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Offshore Entanglements

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Offshore Entanglements

Martin W. Sybblis*

For decades, scholars have struggled to determine how to deploy laws and legal institutions to spur economic prosperity. But, without knowing which legal rules and institutions to prioritize for a particular social context, the outcomes have been generally unsatisfactory. The case of offshore financial centers provides fresh and compelling new insights into this puzzle. This Article uses the sociological concept of community economic identity (“CEI”) to understand why some offshore financial centers prioritize investments in legal institutions that bolster their offshore finance enterprises while others do

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not. CEI refers to a community's shared identity that is linked to a specific commercial enterprise.

Some offshore financial centers, such as the United Kingdom Overseas Territories ("UKOTs") of Bermuda, British Virgin Islands, and Cayman Islands, have developed CEIs around their offshore sectors. This identity has led them to make credible and enduring commitments to legal rules and institutions — innovative corporate laws, financial regulatory agencies, and specialized commercialized courts — that directly support offshore finance activities. Other offshore financial centers, such as the UKOTs of Anguilla, Montserrat, and Turks and Caicos Islands, have not developed a CEI around offshore financial services and lack these sorts of legal and institutional investments. These jurisdictions have also not seen the same level of offshore finance success as Bermuda, British Virgin Islands, and Caymans Islands. CEI may therefore be relevant to determining which legal rules and institutions are appropriate to a particular jurisdiction's economic prosperity.

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INTRODUCTION

Colonialism, conquest, and domination loom large in the islands in the Caribbean and North Atlantic regions.¹ For centuries, many of the islands in the Caribbean region were plantation economies.² They were predominantly serviced by African slaves and received no tangible benefits from the capitalist projects that their labor fueled.³ Despite this

¹ See generally DAVID S. BERRY, *CARIBBEAN INTEGRATION LAW* 17 (2014) (describing the varied colonial histories of the Caribbean islands); ERIC WILLIAMS, *CAPITALISM AND SLAVERY* (1944) (discussing how European colonialism benefitted Europe economically and underdeveloped the Caribbean); Virginia Bernhard, *Bermuda and Virginia in the Seventeenth Century: A Comparative View* 19 J. SOC. HIST. 57, 62-64 (1985) (discussing slavery in Bermuda).

² For example, islands such as Barbados, Jamaica, Trinidad and Tobago were exploited under British rule, while others experienced similar fates under Dutch, French, Portuguese, and Spanish colonization. See BERRY, *supra* note 1, at 17-18.

³ HILARY MCD. BECKLES, *BRITAIN'S BLACK DEBT: REPARATIONS FOR CARIBBEAN SLAVERY AND NATIVE GENOCIDE* 56-67 (2013). It bears noting that, in 2013, the Caribbean Community ("CARICOM"), a regional trade intergovernmental organization in the Caribbean, began discussing how the countries in the region can obtain reparations for "native genocide and slavery." See *About Us*, CARICOM REPARATIONS COMM'N, <https://caricomreparations.org/about-us/> (last visited June 30, 2023) [<https://perma.cc/Z6BC-98PT>]. As of 2016, the member states of the CRC are the sovereign countries of: Antigua

past, today many are sites of resistance, economic transition, and legal innovation.⁴ As a means of self-determination, some islands have developed distinct identities as tourist havens and have sought to make economic lives for their populations in the post-colonial era.⁵ And, among both the former colonies and current territories of the United Kingdom (“UK”) in this region of the world, there has been a remarkable trend towards offshore financial services — as an economic development strategy.⁶ Indeed, notwithstanding the sordid narrative⁷ around offshore financial centers (“OFCs”),⁸ it is hard to ignore that a set of small and resource-challenged islands, such as the United

and Barbuda, The Bahamas, Barbados, Belize, Dominica, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and The Grenadines, Suriname, and Trinidad and Tobago. *Id.*

⁴ See, e.g., William J. Moon, *Delaware’s New Competition*, 114 NW. U. L. REV. 1403, 1406 (2020) [hereinafter *Delaware’s New Competition*] (discussing Bermuda’s, British Virgin Islands’, and Cayman Islands’ legal innovations in corporate governance); Martin W. Sybblis, *Regulatory Competition and State Capacity*, 13 WM. & MARY BUS. L. REV. 189, 233-261 (2021) [hereinafter *State Capacity*] (discussing how colonial experiences led to the development of legal institutions that prepared ex-colonies for offshore financial services).

⁵ See, e.g., Martin W. Sybblis, *Law, Growth, and the Identity Hurdle: A Theory of Legal Reform*, 95 TUL. L. REV. 867, 896-915 (2021) [hereinafter *Identity Hurdle*] (discussing the concept of community economic identity and its role in legal reform).

⁶ NICHOLAS SHAXSON, *TREASURE ISLANDS: UNCOVERING THE DAMAGE OF OFFSHORE BANKING AND TAX HAVENS* 87-106 (2011); Don D. Marshall, *Tax Havens in the Commonwealth Caribbean: A Merchant Capital-Global Finance Connection*, 10 GLOB. SOC’Y 255, 258-59 (1996) (discussing the development of offshore financial centers in the Caribbean).

⁷ See, e.g., *What Are the Panama Papers?*, N.Y. TIMES (Apr. 4, 2016), <https://www.nytimes.com/2016/04/05/world/panama-papers-explainer.html?searchResultPosition=2> [https://perma.cc/CC2Y-AC58] (providing details about the Panama Papers leak from a Panamanian law firm named Mossack Fonseca); Michael Forsythe, *Paradise Papers Shine Light on Where the Elite Keep Their Money*, N.Y. TIMES (Nov. 5, 2017), <https://www.nytimes.com/2017/11/05/world/paradise-papers.html?searchResultPosition=3> [https://perma.cc/U8ZF-3MC3] (discussing leaks that reveal where offshore wealthy individuals keep their money); see also Shu-Yi Oei & Diane Ring, *Leak-Driven Law*, 65 UCLA L. REV. 532, 532-618 (2018).

⁸ While there are a variety of definitions for “OFCs,” they are generally considered jurisdictions that “provide[] financial services to nonresidents on a scale that is incommensurate with the size and the financing of its domestic economy.” Ahmed Zoromé, *Concept of Offshore Financial Centers: In Search of an Operational Definition* 7 (IMF, Working Paper No. 07-87, 2007), <https://www.imf.org/external/pubs/ft/wp/2007/wp0787.pdf> [https://perma.cc/W3HP-CUMY].

Kingdom Overseas Territories (“UKOTs”) of Bermuda, British Virgin Islands, and Cayman Islands (“Market Dominant UKOTs”),⁹ have emerged as market dominant in the offshore finance arena¹⁰ and as competitive producers of corporate law for international firms.¹¹ For these jurisdictions, their prominence as international financial centers

⁹ These jurisdictions are not independent nations and “the [King] is sovereign.” PHILIP LOFT, HOUSE OF COMMONS LIBR., U.K. PARLIAMENT, THE UK OVERSEAS TERRITORIES AND THEIR GOVERNORS 5 (2022), <https://commonslibrary.parliament.uk/research-briefings/cbp-9583/>.

¹⁰ Despite centuries of colonial domination these small jurisdictions have managed to distance themselves from their slave histories and craft a new identity as key players in the complex and sophisticated world of offshore financial services. See, e.g., Moon, *Delaware’s New Competition*, *supra* note 4, at 1423-29 (providing data to show that Bermuda, British Virgin Islands, and Cayman Islands are competitors to Delaware where it concerns incorporations). Their product is “offshore financial law,” which comprises the legal rules pertaining to “investment, financial arrangements and entities, created by non-residents” but situated within their borders. Rose-Marie Bell Antoine, *The Offshore Trust: A Catalyst for Development*, 14 J. FIN. CRIME 264, 264-65 (2007); see also Roberta Romano, *Law as a Product: Some Pieces of the Incorporation Puzzle*, 1 J.L., ECON., & ORG. 225, 227 (1985) (discussing how Delaware’s corporate law “reduces uncertainty concerning the consequences of actions and hence the transaction costs of doing business”). These jurisdictions provide an attractive body of corporate governance rules, as well as expert advisers and lower tax rates. See Moon, *Delaware’s New Competition*, *supra* note 4, at 1423-43 (discussing the influence of sophisticated lawyers and the role of specialized commercial courts in making Bermuda, British Virgin Islands, and Cayman Islands attractive to companies seeking places to incorporate); William J. Moon, *Delaware’s Global Competitiveness*, 106 IOWA L. REV. 1683, 1708 (2021) [hereinafter *Delaware’s Global Competitiveness*] (noting how Bermuda, British Virgin Islands, and Cayman Islands are “becoming important players in the emerging market for corporate charters”).

¹¹ See generally CHRISTOPHER M. BRUNER, RE-IMAGINING OFFSHORE FINANCE: MARKET DOMINANT SMALL JURISDICTIONS IN A GLOBALIZING FINANCIAL WORLD (2016) (discussing the characteristics of successful small offshore financial centers); Moon, *Delaware’s New Competition*, *supra* note 4, at 1423-43 (discussing the rise of Bermuda, British Virgin Islands, and Cayman Islands as producers of corporate law). Bermuda has been an OFC since the 1940s. John Connell, *Britain’s Caribbean Colonies: The End of the Era of Decolonisation?*, 32 J. COMMONWEALTH & COMPAR. POL. 87, 88 (1994). Cayman Islands joined the fold in the 1960s. See VASSEL JOHNSON, AS I SEE IT: HOW CAYMAN BECAME A LEADING FINANCIAL CENTRE 147-74 (2001). British Virgin Islands, the most recent of the three, arrived on the scene in the 1980s. See Bill Maurer, *Writing Law, Making a “Nation”: History, Modernity, and Paradoxes of Self-Rule in the British Virgin Islands*, 29 LAW & SOC’Y REV. 255, 256 (1995) [hereinafter *Writing Law*].

marks a rejection of their slave histories and the enormous potential of their once constrained, metropole-focused economies.¹²

The Market Dominant UKOTs are some of the wealthiest island jurisdictions in the North Atlantic and Caribbean regions, with per capita gross domestic products of up to \$118,846.¹³ But, as with the puzzle of Delaware's dominance for corporate charters,¹⁴ there is no

¹² See, e.g., WILLIAMS, *supra* note 1, at 51-56 (discussing the monopoly system imposed on the colonies by the British Empire). See generally GORDON PHILLIPS, FIRST, ONE THOUSAND MILES . . . : BERMUDIAN ENTERPRISE AND THE BANK OF BERMUDA 2-16 (1992) (discussing the early history of banking in Bermuda beginning in the late 1800s); Howard A. Fergus, *The Cayman Islands: Britain's Maverick Caribbean Colony*, 29 J.E. CARIBBEAN STUD. 1 (2004) (discussing the rise of Cayman Islands from modest colonial beginnings to a successful offshore financial center); Maurer, *Writing Law*, *supra* note 11, at 273-79 (discussing the significance of offshore corporate law legislation to the national identity of the jurisdiction). For additional discussion, see also MICHAEL MANLEY, THE POVERTY OF NATIONS: REFLECTIONS ON UNDERDEVELOPMENT AND THE WORLD ECONOMY 1-12 (1991) (discussing the role of imperialism in the persistent post-colonial economic struggles of developing countries).

