEGAL ANTHROPOLOGY REV.* 1-7 (1993).

11. See generally ANTHONY MCFARLANE, *THE BRITISH IN THE AMERICAS, 1480-1815* (1994); POLICING THE EMPIRE: GOVERNMENT, AUTHORITY, AND CONTROL, 1830-1940 (David M. Anderson &

Similarly, the judiciary of the BVI is but a part of the larger, regional Eastern Caribbean States Supreme Court, shared by all the former and present colonies of the UK in the Caribbean.¹² The legislature is the only seemingly autonomous branch of government. It is the center of the map of the BVI as the entity is legally constructed. From the legislature's position at the center, the Legislative Council derives its potency and salience as the focus of national sentiment. The legislative jurisdiction corresponds to the physical space of the BVI, naturalizing that space and imbuing it with a power of its own. This power appears to spring forth from the soil of the national territory itself.

In November 1992 the BVI celebrated the twenty-fifth anniversary of its ministerial system of government. It was the first major celebration self-consciously and officially styled by its organizers and participants as a *national* celebration. The ministerial system is the current form of government and colonial administration in the BVI, and its major and lasting practical effect is to guarantee that a majority of elected legislators would serve on the Executive Council.¹³ On this level alone it is interesting that the anniversary of ministerial government would be cause for national celebration. What is more interesting is that the focus of the events commemorating the inception of the ministerial system was the legislature. Former legislators were honored in various public fora, one of which was a volume compiled to commemorate the event entitled, *Challenge and Change: The Awakening of a People, British Virgin Islands*. This volume was devoted to the progress the BVI has experienced since 1967 under the ministerial system.¹⁴ Almost all of the instances of progress were discussed in terms of the *legislation* affecting or empowering the BVI Islanders. The two main overview articles detail the development of the system of elected representation in the legislature. Other articles tell the history of the territory as the history of various acts and ordinances. Still other articles chronicle the rise of the territory's economic mainstays—tourism and the offshore finance sector—in terms of the legislative acts that made them possible. In these articles, the law was held

David Killingray eds., 1991).

12. See generally sources cited *supra* note 2; Norwell Harrigan, *Power by Accident: The Making of the Chief Minister*, THE ISLAND SUN, Mar. 24, 1990, at 15; Mar. 31, 1990, at 6; Apr. 7, 1990, at 15; Apr. 14, 1990, at 3; Apr. 21, 1990, at 23 (five part series).

13. See generally Harrigan, *supra* note 12.

14. CHALLENGE AND CHANGE: THE AWAKENING OF A PEOPLE (1993) (on file with author).

as both descriptive of and explanatory for “the nation.” Why was it so simple to conflate the nation and the law?

I will try to suggest an answer by way of anecdote. One day during my fieldwork I happened to stop by a shop owned by one of the BVI’s Arab population. I asked the proprietor of the shop why he thought BVI Islanders had for the most part accepted Arab settlers into their society, granting them citizenship in many cases, and having come to see them as fixtures of BVI life. Instead of answering my question he offered his reasons why he considered the BVI a nice place to live: while he recognized the benefits of other possible immigration destinations, such as the United States, he preferred the BVI’s law-and-order sensibilities to what he saw as the freedom and lawlessness of the United States.

C. The Will to Law and Order: The Origins of BVI Law

Immediately after my conversation, I went to the office of a BVI islander friend and fellow social scientist to relate to him how this Arab shopkeeper had characterized the BVI. Without blinking an eye, my friend smiled and said, confidently, “What did he say? ‘Law and order?’”

BVI Islanders often characterize their society with the expression “law and order.” One hears such expressions as, “We are a law and order people”; “I am a law and order man”; “We aren’t like people in St. Thomas; we have law and order”; “The immigrant population [or drugs, or guns, etc.] is a threat to law and order.” One hears the expression continually, and in all sorts of contexts. The BVI Tourist Board markets the territory as *peaceful*—not in the sense of Club Med serenity and tranquility, but in the sense of “law and order.” One tourist advertisement displays a member of the Royal Virgin Islands Police Force in full regalia. Tourist brochures and people involved in the marketing of the BVI contrast the BVI’s “law and order” with “crime-ridden” Antigua or St. Thomas. The offshore finance sector relies on an image of the BVI as a stable, law-and-order society. In a recent interview with an international finance magazine, the Deputy Chief Prime Minister stated, “Our people are very strong on law and order.” The ideal of law and order is integral to BVI Islanders’ definition of their society.¹⁵

15. *British Virgin Islands: A New Force Emerges*, EUROMONEY, May 1989, at 47, 51 [hereinafter *A New Force Emerges*].