¹³ *Bermuda*, WORLD BANK, <https://data.worldbank.org/country/bermuda?view=chart> (last visited June 30, 2023) [<https://perma.cc/C8D6-NYAT>].

¹⁴ First, there is a perception that Delaware's corporate law regime is superior to those of other American states and generally better for shareholders. See Robert Anderson IV & Jeffrey Manns, *The Delaware Delusion*, 93 N.C. L. REV. 1049, 1054-67 (2015); Moon, *Delaware's New Competition*, *supra* note 4, at 1412-16. This is the race to the top view. See, e.g., Barry D. Baysinger & Henry N. Butler, *The Role of Corporation Law in the Theory of the Firm*, 28 J.L. & ECON. 179, 188-91 (1985) (arguing against uniformity in corporate laws across states); Ralph K. Winter, Jr., *State Law, Shareholder Protection, and the Theory of the Corporation*, 6 J. LEGAL STUD. 251, 254 (1977) (arguing that "competitive legal systems should tend toward optimality so far as the shareholder's relationship to the corporation is concerned"). Second, there is the view that Delaware's corporate law regime is lax and skewed toward directors and managers more so than shareholders. See, e.g., William L. Cary, *Federalism and Corporate Law: Reflections upon Delaware*, 83 YALE L.J. 663 (1974) (discussing the race to the bottom theory with respect to Delaware's corporate law). This is the race to the bottom perspective. See *id.* But there is also the theory that Delaware has benefitted tremendously because of network effects. See Michael Klausner, *Corporations, Corporate Law, and Networks of Contracts*, 81 VA. L. REV. 757, 842-43 (1995). From this perspective, the more firms incorporate in Delaware and utilize the State's laws and courts, the more valuable and attractive the jurisdiction became to other firms. See *id.* at 844. On a related note, some commentators suggest that lawyers and managers, who make the choice of where to incorporate, may simply find Delaware to be the safe bet because of its reputation — and, hence, do no deep analysis into how other jurisdictions may compare. See, e.g., Robert Anderson IV, *The Delaware Trap: An Empirical Analysis of Incorporation Decisions*, 91 S. CAL. L. REV. 657, 662 (2018)

prescription for their replication.¹⁵ Scholars have suggested various theories for their economic success;¹⁶ some have suggested that institutional quality is critical.¹⁷ Indeed, new institutional economists and sociologists have long held that institutions matter for economic growth.¹⁸ But it remains unclear which institutions matter most, and

(arguing that more sophisticated companies “tend to incorporate in Delaware”); Jens Dammann, *Homogeneity Effects in Corporate Law*, 46 ARIZ. ST. L.J. 1103, 1108 (2014) (arguing that “firms benefit if the users of a particular legal regime form a relatively homogenous group”).

¹⁵ See, e.g., BRUNER, *supra* note 11, at 41-50 (discussing the tentative features of successful offshore financial centers).

¹⁶ See, e.g., *id.* at 41-50 (discussing the factors that have helped to make some offshore financial centers “market dominant”); Moon, *Delaware’s New Competition*, *supra* note 4, at 1423-43 (discussing the role of “captured lawmakers” in producing manager friendly corporate governance rules).

¹⁷ See, e.g., Dhammika Dharmapala & James R. Hines Jr., *Which Countries Become Tax Havens?* (Nat’l Bureau of Econ. Rsch., Working Paper No. 12802, 2006), <https://www.nber.org/papers/w12802> [<https://perma.cc/5FRX-CVNH>] (discussing the relationship between good governance and offshore finance success and providing a comprehensive listing of offshore financial centers/tax havens). See generally Tony Freyer & Andrew P. Morriss, *Creating Cayman as an Offshore Financial Center: Structure & Strategy Since 1960*, 45 ARIZ. ST. L.J. 1297 (2013) (discussing the institutional and constitutional choices that Cayman Islands’ leaders made to transform the jurisdiction into an attractive offshore financial center); Sybblis, *State Capacity*, *supra* note 4 (discussing the role of institutional learning in making some jurisdictions more prepared to provide offshore financial services). Some commentators suggest they have risen to prominence because of low taxes, lax corporate governance rules, and legislative capture by wealthy and powerful corporations. Others argue that deeper institutional features, such as smallness, proximity to large markets, and legislative autonomy may explain their rise. See BRUNER, *supra* note 11, at 41-50 (noting that Bermuda is a Market Dominant Small Jurisdiction); Anna Manasco Dionne & Jonathan R. Macey, *Offshore Finance and Onshore Markets: Racing to the Bottom, or Moving Toward Efficient?*, in OFFSHORE FINANCIAL CENTERS AND REGULATORY COMPETITION 18-22 (Andrew P. Morriss ed., 2010); Andrew P. Morriss & Clifford C. Henson, *Regulatory Effectiveness & Offshore Financial Centers*, 53 VA. J. INT’L L. 417, 425 (2013).

¹⁸ See generally KENNETH W. DAM, *THE LAW-GROWTH NEXUS: THE RULE OF LAW AND ECONOMIC DEVELOPMENT* (2006) (outlining the theory behind the relationship between law and economic growth); Kevin E. Davis & Michael J. Trebilcock, *The Relationship Between Law and Development: Optimists Versus Skeptics*, 56 AM. J. COMPAR. L. 895, 904-05 (2008) (summarizing the various theories regarding the role of law in development); Chantal Thomas, *Law and Neoclassical Economic Development in Theory and Practice: Toward an Institutional Critique of Institutionalism*, 96 CORNELL L. REV. 967 (2011) (critiquing the neoclassical theory of the role of law in economic development). For

whether there is a universal set of institutions that can promote economic growth across all types of jurisdictions.¹⁹

This Article offers a fresh approach to understanding which contextual arrangements might suit a particular set of legal institutions for economic development. It suggests that a jurisdiction's economic identity correlates with the institutions it chooses to cultivate and, ultimately its willingness to commit to building and maintaining those institutions.²⁰ By using case studies of all the UKOTs — Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat, and Turks and Caicos Islands — in the Caribbean and North Atlantic region, this Article shows that community economic identity (“CEI”) is a useful sociological concept for understanding the role of legal institutions in economic development.

additional discussion on this point, see also DARON ACEMOGLU & JAMES A. ROBINSON, *WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY, AND POVERTY* (2012) (arguing that institutional quality matters for economic prosperity); Alejandro Portes & Lori D. Smith, *The Comparative Analysis of the Role of Institutions in National Development*, in *INSTITUTIONS COUNT: THEIR ROLE AND SIGNIFICANCE IN LATIN AMERICAN DEVELOPMENT* 167, 178-87 (Alejandro Portes & Lori D. Smith eds., 2012) (showing through empirical analysis that institutions are important for national development); Kevin E. Davis & Michael B. Kruse, *Taking the Measure of Law: The Case of the Doing Business Project*, 32 *LAW & SOC. INQUIRY* 1095 (2007) (describing how the World Bank promoted legal reforms as one way of improving the business climate in developing countries); Katharina Pistor, *The Standardization of Law and Its Effect on Developing Economies*, 50 *AM. J. COMPAR. L.* 97, 98 (2002) (arguing that the standardization of legal rules across jurisdictions can “undermine the development of effective legal systems”).

¹⁹ See generally Daniel Berkowitz, Katharina Pistor & Jean-Francois Richard, *The Transplant Effect*, 51 *AM. J. COMPAR. L.* 163, 167 (2003) (arguing that “the way in which a country received its formal law is a much more important determinant of the current effectiveness of its legal institutions than the particular legal family that it adopted”); Kevin E. Davis, *Legal Universalism: Persistent Objections*, 60 *U. TORONTO L.J.* 537, 537 (2010) (outlining the various critiques of the proposition that there is a “set of legal institutions that invariably tend to promote development”); Davis & Trebilcock, *supra* note 18, at 898-915 (describing how law optimists and law skeptics view the relationship between law and development); Pistor, *supra* note 18, at 100-07 (making the case that regulatory competition facilitates the creation of laws that are relevant to local settings); Thomas, *supra* note 18, at 1002-07 (making the argument that “law and development discourse is surprisingly limited in theory and practice”).

²⁰ See generally Sybblis, *Identity Hurdle*, *supra* note 5 (noting that CEI informs how a jurisdiction uses scarce lawmaking resources). In this article, I provide the example of how an agricultural community might prioritize legal reforms.

CEI is a shared identity of a community.²¹ It is a sociological concept that addresses both how a community conceives of itself in relation to a commercial activity and how others view the community.²² An oft-cited example of a jurisdiction with an economic identity is West Virginia, where coal plays both a commercial and cultural role in the jurisdiction.²³ CEI reflects an entrenched commitment by a jurisdiction toward a specific commercial activity.²⁴ This commitment increases the likelihood that these jurisdictions will build the institutions necessary to maintain the activity and ensure its high quality.²⁵ As artfully noted

²¹ See *id.* at 871. See generally Martin W. Sybblis, *Equality Offshore*, 63 B.C. L. REV. 2667 (2022) [hereinafter *Equality Offshore*] (discussing the concept of CEI).

²² See Sybblis, *Identity Hurdle*, *supra* note 5. For example, a town engaged in agriculture — let’s say “Green Acres” — may conceive of itself as an agricultural community because of the degree to which the sector touches the lives of its residents. Many residents may be farmers or engaged with farming in some way in their professional and social lives — with respect to work, friendships, and community activities. Green Acres may also promote itself to the rest of the world as a place for agriculture, and consequently be known to others as a producer of agricultural products.

²³ See Shannon Elizabeth Bell & Richard York, *Community Economic Identity: The Coal Industry and Ideology Construction in West Virginia*, 75 RURAL SOCIO. 111, 121-129 (2010) [hereinafter *Community Economic Identity*] (discussing the role of CEI in supporting the extractive economic agenda of corporations); Weston M. Eaton, *What’s the Problem? How “Industrial Culture” Shapes Community Responses to Proposed Bioenergy Development in Northern Michigan, USA*, 45 J. RURAL STUD. 76 (2016) (discussing how industrial cultures influence the discourse around development projects in some communities); see also Shannon Elizabeth Bell & Richard York, *Cognitive Liberation, Cultural Manipulation, and Friends of Coal*, in SHANNON ELIZABETH BELL, *FIGHTING KING COAL: THE CHALLENGES TO MICROMOBILIZATION IN CENTRAL APPALACHIA* 89 (2016) [hereinafter *Cognitive Liberation, Cultural Manipulation*]; Sybblis, *Identity Hurdle*, *supra* note 5, at 885. Although CEI has been historically ignored in legal scholarship and limited to environmental and rural sociology, the concept promises important insight into how legal and institutional growth and reform are pursued by communities that identify with specific commercial enterprises.

²⁴ See Richard R.W. Brooks, *Incorporating Race*, 106 COLUM. L. REV. 2023, 2026, 2033 (2006) (discussing the relationship between identity and commitments).

²⁵ For example, an entity that identifies as a university will invest in those things that are vital to institutions of higher education. These would include high quality teachers, teaching facilities, and libraries, to name a few. Similarly, a jurisdiction that identifies with offshore financial services will be committed to high quality legal institutions, regulations, and services — because these features are necessary to the reification of their identity. See, e.g., Sybblis, *Identity Hurdle*, *supra* note 5 (discussing how CEI helps a jurisdiction to prioritize its legal reform efforts). To the contrary, a

by Richard Brooks: “Identities matter not because individuals have ‘tastes’ for certain identities and not for others, but because identities commit and reflect commitments; and commitments affect economic outcomes.”²⁶

All six UKOTs in the North Atlantic and Caribbean regions are known OFCs, but the Market Dominant UKOTs are generally considered more successful in terms of their economic productivity.²⁷ They are also known for their expertise in hedge funds, international business, mutual funds, insurance, and the shipping industry.²⁸ And, to support these

jurisdiction that merely has lax corporate and tax regulations may simply be capitalizing on a market for incorporations and offshore services — without a meaningful commitment to the enterprise. This type of jurisdiction can be reasonably considered to not have an entrenched interest in offshore financial services — and certainly would not qualify as an offshore finance CEI. *See, e.g.*, PAUL STARR, *ENTRENCHMENT: WEALTH, POWER, AND THE CONSTITUTION OF DEMOCRATIC SOCIETIES* (2019) (discussing the factors that impact entrenchment of rules and practices).

²⁶ Brooks, *supra* note 24, at 2033. This Article similarly takes the position that community identity can be gleaned through how a community commits its resources. CEI speaks to a community’s commitments with respect to a commercial activity. *See id.* at 2026. For example, scholars have gleaned that West Virginia has a coal mining CEI because of the financial and institutional investments the state, private sector, and residents have made to the sector. *See* Bell & York, *Community Economic Identity*, *supra* note 23, at 121-38. Similarly, a community that identifies with — and therefore believes itself to be socially and culturally bound to — offshore financial services would likely support financial investments in legal institutions (e.g., courts and other dispute resolution fora) and innovative rules to attract new investors. Importantly, giving up the association with this industry could be viewed as catastrophic. It could strain international “public standing — [and other] possibilities that may be so painful as to be literally unthinkable.” Sociologist Paul Starr artfully explains:

[Beliefs] are often tenacious because we cannot separate what we believe from who we are, and we generally do not hold beliefs by ourselves alone. Many of our core beliefs we hold in concert, together with other people, often under the sway of institutions that have inculcated those beliefs from an early age. . . . Those shared beliefs and experiences may be constitutive of our sense of self and community — they define who we are in one another’s eyes.

STARR, *supra* note 25, at 20.

²⁷ *See* BRUNER, *supra* note 11, at 41-50; Moon, *Delaware’s New Competition*, *supra* note 4, at 1426-31; *see also infra* Appendix, Table 2.

²⁸ Peter Clegg & Peter Gold, *The UK Overseas Territories: A Decade of Progress and Prosperity?*, 49 *COMMONWEALTH & COMPAR. POL.* 115, 127 (2011) (discussing the various offshore finance expertise of Bermuda, British Virgin Islands, and Cayman Islands); *see*

areas of expertise and attract international clients, they have not only invested in complex regulatory regimes, but also in specialized commercial courts for the resolution of complex business disputes and well-developed regulatory agencies to oversee their offshore sectors.²⁹ Thus, it would seem intuitive that neighboring OFCs, especially UKOTs, would follow suit by (1) building specialized commercial courts and (2) designing robust regulatory regimes for their offshore sector.³⁰ This has not been the case.

To glean which institutions may be relevant for economic success, it is helpful to compare institutions in jurisdictions that engage in the same commercial activities, but have different levels of economic success.³¹ Fortunately, the UKOTs in the North Atlantic and Caribbean region provide this kind of “natural experiment of history.”³² While Anguilla, Montserrat, and Turks and Caicos Islands (“Offshore UKOTs”) provide offshore financial services, they are not as economically successful as the Market Dominant UKOTs, as measured by gross domestic product per capita, and have not invested in specialized courts; they also have not invested to the same degree in regulatory agencies.³³ At first blush, there is a chicken and egg paradigm

also Maria Amoamo, *More Thoughts on Core-Periphery and Tourism: Brexit and the UK Overseas Territories*, 43 TOURISM RECREATION RSCH. 289, 293 (2018) (noting that British Virgin Islands is known for international business companies); *infra* Part III.

²⁹ See Sybbilis, *Equality Offshore*, *supra* note 21, at 2721-28; *infra* Part III.

³⁰ One possibility is that there is a cost to building these institutions and some smaller jurisdictions have scarce resources. However, there is also the argument that if an OFC is committed to providing offshore financial services and to effectively competing with other jurisdictions in the offshore finance market, it would see these kinds of institution building as investments that would pay off — if even in building its credibility in the arena. See, e.g., Davis & Trebilcock, *supra* note 18, at 922-23 (noting that there is a cost to “sophisticated legal institutions,” but it may not be as high as we think, and the institutions in the long term “pay for themselves”); see also *infra* Part V.

³¹ See generally NATURAL EXPERIMENTS OF HISTORY (Jared Diamond & James A. Robinson eds., 2010) (describing how natural experiments of history can be useful for theory testing and development than traditional experiments under more controlled arrangements).

³² See *id.* at 1-14, 257-76.

³³ See *infra* Appendix, Table 2. Based on data from the United Nations, in 2020, Bermuda’s GDP per capita was \$123,945, British Virgin Islands’ GDP per capita was \$49,357, and Cayman Islands’ GDP per capita was \$95,191. That same year, Anguilla had

here: do the institutions come before the economic activity, or does the economic activity come first?³⁴ But in the case of the Market Dominant UKOTs, offshore financial services came first and then specialized institutions were developed to support these services.³⁵ After the Market Dominant UKOTs developed an identity linked to offshore financial services, they became committed to building and nurturing institutions that supported this identity — and, of course, the revenues that the services generated.³⁶

A variety of legal institutions are likely to be helpful for economic success.³⁷ Still, CEI can tell us which legal institutions are most likely to develop in a specific jurisdiction.³⁸ Theoretically, we can track the correlation between CEI formation, institutional development, and economic prosperity. In the case of OFCs,³⁹ in addition to strong

a GDP per capita of \$21,203, Montserrat had a GDP per capita of \$12,778, and Turks and Caicos Islands had a GDP per capita of \$28,115.

³⁴ See generally William Ewald, *Comparative Jurisprudence (II): The Logic of Legal Transplants*, 43 AM. J. COMPAR. L. 489 (1995) (critiquing Alan Watson’s theory that “the growth of law is principally to be explained by the transplantation of legal rules”); ADAPTING LEGAL CULTURES (David Nelken & Johannes Feest eds., 2001) (surveying various theories of legal transplantation).

³⁵ See *infra* Part III; see, e.g., Vikramaditya S. Khanna, Law, Institutions, and Economic Development: Examining the Development of the Home Mortgage Market in India – Can Two Wrongs Make a Right? (Sept. 5, 2017) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3032632 [<https://perma.cc/2R49-MBU6>] (introducing the idea of a multi-step approach to law and economic development).

³⁶ See Moon, *Delaware’s New Competition*, *supra* note 4, at 1429-32.

³⁷ See, e.g., DAM, *supra* note 18, at 6 (discussing the role of laws and legal institutions that relate to the “financial sector”); Davis & Trebilcock, *supra* note 18, at 903 (discussing the relevance of corporate law, commercial law, and tax laws in encouraging commercial activities and growth).

³⁸ See *infra* Part II.

³⁹ CEI has been associated with extractive industries — like agriculture, fishing, or coal mining — because of how these industries invite large participation from communities, and even across generations in a community. See, e.g., Bell & York, *Community Economic Identity*, *supra* note 23, at 118-23 (discussing CEI as a form of ideology construction by West Virginia’s coal industry); Eaton, *supra* note 23, at 78-79 (discussing the relationship between industrial cultures and community responses to “environmental degradation”); see also Bell & York, *Cognitive Liberation, Cultural Manipulation*, *supra* note 23, at 89-108. But non-extractive industries, like offshore financial services, can be linked to CEI — even though domestic participation in the

property rights, effectively enforced contract regimes, and efficient corporate governance rules, the legal institutions that have proved useful — specialized commercial courts and strong financial regulatory agencies — required the jurisdictions’ commitment to build.⁴⁰ And, while this commitment may have several motivators, it is more likely to be present where residents in the jurisdiction have come to identify with the offshore sector: i.e., where offshore finance is a CEI.⁴¹ For example, the renowned Cayman Islands Monetary Authority (“CIMA”) — the body that oversees the jurisdiction’s offshore financial sector — was specifically developed to supervise the jurisdiction’s offshore financial industry. But for Cayman Islands’ offshore finance identity, CIMA would likely not exist, at least in its current form.⁴²

This Article’s insights into the legal underpinnings of economic development have important implications for multiple fields, including corporate governance, international tax, law and development, law and economics, inequality, and colonialism literature.⁴³ In addition to

offshore finance sector may be less than in extractive sectors. In this regard, this Article elaborates on the scant literature on CEI, forges new insights into the concept as well as explains the resilience of some offshore financial centers in an increasingly anti-offshore financial center global community. *See, e.g.*, GABRIEL ZUCHMAN, *THE HIDDEN WEALTH OF NATIONS: THE SCOURGE OF TAX HAVENS* (Teresa Lavender Fagan trans., 2015) (describing tax havens as perilous for the international economy and proposing reform solutions).

⁴⁰ See Moon, *Delaware’s New Competition*, *supra* note 4, at 1437-43.

⁴¹ See Sybblis, *Identity Hurdle*, *supra* note 5, at 885-86 (discussing the relationship between economic identity and legal reform). *See generally* Bell & York, *Community Economic Identity*, *supra* note 23 (discussing how residents of West Virginia have come to identify with the coal industry).

⁴² See Freyer & Morriss, *supra* note 17, at 1369 (discussing how the creation of CIMA was tied to the protection of Cayman Islands’ “positive reputation” as an OFC).