The expression “law and order” conveys the popular sentiment that the BVI will never separate from Britain and that it can have the best of both worlds—the U.S. dollar, and British law and order. BVI Islanders seem to be saying, “Why would we want independence? We have the security of Scotland Yard behind us!” People speak of their British heritage of law and order. People also contrast the BVI’s law-and-orderliness with the perceived disorder and criminality of other Caribbean peoples, especially those living and working in the BVI. When I asked BVI Islanders, in the most general of terms, about their perceptions of different groups of immigrants, quite often I was told stories about these groups’ lack of law and order. For example, immigrants from St. Lucia and Dominica are often described as not law-abiding, as ones who try to subvert the legal process. Many BVI Islanders believe that St. Lucians and Dominicans practice *obeah*—a form of “witchcraft”—which is illegal in the BVI. Furthermore, some BVI Islanders believe that all female immigrants from the Dominican Republic are prostitutes, even when challenged with facts to the contrary by the author.

These kinds of stories about immigrants solidify a sense of BVI Islander law and order by defining what it is not, thereby defining what it is to be a British Virgin Islander.¹⁶ But law and order, however, is not only defined negatively. When one looks at the relative lack of crime in the BVI, it appears that the BVI *is* a law and order society. To many BVI Islanders, though, it is the mostly foreign-born police force that is responsible for what little crime does occur.

Because law and order is central to BVI Islander discourse about what it means to belong to the BVI, and because law both solidifies a sense of *national* identity and expresses the *national self*, a recurrent concern of the legislature has been “borrowed” laws. Pieces of legislation drafted in the other colonies and States of the Caribbean and Commonwealth are brought into the Legislative Council by the Attorney General’s office to be adapted and adopted for BVI use.¹⁷ The adoption of foreign laws has been unpopular, and has been a continual point of contention between the

16. Colleen Cohen & Frances Mascia-Lees, *The British Virgin Islands as Nation and Destination: Representing and Siting Identity in a Post-Colonial Caribbean*, 33 SOC. ANALYSIS 130 (1993) (discussing representations of the BVI aimed toward tourists); see also PETER FITZPATRICK, *THE MYTHOLOGY OF MODERN LAW* (1992); EDWARD SAID, *CULTURE AND IMPERIALISM* (1993).

17. For examples, see British Virgin Islands, Minutes of the Legislative Council, Apr. 21, 1977; Jan. 26, 1978; Apr. 13, 1978; Dec. 7, 1978 (archived in Caribbean Studies Unit, BVI Public Library). For general information on BVI lawmaking, see Maurer, *supra* note 6.

Attorney General's office and the Legislative Council. At times, the debate has even turned toward recalling the Attorney General and/or demanding that the Governor appoint a local Attorney General.¹⁸

Several examples will illuminate the rhetoric that surrounds "borrowed" laws. During the introduction of a minor piece of legislation amending certain legal fees and giving the Magistrate jurisdiction over suits brought for damages up to \$2000,¹⁹ the Attorney General mentioned that it "followed the pattern in Antigua."²⁰ A Member of the Legislative Council replied, "what was good for Antigua was not relevant for us. . . . [T]he 1st July 1956 was the day when the BVI broke away from the Associated States [the former Leeward Islands Federation] and that . . . day should always be a holiday."²¹

In another incident, a piece of legislation that would have amended building and construction codes and fees²² was held up in the Legislative Council. As one Member stated, "the time had come to look at what was good for the BVI, because what was good for Antigua and the Bahamas was not good for the BVI. . . . They should stop bringing 'exotic plants' but should look within what was relevant to the needs of the Territory."²³

While my purpose is not to trivialize the concerns of Members of the legislature over "non-local" laws, three points deserve mention. First, none of the laws disparaged as "foreign," or as the product of "exotic plants," has ever failed to pass the Legislative Council; in fact, such laws usually pass unanimously.²⁴ Second, concerns over foreign laws, or over the UK forcing laws upon the BVI or attempting to control the BVI through such laws, have never crystallized into sustained criticism of colonial rule; they have not led to constitutional crises; they have not inspired public demonstrations; they have not produced boycotts of government meetings; and they have not fomented calls for independence among legislators or

18. During 1992-1993 a local woman was in fact appointed to the post.

19. The Summary Jurisdiction Act, *as amended* 1977 (repealed 1987) (BVI).

20. *Id.*

21. British Virgin Islands, Minutes of the Legislative Council, Apr. 21, 1977.

22. Land Development (Control) Act, (BVI).

23. British Virgin Islands, Minutes of the Legislative Council, Jan. 26, 1978. The term "exotic plants," attributed to Eric E. Williams, the late Caribbean historian and former Prime Minister of Trinidad and Tobago, is commonly used in Caribbean legislatures to refer to non-West Indian legal draftsmen or legal experts. For a recent collection of Williams' speeches, see SELWYN CUDJOE, ERIC E. WILLIAMS SPEAKS (1993).