⁴³ *See, e.g.*, BRUNER, *supra* note 11 (discussing the factors that make some small OFCs market dominant); TSILLY DAGAN, *INTERNATIONAL TAX POLICY: BETWEEN COMPETITION AND COOPERATION* (2017) (discussing how international tax cooperation does not benefit developing countries); DAM, *supra* note 18 (providing the theoretical background behind the relationship between specific areas of law and economic growth); Davis & Trebilcock, *supra* note 18 (summarizes the various theories regarding the relationship between law and development); Dhammika Dharmapala, *Do Multinational Firms Use Tax Havens to the Detriment of Other Countries?* (Ctr. for Econ. Stud. and Ifo Inst., Working Paper No. 8275, 2020) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3598761 [<https://perma.cc/HB2U-LY4S>] (empirically demonstrating the positive relationship

highlighting a place for small and historically underprivileged jurisdictions in legal scholarship, it suggests that lessons learned in these contexts can inform lawmaking in larger countries and sub-national jurisdictions (e.g., states and cities).⁴⁴ By carefully analyzing law's role in the economic development challenges and successes in these regions, scholars and policymakers can uncover blueprints for solutions in other parts of the global community.⁴⁵

between good governance and tax haven status); Moon, *Delaware's New Competition*, *supra* note 4 (discussing emerging trends in incorporations and the attractiveness of OFCs, such as Bermuda, British Virgin Islands, and Cayman Islands); Shu-Yi Oei, *World Tax Policy in the World Tax Polity? An Event History Analysis of OECD/G20 BEPS Inclusive Framework Membership*, 47 *YALE J. INT'L L.* 199, 200 (2022) (arguing that some international initiatives to improve "transparency, cooperation, and coordination among countries in matters of international tax policy" do not incorporate the interests of developing countries). This Article builds on two of my prior works of scholarship, which discuss the theory behind CEI and the role of institutional learning in economic growth. *See generally* Sybblis, *Identity Hurdle*, *supra* note 5 (discussing how CEI shapes legal reform efforts); Sybblis, *State Capacity*, *supra* note 4 (discussing how institutional learning can impact a jurisdiction's preparation for specific commercial activities).

⁴⁴ Further, the islands of the North Atlantic and Caribbean regions with their varied colonial heritage, multiethnic island nations, and development challenges is a microcosm of the world. Indeed, the Caribbean region reflects

veritable microcosms of our present hybrid and globalised era. Multiple cultural, linguistic, political, religious and philosophical legacies have mixed here for centuries in the colonial and then post-colonial 'cooking pot,' with outward migration producing more recent offshoots in the form of migrant communities in Europe. Social scientists interested in post-colonial relations, in comparative governance, in migration and cross-border movement, find in these islands windows on the contemporary world.

Helen Hintjens & Dorothea Hodge, *The UK Caribbean Overseas Territories: Governing Unruliness Amidst the Extra-Territorial EU*, 50 *COMMONWEALTH & COMPAR. POL.* 190, 194 (2012).

⁴⁵ This Article's analysis is timely given the current policy and media attention on offshore financial services. On November 27, 2022, the Attorney General and Minister of Legal Affairs for The Bahamas made time to deliver a public and spirited defense of the island's cryptocurrency regulatory regime. The Office of the Prime Minister Commonwealth of The Bahamas, *National Address with Respect to the FTX Collapse — Sen. The Hon. Ryan Pinder KC, Attorney General*, YOUTUBE (Nov. 27, 2022), <https://www.youtube.com/watch?v=ZFTJliF15Fo> [<https://perma.cc/N7KV-9E4P>] [hereinafter *National Address*]. The address came in the immediate aftermath of the now infamous collapse of FTX — the once high value cryptocurrency exchange. *See* Scott Chipolina,

The remainder of this Article is organized into five parts. Part I describes the more recent rise of the Market Dominant UKOTs as competitors to Delaware for corporate charters. Importantly, this Part outlines the perennial debate over the appropriate institutions to support economic growth and sets the stage for the subsequent discussion of the role of identity in institution building. Part I also outlines the role of identity in economic decision-making. It shows how CEI is a useful complement to the identity economics scholarship, which does not explore the relationship between legal reforms and group identities. Part II provides a CEI framework for understanding how the Market Dominant UKOTs have entrenched legal institutions that support offshore finance. Part III compares the Offshore UKOTs to the Market Dominant UKOTs. Part IV outlines the legal, global governance, and political economy implications of a CEI analysis for institutional development. Part V concludes the Article.

I. DELAWARE'S "NEW" INTERNATIONAL COMPETITORS

Traditionally, other American states were considered Delaware's competitors for corporate charters.⁴⁶ But recently, the Market Dominant UKOTs have shown to be competitors to Delaware.⁴⁷

Bahamas Reels from FTX Collapse: "Crypto Was Going to Be Our Way Out," FIN. TIMES (Nov. 24, 2022), <https://www.ft.com/content/64e11ce1-c0c7-4663-a46c-2bd33ac1cbc6> [<https://perma.cc/F2BF-BUVM>]. And the Attorney General sought to reassure the world that The Bahamas "is a nation of laws" and has a well-developed cryptocurrency and financial services legal regime. See *National Address*, *supra*.

⁴⁶ See Anderson, *supra* note 14, at 662; Anderson & Manns, *supra* note 14, at 1054-1067; Baysinger & Butler, *supra* note 14, at 188; Cary, *supra* note 14, at 663; Moon, *Delaware's New Competition*, *supra* note 4, at 1412-22 (providing an overview of the general scholarly understanding of the race for corporate charters); Winter, *supra* note 14, at 254.

⁴⁷ Although there have been questions about Delaware's current "global competitiveness," the jurisdiction remains appealing to American corporations. Moon, *Delaware's Global Competitiveness*, *supra* note 10, at 1685-86. In 2018, Delaware was responsible for 49.2 percent of incorporations by "publicly traded corporations listed in American securities markets." Moon, *Delaware's New Competition*, *supra* note 4, at 1425. In 2018, 5.8 per cent of "foreign corporations incorporated in [OFCs]" were incorporated in Bermuda. *Id.* at 1426-27. That same year, 18.5 per cent of foreign corporations incorporated in Cayman Islands and 4.5 per cent incorporated in British Virgin Islands. *Id.*

Professor William Moon explains these jurisdictions' competitiveness by way of the strong influence of powerful law firms that influence their legislatures, lax corporate laws, and the rise of specialized commercial courts within their borders. Arguably, all the features ascribed to the Market Dominant UKOTs also apply to Offshore UKOTs.⁴⁸ But, notwithstanding their label as OFCs, Offshore UKOTs are not similarly identified as legitimate competitors to Delaware.⁴⁹

According to corporate law scholar Christopher Bruner, globally competitive small jurisdictions such as Delaware, Dubai, Singapore, Hong Kong, Switzerland, and Bermuda, have special features.⁵⁰ They are referred to as Market Dominant Small Jurisdictions ("MDSJs") because of their tremendous success in the offshore financial services arena.⁵¹ The secret to their success is a combination of legislative autonomy, geographic and cultural proximity⁵² to major markets, "heavy investment in human capital," and their ability to "balance collaboration with, and oversight of, [the] financial community."⁵³ Arguably, effective governance and institutional learning are at the core of MDSJs' success because discipline and practice are required to coordinate the public and private sectors toward the desired economic development goals.⁵⁴ Both Delaware and several of the more successful OFCs have had long histories of practice with key institutions. For example, "Delaware's Court of Chancery draws on 220 plus years of rich institutional

⁴⁸ See generally Dharmapala & Hines, *supra* note 17, at 29-32 app. & tbl.1 (listing tax havens around the world); Zoromé, *supra* note 8 (providing lists and definitions of offshore financial centers).

⁴⁹ See Moon, *Delaware's New Competition*, *supra* note 4, at 1423-29.

⁵⁰ BRUNER, *supra* note 11, at 41-45.

⁵¹ See *id.*

⁵² By cultural proximity, Professor Bruner is referring to MDSJs "simultaneous identification — and capacity to interact closely — with multiple political and economic powers." *Id.* at 45. These abilities come from "colonialism, common histories, or purely by dint of geographic location." *Id.*

⁵³ *Id.* at 42-47.

⁵⁴ See generally ORLANDO PATTERSON, *THE CONFOUNDING ISLAND: JAMAICA AND THE POSTCOLONIAL PREDICAMENT* (2019) (discussing the role of "institutional learning" in governance capabilities); Sybblis, *State Capacity*, *supra* note 4 (discussing the role of "institutional learning" in the development of OFCs).

history.”⁵⁵ And Cayman Islands had significant experience managing its internal governance during its colonial period and crafting the institutional framework — through subsequent constitutional amendments — required to manage their offshore sector in the post-colonial period.⁵⁶

Institutions are the “formal and informal norms” that guide behavior.⁵⁷ Commentators have long held that they are important for economic growth⁵⁸ because it is theorized that well-designed and well-governed public institutions to create the “right” incentive structures for efficient commercial activities.⁵⁹ For example, scholars suggest that, if a jurisdiction implements a corporate law infrastructure “that facilitates the capital investment function through ease of incorporation” and sufficiently protects shareholders, this will likely encourage economic activity and growth for the jurisdiction.⁶⁰ New Institutional Economics (“NIE”) scholars and sociologists of development have been particularly keen on the role of institutions in development.⁶¹ But there is a lingering skepticism among scholars and

⁵⁵ Syblis, *State Capacity*, *supra* note 4, at 196.

⁵⁶ See generally Freyer & Morriss, *supra* note 17 (discussing how Cayman Islands developed the institutional framework to become a leading OFC).

⁵⁷ PATTERSON, *supra* note 54, at 23-24; see also DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE 4 (1990).

⁵⁸ See generally Dani Rodrik, Arvind Subramanian, & Francesco Trebbi, *Institutions Rule: The Primacy of Institutions over Geography and Integration in Economic Development*, 9 J. ECON. GROWTH 131, 131 (2004) (showing empirically that institutional quality matters more than geography and trade where it concerns “income levels around the world”); Thomas, *supra* note 18, at 968.

⁵⁹ Davis & Trebilcock, *supra* note 18, at 902.

⁶⁰ *Id.* at 903.

⁶¹ See generally PATTERSON, *supra* note 54, at 21-119 (discussing how colonial choices impacted institutional development and ultimately economic growth in ex-colonies); Thomas, *supra* note 18, at 1018 (noting that new institutional economics support “the establishment of legal institutions to enforce property rights and support commerce”).

policy experts regarding exactly which institutions matter.⁶² In other words, there is no evidence that “one size fits all.”⁶³

Despite doubts about legal universalism,⁶⁴ strong “private property rights,” “a formal system of contract law that facilitates impersonal contracting[,]” and “user-friendly corporate and commercial law regimes[,]” independent courts, among other legal institutions, have become central to what some economists and development agencies consider a healthier business environment.⁶⁵ But, given the limited resources available in developing economies and especially small post-colonial island jurisdictions, it is unclear how their policymakers should prioritize institutions to invest in.⁶⁶ Even if they sought to produce an “island of excellence” as a model for other institutions, they still require a framework for choosing such an institution.⁶⁷

⁶² See, e.g., Berkowitz et al., *supra* note 19, at 167 (noting that the manner in which a jurisdiction’s formal laws were received is relevant to the rule’s ultimate effectiveness); Pistor, *supra* note 18, at 129 (noting that the promotion of legal standards across jurisdictions must be “fitted into domestic legal systems”); Thomas, *supra* note 18, at 1002-18 (critiquing new institutional economics).

⁶³ See, e.g., Suzanne Goldson, *Corporate Governance: One Size Fits All?*, in *TRANSITIONS IN CARIBBEAN LAW: LAW-MAKING, CONSTITUTIONALISM AND THE CONVERGENCE OF NATIONAL AND INTERNATIONAL LAW* 33, 35 (David S. Berry & Tracy Robinson eds., 2013) (noting that the size of a country’s economy matters with respect to the kind of corporate governance rules it adopts); Pistor, *supra* note 18, at 98-99 (noting that legal context matters); see also Sybblis, *State Capacity*, *supra* note 4 (noting that socio-legal history of a jurisdiction matters regarding its institutional development).

⁶⁴ See generally Davis, *supra* note 19 (summarizing the key objections to legal universalism, which is the idea that a set of laws will produce the same outcomes despite their social context).

⁶⁵ Davis & Trebilcock, *supra* note 18, at 903-04, 914. See generally Davis & Kruse, *supra* note 18 (discussing the World Bank’s Doing Business project). Indeed, these types of rules and institutional structures were deemed so elementary to economic growth that the World Bank built an entire practice around ranking countries according to how they measure up in these and other areas pertaining to the “ease of doing business.” See *id.*

⁶⁶ See Davis & Trebilcock, *supra* note 18, at 922 (discussing the cost of building institutions); Sybblis, *Identity Hurdle*, *supra* note 5, at 926 (discussing how policymakers prioritize institutions for reform).

⁶⁷ See, e.g., Katherine Bersch, Sérgio Praça & Matthew M. Taylor, *Bureaucratic Capacity and Political Autonomy Within National States: Mapping the Archipelago of Excellence in Brazil*, in *STATES IN THE DEVELOPING WORLD* 157, 175-80 (Miguel A. Centeno, Atul Kohli & Deborah J. Yashar eds., 2017) (measuring the how the effectiveness of institutions vary within a jurisdiction).

An underappreciated feature of ex-colonies is that post-colonial identities impact economic development choices more than commentators realize, and nudge jurisdictions toward investing in some institutions over others.⁶⁸ This post-colonial identity is reactionary.⁶⁹ Ex-colonies often try to remedy the harms inflicted on their economies and societies by their former colonizers.⁷⁰ In this regard, their post-colonial national identity is a variable in their post-colonial governance and economic development strategies.⁷¹ Smaller ex-colonies, including UKOTs, are likely to have modern identities tied to a commercial sector because their identities were historically intertwined with specific commercial activities in the colonial period.⁷² Indeed, many small colonies were single-sector plantation economies, known for producing items such as sugar, cotton, and tobacco.⁷³

⁶⁸ See Sybblis, *Identity Hurdle*, *supra* note 5, at 896-931.

⁶⁹ See, e.g., EVELYN HUBER STEPHENS & JOHN D. STEPHENS, *DEMOCRATIC SOCIALISM IN JAMAICA* 1-59 (1986) (discussing the relationship between Jamaica's governance strategies in the 1970s and the island's colonial past).

⁷⁰ See ADOM GETACHEW, *WORLDMAKING AFTER EMPIRE: THE RISE AND FALL OF SELF-DETERMINATION* 107-117 (2019) (discussing efforts by anticolonial nationalist to reshape the international economic order that subordinated colonies).

⁷¹ See PATTERSON, *supra* note 54, at 21-119 (discussing the differences in the colonial experiences of Barbados and Jamaica and how it impacted their post-colonial approach to governance).

⁷² See WILLIAMS, *supra* note 1, at 51-84. Lindsay Stirton and Martin Lodge explain how deeply plantation economics impacted every aspect of social life in these colonies. For example, according to these scholars: "Sugar plantations were 'totalising' economic institutions, which ordered not only the work but the entire lives of the slaves who worked in the sugar cane fields and processing factories." Lindsay Stirton & Martin Lodge, *Constitutionalism and Colonial Legacies in the Caribbean*, in *THE OXFORD HANDBOOK OF CARIBBEAN CONSTITUTIONS* 25, 27 (Richard Albert, Derek O'Brien & Se-shauna Wheatle eds., 2020).

⁷³ Commentators have noted that the Caribbean islands were colonized according to their economic worth — i.e., what could be extracted from them. See WILLIAMS, *supra* note 1, at 51-84. See generally BECKLES, *supra* note 3 (discussing the brutal and extractive nature of colonialism in the Caribbean); PATTERSON, *supra* note 54, at 21-119 (discussing the British strategies for institution building in various colonies); Alex Dupuy, *Slavery and Underdevelopment in the Caribbean: A Critique of the "Plantation Economy" Perspective*, 7 *DIALECTICAL ANTHROPOLOGY* 237, 238 (1983) (noting that "[t]he New World plantations were from their origin highly capitalistic enterprises, with the main objective being production of profit"). For example, on the one hand, islands such as Barbados and Jamaica were treasured because of their sugar producing capabilities. See, e.g.,

Geographic smallness in the colonial and post-colonial period provides greater opportunities for informality and an increased likelihood that ideas and beliefs, including those associated with the economy, are widely disseminated and shared.⁷⁴ Indeed, the business and political elites in small jurisdictions often occupy overlapping roles — e.g., in government and business activities — and have opportunities to develop a multitude of close relationships throughout the community.⁷⁵ And, where business and personal affairs tend to coincide in small societies “there may be a greater consistency of values than in a large-scale society.”⁷⁶ Consequently, elites working in a specific economic sector have a greater opportunity to create and communicate a narrative about the sector to the larger community, and to represent that community’s interests to the external world.⁷⁷ Of course, this is magnified by the fact that smaller societies, including small islands, generally have few well-developed sectors of their economies, which enhances the importance of those sectors.⁷⁸

PATTERSON *supra* note 54, at 21-119 (discussing the British colonial strategy in Barbados and Jamaica).

⁷⁴ Anthropologist Burton Benedict notes: “In a small-scale society the individual interacts over and over again with the same individuals in virtually all social situations.” Burton Benedict, *Sociological Characteristics of Small Territories and Their Implications for Economic Development*, in *SOCIAL ANTHROPOLOGY OF COMPLEX SOCIETIES* 23, 23 (Michael Banton ed., 2004). Indeed, Benedict observed that: “[d]ecisions in the economic, political, and legal fields have a pervasiveness in small-scale societies which they lack in societies in larger scale . . . because people are connected to each other in so many different ways . . .” *Id.* at 28. And, of course, this connection is amplified in more isolated jurisdictions, such as island societies. *See id.* at 33. Indeed, personal relationships are core to even formal or business transactions in smaller societies. *See* Hemant B. Chittoo, *Public Administration in “Small and Island Developing States”: A Debate About Implications of Smallness*, 11 *GLOB. J. MGMT. & BUS. RSCH.* 23, 23, 27-28 (2011).

⁷⁵ *See* Benedict, *supra* note 74, at 26 (noting that “[n]ot only are there fewer roles in a small-scale society, but because of the smallness of the total social field many roles are played by relatively few individuals”).

⁷⁶ *Id.* at 27.

⁷⁷ *See, e.g.*, JONATHAN BELL & ROGER CROMBIE, *BUTTERFIELD BANK: ONE HUNDRED AND FIFTY – 00100*, 57 (2008) (discussing the small and intimate elite circle of entrepreneurs and government officials who led the development of Bermuda’s offshore financial sector).

⁷⁸ Commentators note that “[s]ize-related constraints on development are normally associated with small domestic markets and limited resources, identified with

The economic dictates of the British Empire and geographic smallness set the stage for the social and institutional lives of inhabitants of the colonies.⁷⁹ It is unsurprising, then, that the commercial and institutional aspects of the jurisdictions that emerged from colonialism continue to influence each other and that these jurisdictions persist in viewing their institutional choices through the lens of their economic strengths. In other words, a component of their identities may be tied to significant income-generating activities within their borders.⁸⁰

II. IDENTITY AND ECONOMIC BEHAVIOR

In this Part, I introduce the relationship between identity and economic behavior. I first discuss how economists have determined that identity matters in economic affairs, then outline the connection between legal rules, institutions, and identity. I close this Part by introducing the concept of CEI.

A. Identity Matters

Identities are powerful and are embedded in cultural and economic matters.⁸¹ They reflect our commitments to “communities, beliefs, and

common patterns such as higher trade ratios and less diversification on the supply side.” Rudolf Buitelaar & Juan Alberto Fuentes, *The Competitiveness of the Small Economies of the Region*, in 43 CEPAL REVIEW 83, 83 (UN Econ. Comm’n for Latin Am. & the Caribbean ed., 1991); see also Winston H. Griffith, *Caricom Countries and the Irrelevance of Economic Smallness*, 28 THIRD WORLD Q. 939, 939 (2007) (noting that “a small country would of necessity have a smaller endowment of natural resources than a large country”).

⁷⁹ See generally PATTERSON, *supra* note 54, at 21-119 (describing the varying degree of British institutional investments in the colonies of Barbados and Jamaica); WILLIAMS, *supra* note 1, at 30-107 (describing the limitations on the trading relationship between British colonies and the metropole).

⁸⁰ See generally Bell & York, *Community Economic Identity*, *supra* note 23 (discussing CEI in an extractive industry); Sybblis, *Identity Hurdle*, *supra* note 5 (discussing the relationship between community identity and commercial activity).

⁸¹ See George A. Akerlof & Rachel E. Kranton, *Identity and the Economics of Organizations*, 19 J. ECON. PERSPECTIVES 9, 12 (2005) (noting that “[p]eople’s speech, dress and demeanor typically convey how they think of themselves”); see also Jan E. Stets & Peter J. Burke, *A Sociological Approach to Self and Identity*, in HANDBOOK OF SELF AND IDENTITY 128, 128 (Mark R. Leary & June Price Tangney eds., 2003).

conventions,”⁸² and they shape our choices.⁸³ Indeed, economists have begun to recognize identity as a key variable in decision-making. For example, economists George Akerlof and Rachel Kranton highlight that identity is a critical tool “because it gives us a way to think about *how* behavior should vary across types.”⁸⁴ These scholars suggest that identity may provide a surprising payoff to individuals functioning in an organization context.⁸⁵

In a theoretical model of how identity works in an organization, Akerlof and Kranton, suggest that an employee who sees himself as an insider might find great utility in behaving in a manner consistent with that of an insider.⁸⁶ For example, if an insider is someone who serves the firm with “high-effort action,” the employee may perceive their own efforts to work in this manner as consistent with those of an insider.⁸⁷ They may therefore strive to work long hours and weekends to increase the organization’s profits and prominence because that is how they understand insiders to perform.⁸⁸

In turn, the employee values being considered an insider because their sense of self — perhaps their professional identity — is tied to the destiny of the organization.⁸⁹ For example, the identity (and status) of a partner at a major international law firm may be worth as much (or nearly somewhat as much) as their salary. A high income notwithstanding, this employee would find less utility if their work efforts deviated (downward) from the efforts expected from somebody with the status of a partner — an insider.⁹⁰ Similarly, when the employee views himself as an outsider, they will work less hard to achieve the

⁸² Brooks, *supra* note 24, at 2026.