24. *See, e.g.*, sources cited *supra* note 17.

within the community. Third, legal draftsmen resident in the BVI are generally outsiders from other Caribbean or Commonwealth countries. They draft the laws for the Legislative Council, while the Legislative Council claims official authorship.

What is important in cries against “exotic plants” is not the laws themselves, their contents, or their intended or unintended effects, but rather a particular understanding of the laws’ origins: where were they written, and by whom? Is a piece of legislation our own law, or somebody else’s? Was it written by “our boys,” or somebody else’s? A law’s existence and not its provisions is what matters to BVI legislators and to “British Virgin Islander-ness.” The BVI’s own laws are necessary emanations of, or demonstrations of, the uniqueness of the BVI. In authoring their own laws, BVI Islanders demonstrate to themselves their ability to be authors; to write from a coherent, unified, and unique subject position; to authorize a nation. In short, this allows BVI Islanders to create legislative or national history—even when someone else does the actual writing.

III. THE INTERNATIONAL BUSINESS COMPANIES ORDINANCE

In 1984, British Virgin Islanders became ostensible authors. The Legislative Council enacted what was perhaps the most significant piece of legislation in its history, the International Business Companies Ordinance of 1984 (Ordinance).²⁵ In addition to being touted as the first truly local law of the BVI, it heralded a new era in offshore financial services.

The Ordinance set up the provisions for the incorporation of a new kind of investment entity—the International Business Company (IBC).²⁶ Under the Ordinance, an investor can set up an IBC for a small incorporation fee and annual licensing fees.²⁷ The IBCs are not subject to any other fee or income tax.²⁸

Prior to the invention of the IBC, other jurisdictions marketing themselves to investors as tax havens (e.g., Jersey, Guernsey, Panama) charged minimal income tax on investment earnings, or mandated that

25. International Business Companies Act, 1984, cap. 291 (BVI).

26. *Id.* pt. II.

27. *Id.* pt. X.

28. *Id.*

boards of directors meet once a year on tax-haven soil.²⁹ The BVI placed neither of these constraints on offshore investors. As a result it rapidly rose to prominence among the world's tax havens. In less than ten years, thanks to the IBCs, the offshore financial services sector has overtaken tourism as the primary source of revenue for the BVI.³⁰

A. Local Authorship

Members of the Legislative Council invoke the Ordinance almost as often as they used to complain about "foreign" laws. They proudly proclaim that now other countries copy their laws. They have gone from being imitators to being imitated. Moreover, the IBC Ordinance has become a benchmark against which to judge all new legislation that comes through the Legislative Council. As one Member said of a bill³¹ he was introducing:

[T]his Bill which I am asking this Honourable House to pass into law constitutes one of the most far reaching pieces of social reform to be introduced into this Territory in recent times. It seeks to do on a social level what the International Business Companies Ordinance has sought to achieve in the financial sphere.³²

The IBC Ordinance made another difference for the BVI. In 1992 alone, just eight years after the introduction of the law bringing them about, IBCs contributed \$21 million directly to government revenue. Of a total revenue of approximately \$54 million, this was an increase of more than thirty percent over 1991 figures.³³ Slumps in the tourist sector led the Chief Minister to report in 1993 that moneys from IBCs had "more than offset stagnating or declining revenues from just about all other areas of the economy."³⁴

Since 1984, more than 60,000 IBCs have incorporated in this territory with a population of only 18,000.³⁵ The territory is now touted in leading

29. See generally GINSBERG, *supra* note 5.

30. Jeffrey Meyers, *Financial Services Driving Economy*, BVI BEACON, Apr. 8, 1993, at 1.

31. Mental Health Act, 1986, cap. 191 (BVI).

32. British Virgin Islands, Minutes of the Legislative Council of the Virgin Islands, June 28, 1985.

33. Meyers, *supra* note 4, at 8.

34. Meyers, *supra* note 30, at 1.

35. Meyers, *supra* note 4, at 8.

Asian finance magazines as the place to incorporate in preparation for Chinese integration of Hong Kong. One New York lawyer recently said, "Lawyers love the British Virgin Islands. You can do anything you want. . . . Obtaining tax-exempt status in the British Virgin Islands is as difficult as choosing a name and paying a registration fee."³⁶ The IBC is now firmly established in the BVI and international financial circles.