⁸³ See generally Sybblis, *Identity Hurdle*, *supra* note 5 (discussing how CEI shapes law reform strategies).

⁸⁴ Akerlof & Kranton, *supra* note 81, at 13.

⁸⁵ *Id.* at 13-16.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See *id.*

⁸⁹ *Id.* at 10-11.

⁹⁰ See *id.* at 13-14 (noting the sociological aspects of identity).

goals of the organization.⁹¹ Importantly, “[they] will lose identity utility insofar as [they] deviate[] from the low-effort ideal of [an outsider].”⁹²

One of the many compelling observations made by Akerlof and Kranton regarding identity is that organizations (such as the military) can make a concerted effort to “turn outsiders into insiders.”⁹³ For example, concerning the military, they suggest that “[i]nitiation rites, short haircuts, boot camp, uniforms and oaths of office are some obvious means to create a common identity.”⁹⁴ These rituals help to build a common identity around service to country rather than through monetary compensation alone, and may explain some soldiers’ commitment to their assigned tasks.⁹⁵

For purposes of this Article, the key takeaway from Akerlof and Kranton’s studies is that identity is doing significant work in what should be purely economic matters, such as how much an employee desires to be paid.⁹⁶ But, while these insights provide nuance to economic choices, they tend to focus on individual decisions in “firms, workgroups [and] jobs.”⁹⁷ What remains understudied is how group identity impacts collective economic decisions and what role law can play in guiding these kinds of decisions.

B. Law and Collective Identity

Socio-legal scholars have long considered law and social relations to be intertwined.⁹⁸ But corporate law scholars have also begun to make a

⁹¹ *Id.* at 14.

⁹² *Id.* at 14. This may explain the retention rate of associates at large law firms.

⁹³ *Id.* at 17.

⁹⁴ *Id.*

⁹⁵ *See id.* at 18 (describing an interview with a soldier who notes that what was most important to them was service — and not so much money).

⁹⁶ *See id.* at 9-32.

⁹⁷ *Id.* at 27-28.

⁹⁸ *See, e.g.,* Lawrence M. Friedman, *Coming of Age: Law and Society Enters an Exclusive Club*, 1 ANN. REV. L. & SOC. SCI. 1, 4-5 (2005) (discussing the scholarly developments in law and society studies); *see also* Richard L. Abel, *Law and Society: Project and Practice*, 6 ANN. REV. L. & SOC. SCI. 1, 11-16 (2010) (discussing the parameters of law and society studies). Indeed, in the nineteenth century, lawyer and sociologist Max Weber was already exploring the link between law and economic development in specific social contexts. *See, e.g.,* David M. Trubek, *Max Weber on Law and the Rise of Capitalism*, 1972

similar connections.⁹⁹ For example, corporate law scholar Richard Brooks identifies a connection between racial identity and corporate identity.¹⁰⁰ Given the history of racial subordination and harm to minority communities in the United States and elsewhere in the world, there are compelling arguments regarding why we should consider racial identities in some legal contexts.¹⁰¹ One reason is that racial identities could provide insights into potential discriminatory treatment of one group by another.¹⁰² This form of identity informs the society of the relationship between the discriminatory treatment and the prior group subordination.¹⁰³ In other words, community identities communicate

WIS. L. REV. 720, 722-25 (1972) (discussing Max Weber's theory of law's role in the development of Western capitalism). More recently, legal scholars have pursued this area of study with varying methodologies and insights. *See, e.g.*, Berkowitz et al., *supra* note 19, at 189 (using empirical data to show that the mode of reception of "formal law" is related to the law's ultimate effectiveness); Davis & Trebilcock, *supra* note 18, at 895 (discussing theories regarding the relationship between law and development); Pistor, *supra* note 18, at 15 (arguing that domestic context matters for law's effectiveness).

⁹⁹ *See, e.g.*, Brooks, *supra* note 24, at 2026 (arguing for the recognition of racial identities in legal proceedings, including where they concern corporations, but "only to the extent that it is connected to legally cognizable harm . . . without appealing to elusive essentialist notions of race"); *see also* BRUNER, *supra* note 11, at 41-50 (discussing the social factors that help to make some jurisdictions market dominant in the area of offshore financial services).

¹⁰⁰ Brooks, *supra* note 24, at 2026 (arguing for the recognition of racial identities in some legal contexts). Professor Brooks examined the courts' "treatment of race in the corporate context over time" and argued that corporate entities can have racial identities. *Id.* As justification for this conclusion, Professor Brooks explained: "[L]egal persons adopt and are ascribed identities for the same reasons as natural persons: Identities signify commitments of persons to other persons, communities, beliefs, and conventions." *Id.* As a normative matter, Professor Brooks claims: "The law should demand that race be recognized as something existing in interactions and give it importance (in law) only to the extent that it is connected to legally cognizable harm resulting from such interactions, without appealing to elusive essentialist notions of race." *Id.*

¹⁰¹ *See, e.g.*, RANDALL KENNEDY, FOR DISCRIMINATION: RACE, AFFIRMATIVE ACTION, AND THE LAW (2013) (outlining when it is appropriate to use race in affirmative action measures).

¹⁰² *See id.*

¹⁰³ *See, e.g.*, Steven A. Dean & Attiya Waris, *Ten Truths About Tax Havens: Inclusion and the "Liberia" Problem*, 70 EMORY L.J. 1659, 1662 (2021) (discussing perceptions of racial bias in international tax policy).

information about group histories, treatment, and commitments, which can be pivotal to legal arrangements.¹⁰⁴

There are compelling reasons why community identity should be considered when efforts are underway to govern geographically remote communities.¹⁰⁵ In the case of the governance of offshore financial centers by global powers such as the Organization for Economic Cooperation and Development (“OECD”), the European Union (“EU”), and the United States, efforts to influence the legal regimes in small jurisdictions, many of which are ex-colonies of empires¹⁰⁶ and some of which are still territories of former empires,¹⁰⁷ can lead to inequitable outcomes.¹⁰⁸ Not only do some of these jurisdictions have resource limitations and underdeveloped economies as a result of their colonial histories and legacies, but they may also be striving to overcome the social and psychological burdens of plantation societies and slave histories.¹⁰⁹ Indeed, many of these colonial and post-colonial jurisdictions were defined by their ability to produce specific raw

¹⁰⁴ For example, the law incorporates identity in matters related to: “trade secrets, business organizations, trusts, contracts, patents, and bankruptcy.” See Brooks, *supra* note 24, at 2028-29 (discussing instances when the law considers a party’s identity in a legal transaction).

¹⁰⁵ See, e.g., Sybblis, *Equality Offshore*, *supra* note 21, at 2672 (“The Washington Consensus demonstrated that one size does not fit all. Every country has its own history and social context that must be carefully examined and understood before proposing policy reforms.”).

¹⁰⁶ For example, The Bahamas, Barbados, and Antigua and Barbuda are offshore financial centers and independent states that were once colonies of Britain. See BERRY, *supra* note 1, at 17-21; Marshall, *supra* note 6, at 259.

¹⁰⁷ For example, the Market Dominant UKOTs are offshore financial centers and territories of the United Kingdom. See, e.g., Marshall, *supra* note 6, at 259-60 (discussing the development of OFCs in the Caribbean). See generally ELIZABETH W. DAVIES, *THE LEGAL STATUS OF BRITISH DEPENDENT TERRITORIES* (1995) (discussing the legal relationship between ex-colonies that chose not to seek political independence and the United Kingdom).

¹⁰⁸ See Sybblis, *Equality Offshore*, *supra* note 21, at 2714-15 (discussing how colonial history makes some OFCs (e.g., Barbados) more vulnerable to global governance efforts by the Organization for Economic Co-operation and Development and European Union than others (e.g., Switzerland)).

¹⁰⁹ See GETACHEW, *supra* note 70, at 152-53 (discussing the work of anticolonial nationalists to pave way for a new world order that supports the self-determination efforts); PATTERSON, *supra* note 54, at 79-84.

materials (cotton, sugar, tobacco, etc.) for the metropole.¹¹⁰ The pursuit of less inequality and greater access to public goods and services in larger developed countries, while well-intentioned, could undermine the goals of these smaller colonial and post-colonial communities from the Global South.

C. Community Economic Identity

CEI provides a conceptual framework for understanding the social and historical context of an economic enterprise or enterprises in a jurisdiction.¹¹¹ The concept suggests that identity has a direct relationship to institution building.¹¹² Industries or economic sectors that have become embedded in a community's self-image and values will benefit from that community's significant investments in human and capital resources.¹¹³ Indeed, the utility derived from supporting a shared identity serves as a galvanizing force for community members.¹¹⁴ Two ways of ensuring that a CEI industry survives and thrives are (1) through legal reform (i.e., making rules that benefit the sector) and (2) through bolstering of specific legal institutions associated with the sector, such as courts and regulatory agencies.¹¹⁵

Similar to the identity economics model, CEI suggests that a group will increase their utility by undertaking behaviors consistent with their ideals, which are not necessarily economic.¹¹⁶ However, the scholarship and research on CEI are nascent and primarily confined to rural and

¹¹⁰ See WILLIAMS, *supra* note 1, at 51-107.

¹¹¹ See Sybblis, *Identity Hurdle*, *supra* note 5, at 876-78; see also Lauren B. Edelman, *Rivers of Law and Contested Terrain: A Law and Society Approach to Economic Rationality*, 38 LAW & SOC'Y REV. 181, 186 (2004).

¹¹² See Sybblis, *Identity Hurdle*, *supra* note 5, at 936 (discussing the relationship between CEI and legal reform efforts).

¹¹³ See *id.* at 873-74.

¹¹⁴ See Akerlof & Kranton, *supra* note 81, at 13-15.

¹¹⁵ See, e.g., Sybblis, *Equality Offshore*, *supra* note 21, at 2721-28 (discussing the interaction between offshore financial services and the legal needs of the domestic community).