For many BVI Islanders, the offshore financial services sector might mean little more than "bank jobs" and the prestige associated with them. The BVI government and offshore investors, however, are keenly aware of the instability of the investment market and the risks involved in depending too heavily on revenue from financial services. Examples of failed tax havens, like Panama, put a damper on optimism. Many factors influencing the success of the BVI as a tax haven are beyond the government's control, but the government has actively bolstered the one crucial intangible that seems to make or break the reputation of a haven. In marketing brochures, BVI government officials and members of the Legislative Council stress that the BVI is a stable jurisdiction, free of drug money and shady dealings, and only for "legitimate" business enterprises. One brochure states:

[W]hile the Government strongly encourages some types of activities, it strongly discourages others, including certain types of banks. "We have not and will not be granting offshore banking licenses to individuals, or unproven entities," says Financial Secretary Robert Macthaviour. "They can go elsewhere and form their bank in a day or two. . . . [W]e do invite those banks with an established track record to consider the BVI. They can expedite their application through a local legal advocate or through one of the trust or service companies already established here. I should emphasise, however, that we will search into the bona fides of all applicants, and it may take some time. . . . This is an offshore centre that is not for everyone. But it is for those who want to do legitimate business in a stable environment, a British dependency based on Anglo Saxon common laws. For those who want to do business from such a jurisdiction, we strongly believe that they can find no better place to do it."³⁷

36. Jonathan Burton, *Pleasures of the Caribbean*, FAR EASTERN ECON. REV., Mar. 5, 1992, at 42.

37. *A New Force Emerges*, *supra* note 15, at 49.

However, the question remains, how does one maintain a good reputation in such a fickle and risky business as offshore finance? For the BVI, and other Caribbean-dependent territories who took the tax haven road, the answer lay in the conducting of in-depth studies of the financial services of the respective territories. Such studies determined what loopholes needed to be filled and what safeguards needed to be taken in order to lessen the chances that money laundering and other illegal activities would occur.

B. The Gallagher Report

The territorial governments and the British Foreign and Commonwealth Office (FCO) invited a financial management consulting firm, Coopers and Lybrand, to conduct such a study.³⁸ The resulting report, issued in 1990, became known in the BVI as the Gallagher Report (the Report), and it made two main recommendations. The first recommendation was for legislative changes. For the BVI, the Report specifically recommended "new legislation in order to give legal strength to . . . proposed regulatory procedures."³⁹ The second recommendation was for the establishment of a Financial Secretaries Advisory Panel that would require on-going technical assistance support from Her Majesty's Government.⁴⁰ The Report stated that such assistance would be necessary to ensure consistent progress.

The legislative recommendations in the Gallagher Report were not vague suggestions. The Report contained actual drafts of proposed legislation the consultants thought appropriate for each territory.⁴¹ These drafts were the bulk of the Report and were detailed and complete, right down to the dotted line on which the Legislative Council was to sign. All that the Legislative Council had to do to enact the Report's recommendations into law was to fill in the date, pass the bills into law, have the Speaker and Clerk sign them, and send them off to the government printers. This is essentially what was done.

Gallagher's Draft Bank and Trust Law became the Banks and Trust Companies Act; the Draft Insurance Law became the Insurance Business

38. RODNEY GALLAGHER, REPORT ON THE SURVEY OF OFFSHORE SECTORS IN THE CARIBBEAN DEPENDENT TERRITORIES (1992).

39. *Id.* at 3.

40. *Id.*

41. *Id.*

(Special Provisions) Act; and the Draft Company Law became the Company Management Act. Each of these acts underwent only minor additions, deletions, and modifications before passage into law.⁴²

The Gallagher Report also recommended the establishment of a dependent territories Financial Advisory Panel, an idea at first wholly supported by the Legislative Council.⁴³ Recently, however, the establishment of the Panel has borne fruit the Legislative Council perhaps did not expect. Late in 1992, the FCO announced the creation of a Board of Management for Dependent Territories (later named the Ministerial Group of Dependent Territories). It was to be composed of the Governor of each territory, and it would be created to consider “aid allocation, [to] monitor drug trafficking activities, and [to] revise outdated laws in the dependent territories.”⁴⁴ One of the explicit purposes of the proposed Board was to provide international investors some degree of confidence that Britain’s dependent territories were “clean” of illegal offshore activities.⁴⁵ The impetus for the proposal of the Board grew from a variety of factors, but the BCCI scandal involving the Caymans was surely a great embarrassment to the FCO and a contributing element to creating the Board. There is also probably an implicit racism in the FCO’s decision: investors would be assured that British advisors would keep control of the markets.