¹¹⁶ The connection between identity and behavior is not new. Sociologist Max Weber argued that group identity and belief can influence how work is perceived. MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* 102-25 (Taylor & Francis Group 2001) (1930).

environmental sociology.¹¹⁷ Sociologists working in these fields have used case studies to show how an industry's economic agenda can shape a community's culture, thereby influencing how residents understand and conceptualize their self-interest.¹¹⁸ As the argument goes, residents are made to misperceive their interests and act primarily to the benefit of the corporation.¹¹⁹ I refer to this original view as "Neo-Marxian CEI." For example, sociologists Elizabeth Bell and Richard York have studied the coal industry in West Virginia and argue that it maintains its power by embedding itself in the social landscape and constructing a community identity directly linked to coal.¹²⁰ In the case of coal, they suggest that there is a corporate presence interwoven throughout various institutions and experiences in the community, from schools to healthcare, for example.¹²¹ I consider this a thick version of CEI because it is deeply and directly entrenched in the fabric of daily lives.

Instead of viewing CEI as primarily a means of gaining power, facilitating wealth generation for an elite group within a society, and a way of undermining the interests of vulnerable populations, we may also view CEI as a source of empowerment and an expression of a community's goals and aspirations.¹²² Further, CEI analysis need not be

¹¹⁷ See, e.g., Bell & York, *Community Economic Identity*, *supra* note 23, at 129 (discussing the relationship between CEI and extractive industries, such as coal production).

¹¹⁸ See *id.* at 112 (arguing that "economic identity is influenced by the active contemporary framing efforts of [extractive] industries, which aim to define themselves as the backbone of local and regional economies").

¹¹⁹ See *id.* at 112-13.

¹²⁰ *Id.* at 129; see also Sybblis, *Identity Hurdle*, *supra* note 5, at 885-86 (summarizing Professors Bell and York's theory of CEI).

¹²¹ Bell and York explain that "[in Central Appalachia], the coal companies owned the houses, the streets, the schools, the water systems, the churches, the recreational facilities (if there were any), the doctor's office, and the company store, which was the only store in town where one could buy groceries, furniture, clothes, and other goods." Bell & York, *Community Economic Identity*, *supra* note 23, at 120. According to Bell and York, some industries can effectively frame and market their work to "define themselves as the backbone of local and regional economies." *Id.* at 112. Further, "to maintain their power (and profits) as their contribution to employment declines, extractive industries have increased their efforts to maintain and amplify the extent to which the 'economic identity' of communities is connected with the industry that was historically an important source of employment." *Id.* at 111.

¹²² Sybblis, *Identity Hurdle*, *supra* note 5, at 894-931. In some respect, the case of small island UKOTs can be articulated pursuant to the neo-Marxian framework developed by

cabined to extractive industries, where the number of people working in the industry is reasonably large, where evidence of the activity is present in the physical environment, and where time spent on the activity (e.g., time spent on coal mining) is great.¹²³ A thinner version of CEI might be present in non-extractive activities, where there is an awareness of and appreciation for the sector by a broad swath of the population, even if there is less direct involvement.¹²⁴ Community leaders¹²⁵ — e.g., political actors, professionals, and business entrepreneurs — can cultivate this thinner version of CEI.¹²⁶ In cases where non-extractive industries are

rural and environmental sociologists. Bell & York, *Community Economic Identity*, *supra* note 23, at 139-40. After all, actors in positions of power and influence — like government officials, bankers, accountants, and lawyers in England — cultivated these OFCs from afar to serve their purpose. *See* SHAXSON, *supra* note 6, at 63-106; Sybblis, *Identity Hurdle*, *supra* note 5, at 894-931.

¹²³ Sybblis, *Identity Hurdle*, *supra* note 5, at 885-86.

¹²⁴ *See* Sybblis, *Identity Hurdle*, *supra* note 5, at 885-86.

¹²⁵ According to Nobel Laureate Arthur Lewis, “[c]ritical to this process of labor transfer were the activities of a nascent entrepreneurial class or an emergent interventionist state, so long as both groups were capable of recognizing the opportunities that an ‘unlimited supply of cheap rural labor’ created for rapid industrialization.” ROBERT L. TIGNOR, W. ARTHUR LEWIS AND THE BIRTH OF DEVELOPMENT ECONOMICS 82 (2006).

¹²⁶ It bears noting that the Delaware incorporation franchise (the “Franchise”) is not only experienced by the state’s government and the companies that benefit from its legal regime. While it is not identical to an extractive industry such as coal mining, which directly impacts the lives of most members of a community, it touches the lives of a large swath of Delawareans. HAL WEITZMAN, WHAT’S THE MATTER WITH DELAWARE: HOW THE FIRST STATE HAS FAVORED THE RICH, POWERFUL, AND CRIMINAL — AND HOW IT COSTS US ALL 30-31 (2022). Beyond employees of the agencies of the state that service the Franchise, “[e]very company has to have a registered agent and there are hundreds of agents in the state, from mom-and-pop operations to vast companies with hundreds of employees.” *Id.* at 28. Of course, there are lawyers throughout the state that are hired to represent those companies dealing with the court system in some manner. *Id.* Delawareans who work in adjacent service businesses also benefit from the Franchise. *Id.* They include those “who work in the restaurants, bars, and hotels, the Uber drivers, office cleaners, and IT service technicians.” *Id.* And, on a purely economic basis, Delawareans benefit from the government’s high per capita spending on them. *See id.* at 30 (listing Delaware as second highest among US States in per capital spending for financial year 2019); *see also* *Total State Expenditures per Capita*, KAISER FAM. FOUND., <https://www.kff.org/other/state-indicator/per-capita-state-spending/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Per%20Capita%20State%20Spending%22,%22sort%22:%22desc%22%7D> (last visited July 12, 2023) [<https://perma.cc/S52C-CXAW>] (listing

important drivers of commerce in a community, there may be significant messaging from local leaders (e.g., politicians, corporate executives, non-profit entities) about how the industry aligns with the goals and ideals of the place, and about direct benefits for community members' lives.¹²⁷

One approach to employing a CEI analysis is through extensive field research, including archival work and ethnographies, to understand the relationship between a community and an economic enterprise.¹²⁸ This is the approach taken by rural and environmental sociologists.¹²⁹ But otherwise observable community commitments can also be indicative of a specific type of relationship with an industry.¹³⁰ In this regard, a

Hawaii as number one in State expenditures with an amount of \$16,927; Alaska as number two with an amount of \$15,969; Oregon as number three with an amount of \$15,725; and Delaware as number four with an amount of \$13,213). They also benefit from a lower tax burden than many other states. WEITZMAN, *supra*, at 30 (“Delawareans have the fourth-lowest tax burden among all states in the union.”); *see also* Adam McCann, *2023’s Tax Burden by State*, WALLETHUB (Mar. 28, 2022), <https://wallethub.com/edu/states-with-highest-lowest-tax-burden/20494> [<https://perma.cc/37UK-H8EW>]. Consequently, while most Delawareans do not work for the Franchise or know someone who does, enough do that others are generally aware that the quality of their lives is intertwined with Delaware’s status as the leader for corporations and corporate law. WEITZMAN, *supra*, at 30-31 (describing how Delawareans are connected to the Franchise and benefit from it).

¹²⁷ Like the coal industry, this messaging could take place in formal settings (e.g., the legislature and agencies of government), as well as in informal environments like family dinners and school gatherings. *See* Bell & York, *Community Economic Identity*, *supra* note 23, at 137.

¹²⁸ *See, e.g., id.* at 128-29 (describing how sociologists Elizabeth Bell and Richard York undertook ethnographic work in Central Appalachia to determine the impact of ideology construction with respect to the coal industry); *see also* JOHN W. MOHR, CHRISTOPHER A. BAIL, MARGARET FRYE, JENNIFER C. LENA, OMAR LIZARDO, TERENCE E. McDONNELL, ANN MISCHÉ, IDDO TAVORY & FREDERICK F. WHERRY, *MEASURING CULTURE* 15 (2020) (“[The scholars] provide a programmatic statement on the measurement of culture that moves debates beyond qualitative and quantitative boundaries and among theoretical traditions.”).

¹²⁹ *See* Bell & York, *Community Economic Identity*, *supra* note 23, at 128-129.

¹³⁰ *See, e.g.,* Moon, *Delaware’s New Competition*, *supra* note 4, at 1429-32 (suggesting that the type of corporate governance reforms in Delaware and “offshore corporate law havens,” such as Bermuda, British Virgin Islands, and Cayman Islands is indicative of a close relationship between the legal and legislative community in these places and corporations).

community's commitment to an industry, particularly in a small jurisdiction where the economy is not diversified, is a rough proxy for CEI.¹³¹ In the case of offshore financial centers, the government is likely to make substantial economic and political commitments to building topflight legal institutions,¹³² such as courts and regulatory agencies, to attract, protect, and support corporations and other foreign investors.¹³³ In the context of a small jurisdiction, it is reasonable to assume that this commitment reflects a shared identity around offshore financial services.¹³⁴

A range of factors, from geography to history, can indicate how a community may develop enduring commitments to an industry.¹³⁵ But three factors bear highlighting because they are readily observable: (1) how the community promotes its commercial attribute(s) to the external world (i.e., investment promotion); (2) how the community responds to competition from others; and (3) the types of institutions in which the community invests its resources. The degree to which each jurisdiction invests in these activities indicates its commitment to the offshore sector.

With respect to investment promotion, statements by local community leaders regarding the community's areas of commercial strength indicate how the community views itself in relation to sector or industry.¹³⁶ Indeed, "[l]eadership is critical for CEI construction" and

¹³¹ See Brooks, *supra* note 24, at 2026, 2033; *supra* Part I.

¹³² See Pamela K. Bookman, *The Adjudication Business*, 45 YALE J. INT'L L. 227, 228 (2020) (noting that the OFC of Singapore has a specialized commercial court that "focus[es] on international commercial disputes").

¹³³ See, e.g., Moon, *Delaware's New Competition*, *supra* note 4, at 1438 (noting that both Bermuda and Cayman have specialized commercial courts). As discussed in the following paragraphs, community leaders, including political leaders, are important for CEI formation. See *infra* Part II.C (describing the factors that influence the development of a CEI). Hence, a CEI can be developed in jurisdictions with democratic and autocratic governments.

¹³⁴ See, e.g., Maurer, *Writing Law*, *supra* note 11, at 273-77 (discussing the shared sense of ownership and pride that many people in the British Virgin Island feel toward the international business company legislation produced by the jurisdiction).

¹³⁵ Sybblis, *Identity Hurdle*, *supra* note 5, at 888-92.