The proposed Board is now a sore point and, very recently, the occasion for fiery words from the Chief Minister to the Foreign and Commonwealth Office. The Chief Minister has maintained that such a Board is an insult and an affront to the “sovereignty” of the BVI and other dependent territories. His arguments exemplify the teleology of BVI historical progress, of moving ever toward the nation-state—a goal jeopardized by the possibility of the Board. The local newspaper reported:

[T]he chief minister said he views the establishment of the board as a “backward” step. “We’ve had 25 years of ministerial government and now we’ve got to move on,” he said. “Therefore I am still not

42. For the most part, these changes, deletions, and modifications were to make the wording of Gallagher’s proposed law consistent with other BVI laws and legal conventions.

43. British Virgin Islands, Minutes of the Legislative Council, Sept. 10, 1990.

44. Jeffrey A. Meyers, *Stout: BVI Still Rejects Board*, BVI BEACON, Jan. 21, 1993, at 1.

45. *Id.*

happy that there is now a move to have certain intrusion on the present constitution."⁴⁶

The Chief Minister, however, has made no calls against the continuing colonial relationship with the United Kingdom. Progress marches on, but never gets to independence.

The Gallagher Report broke the relationship between BVI legislative jurisdiction and "real territory."⁴⁷ Prior to these developments, the Legislative Council could operate as a quasi-autonomous body solely responsible for the laws of the BVI space. Now, however, other actors have a part to play in the creation and enforcement of BVI law. Part of the resistance to the Board of Management for Dependent Territories stems from the erosion of the legal-spatial relationship between the physical space of the BVI and its legislature.

When the Report was written into law, the Legislative Council effectively deferred authorship to Coopers and Lybrand.⁴⁸ This action, for the members of the Legislative Council at least, represented a tragic abrogation of authority to another power. In effect, the BVI Legislative Council created a precedent allowing external agencies to draft laws for them. In contrast, the situation for Coopers and Lybrand could not have been better: the consultants were able to design laws to benefit their investor clients.⁴⁹

IV. CONCLUSION

The way in which jurisdictional authority is split among the branches of government in the BVI creates conditions for the prominence of the Legislative Council. It is the only branch of government whose jurisdiction maps neatly onto the physical territory of the BVI. The Legislative Council furthered the BVI's movement down the path of "modernity," as the "local"

46. *Id.* at 3, 12.

47. GALLAGHER, *supra* note 38.

48. *Id.*

49. See also Yves Dezalay, *Multinationales De l'expertise et "Dépérissement de l'état"* [Multinational Law Consultancies and the "Withering-Away of the State"], 96/97 ACTES DE LA RECHERCHE EN SCIENCES SOCIALES 3 (1993); DAVID M. TRUBEK ET AL., GLOBAL RESTRUCTURING AND THE LAW: THE INTERNATIONALIZATION OF LEGAL FIELDS AND THE CREATION OF TRANSNATION ARENAS (Global Studies Research Program, University of Wisconsin, Working Paper Series on the Political Economy of Legal Change, No. 1, 1993).

legislature became a primary site for inscribing national selfhood through law-writing. As it worked toward self-rule, the BVI legislature engaged in a struggle for the authority to constitute a distinct national “self” that could write laws expressing and regulating its identity. In this struggle over authorship, the stakes were modern identity and subjecthood. The struggle created a history for the BVI written in terms of progress toward legislative self-determination.

The national self envisioned in local lawmaking and popular discourse is a “law and order” self, self-regulating and self-disciplining. A “law and order” people has emerged through comparison with immigrants’ “lawlessness.” After the introduction of the IBC Ordinance, being a “law and order” people now requires assertions of the BVI’s connection to the Anglo Saxon common-law tradition in order to guarantee to investors the territory’s stability as a tax haven. The national self is both distinct and British. The sense of law and order that is the basis of claims to autonomy, authority, and self-rule has Britain as its referent. Nevertheless, at the same time, “law and order” keeps the BVI in the progressivist teleological narrative of history. It is a story of getting ever closer to self-rule as a distinct nation-state, a story that paradoxically depends on the BVI never reaching that predetermined endpoint.⁵⁰

50. For other discussions of progressivist notions of history as linked specifically to the nation-state form, see RANAJIT GUHA, *ELEMENTARY ASPECTS OF PEASANT INSURGENCY IN COLONIAL INDIA* (1983); Dipesh Chakrabarty, *Post-Coloniality and the Artifice of History: Who Speaks for “Indian” Pasts?*, 37 *REPRESENTATIONS* 1 (1992); Dipesh Chakrabarty, *Provincializing Europe: Postcoloniality and the Critique of History*, 6 *CULTURAL STUD.* 337 (1992).