¹³⁶ *Id.* at 889.

is integral to the narrative surrounding a community's identity.¹³⁷ With respect to inter-jurisdictional competition, how a community views its comparative advantage over neighbors or rivals can influence areas of investment.¹³⁸ For example, New Jersey and Delaware were competitors for incorporations when Delaware saw the opportunity to surpass the Garden State in this arena based on the missteps of then Governor Woodrow Wilson.¹³⁹ Finally, with regard to investments, it is telling where a community spends its resources — both money and attention to institution building.¹⁴⁰ The investment in institutions that support a particular enterprise indicates the degree to which the activity is important in the jurisdiction.¹⁴¹

III. THE CASE OF MARKET DOMINANT UKOTs

Using observable commitments to offshore financial services as an indicator of economic identity, Sections A, B, and C outline the three ways that the Market Dominant UKOTs are deeply invested in their

¹³⁷ *Id.* at 888; *see also* MELISSA ARONCZYK, *BRANDING THE NATION: THE GLOBAL BUSINESS OF NATIONAL IDENTITY* 31 (2013) (arguing that “[a]dopting a brand . . . allowed national leaders to entrench the perception that the best way to renew their population’s interest in their identity was through renewing the use of identity as part of the national interest”).

¹³⁸ *See* Sybblis, *Identity Hurdle*, *supra* note 5, at 891-92; *see also* Frederick F. Wherry, *The Nation-State, Identity Management, and Indigenous Crafts: Constructing Markets and Opportunities in Northwest Costa Rica*, 29 *ETHNIC & RACIAL STUD.* 124, 125 (2006).

¹³⁹ WEITZMAN, *supra* note 126, at 12 (noting that “[Delaware] had not been an innovator” where it concerned corporate law). It is well known that “New Jersey’s fall from corporate grace is due to the political agenda of then governor and president-elect Woodrow Wilson.” Marcel Kahan & Ehud Kamar, *The Myth of State Competition in Corporate Law*, 55 *STAN. L. REV.* 679, 731 (2002). Wilson decided to make “the destruction of business monopolies a keystone of his [political] platform. *Id.* In service of this agenda, he prepared and supported the passage of antitrust legislation in New Jersey. *Id.* The new laws “outlawed trusts and holding companies . . . and cost New Jersey its lead.” *Id.* Delaware stepped in at this juncture to fill the market need for business-friendly legislation. *See* WEITZMAN, *supra* note 126, at 12.

¹⁴⁰ *See* WEITZMAN, *supra* note 126, at 169-85 (discussing how Delaware invested in the legal and institutional infrastructure for corporate law). For purposes of this Article, the investments of greatest interest are those made in legal reform and the building of legal institutions. *See infra* Appendix, Table 4.

¹⁴¹ *See, e.g.*, WEITZMAN, *supra* note 126, at 169-85 (discussing how Delaware invested in the legal and institutional infrastructure for corporate law).

offshore financial sectors. Following the CEI framework discussed in Part II, I show (1) how each jurisdiction promotes its commercial attribute(s) globally; (2) how each has responded to competition from others; and (3) the types of legal institutions each has created to support its offshore finance enterprise.¹⁴²

A. Bermuda

Bermuda is a tiny island located in the Northern Atlantic region with a current population of 63,352.¹⁴³ The jurisdictions “formally became a [British] colony in 1612,”¹⁴⁴ and its early economy was based in agriculture.¹⁴⁵ Slavery was a feature of the island, as in other British colonies in the region, but is reported to have been on a “small scale and more in the nature of indentured [labor].”¹⁴⁶ In general, because of its size and location, economic survival required an outward orientation, whereby engagement with the international community was vital.¹⁴⁷ The offshore finance sector is consistent with this more global outreach.¹⁴⁸

1. Investment Promotion

Bermuda appears deceptively remote on a map, but it is merely a “two-hour flight from New York” — a factor conducive to its international business enterprise.¹⁴⁹ Other factors that have arguably bolstered Bermuda’s offshore financial sector, include “a conservative and stable [g]overnment and . . . a legal code based on English [c]ommon [l]aw and therefore familiar to lawyers on both side of the

¹⁴² See *supra* Part II.

¹⁴³ See *Population, Total — Bermuda*, WORLD BANK, <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=BM> (last visited July 14, 2023) [<https://perma.cc/MUY2-NKTX>] (noting Bermuda’s population as of 2021).

¹⁴⁴ Connell, *supra* note 11, at 87.

¹⁴⁵ PHILLIPS, *supra* note 12, at 4.

¹⁴⁶ *Id.* at 9.

¹⁴⁷ See PHILLIPS, *supra* note 12, at 6 (discussing Bermuda’s early global economic outlook).

¹⁴⁸ See Zoromé, *supra* note 8, at 7 (discussing the outward orientation of offshore financial centers).

¹⁴⁹ *Why Bermuda*, BERM. BUS. DEV. AGENCY, <https://www.bda.bm/why-bermuda/> (last visited Sept. 5, 2023) [<https://perma.cc/5ZNW-94P4>].

Atlantic.”¹⁵⁰ Notwithstanding these features, early leadership was responsible for the offshore vision and was critical to shaping a narrative around what Bermuda could become on the international finance stage.¹⁵¹ These leaders were both involved in government and directly engaged in the offshore business, and therefore took responsibility for communicating the enterprise to others — Bermudians¹⁵² and the rest of the world. Indeed, the leaders that shaped the international business¹⁵³ sector for Bermuda were a close-knit group of entrepreneurs whose activities overlapped with business, political, and social life on the island.¹⁵⁴

¹⁵⁰ PHILLIPS, *supra* note 12, at 130.

¹⁵¹ *See id.* at 206 (discussing the overlap between the business community and the political community). According to Gordon Phillips, “[i]n a community the size of Bermuda, the luxury of enough experienced people to fill business and Government posts separately does not exist.” *Id.* For example, “in 1987, the overlap between the [Bank of Bermuda’s] Board and the Island’s Government was questioned.” *Id.* That year saw “the retirement from the [Board of Bank of Bermuda] of Sir Edward Richards, revered in public life as a teacher, lawyer, [Member of Parliament], Premier and kindred spirit in the development of Bermuda as a stable jurisdiction for international business . . .” *Id.*

¹⁵² For example, Henry Tucker, a former businessperson, and politician in Bermuda was invaluable to the narrative regarding Bermuda’s offshore identity. According to one commentator, “[Tucker’s] influence upon the islanders in the 1960s was profound, a judicious mixture of coercion, persuasion, and expedience.” PHILLIPS, *supra* note 12, at 165.

¹⁵³ In the context of Bermuda, “international business” refers to “insurance, banking, trust and related activities of international companies conducted from, but not within, Bermuda.” BELL & CROMBIE, *supra* note 77, at 112.

¹⁵⁴ *See id.* at 11; *see also* Benedict, *supra* note 74, at 23-34 (discussing social relations in small societies).

These leaders grew up together and were not just business colleagues but family friends. BELL & CROMBIE, *supra* note 77, at 57 (noting that “[t]he professional cadre has always known its members intimately. They grew up together, as their parents had done . . . social and business life intermingled”). Embedded in this group were lawyers. Indeed, two Bermudian lawyers, Reginal Conyers, and Henry Tucker, opened the gates to offshore financial services in Bermuda when they “found a way around protectionist legislation to enable the U.S. makers of LifeSavers candy, to shelter their non-U.S. earnings from the U.S. Internal Revenue Service (IRS), creating what many believe was the first exempt company in the world.” RONEN PALAN, RICHARD MURPHY & CHRISTIAN CHAVAGNEUX, *TAX HAVENS: HOW GLOBALIZATION REALLY WORKS* 126-27 (2010) (discussing the details of the transaction).

Spearheading the passage of key pieces of legislation, such as the Exempt Companies Act and Exempt Partnership Act, was important for the fledgling offshore enterprise in the 1950s,¹⁵⁵ but other jurisdictions had business-friendly legislation at this time, too. And these jurisdictions were also trying to build their offshore business.¹⁵⁶ Perhaps an important advantage for Bermuda was the willingness of business leaders to market the jurisdiction actively and aggressively to the world.¹⁵⁷ This meant travelling internationally and informing major markets, such as New York and London, of Bermuda's financial services.¹⁵⁸ These entrepreneurs and government officials became *de facto* ambassadors for the island.¹⁵⁹ They crafted a narrative of Bermuda's identity and how others should engage with Bermudians.¹⁶⁰

As a result of early promotion efforts, Bermuda's achievements in the offshore sector have come a long way from the 1950s, and Bermudians are happy to share their story. For example, a visit to the website of the

¹⁵⁵ For example, "[i]n 1958, Bermuda enacted the Exempted Partnership Act, which permitted nonresidents to operate out of partnerships formed in the colony." PALAN ET AL., *supra* note 154, at 126-27.

¹⁵⁶ PHILLIPS, *supra* note 12, at 126.

¹⁵⁷ BELL & CROMBIE, *supra* note 77, at 46-47. This strategy of traveling internationally to promote the business-friendly nature of a jurisdiction is also used by the State of Delaware. WEITZMAN, *supra* note 126, at 25-26 (noting that the State of Delaware markets their incorporation "Franchise" relentlessly).

¹⁵⁸ BELL & CROMBIE, *supra* note 77, at 46-47.

¹⁵⁹ *Id.*

¹⁶⁰ According to commentators,

By the mid 1950s, more and more foreign interests were choosing to incorporate in Bermuda... . Thus commenced the pioneer days of international business development... when individual representatives travelled abroad to spread the word and sell the Island's services, and when Bermuda was really first heard of in the financial centres of New York and London. Soliciting overseas clients was a new business arena, with something of the 'seat-of-the-pants' edge to it. Largely improvised in nature, the practice of every travelling Bermudian business[person] (they were almost exclusively men) being a roving ambassador for [their] homeland would retain its informal and spontaneous character until the 1970s.

BELL & CROMBIE, *supra* note 77, at 46-47.

Bermuda Business Development Agency's ("BDA")¹⁶¹ quickly tells potential investors that they should visit the island because it is "a place for success."¹⁶² It characterizes the jurisdiction as a place that "fosters a collaborative business culture that sees government and industry working together for the jurisdiction's commercial success with the active engagement of independent regulators."¹⁶³ But, perhaps most interestingly, the BDA outlines that Bermuda should be known for five features: (1) its "quality and expertise" across industries; (2) the "ease of doing business" in the jurisdiction; (3) its "stability and safety"; (4) its "global contributions and connections;" and (5) a "sophisticated lifestyle."¹⁶⁴ Much like Delaware,¹⁶⁵ Bermuda boldly advertises its customer service, collaboration with business interests, and optimal regulations as core to the jurisdiction's identity and what it has to offer to investors.¹⁶⁶

Further, three of the five key industries on the island are tied to financial services.¹⁶⁷ They are "asset management," "high net-worth services," and "insurance and risk."¹⁶⁸ Significantly, Bermuda's government is quick to highlight that the jurisdiction stands out from other financial centers.¹⁶⁹ The Bermudian government suggests the jurisdiction "is different from other international financial [centers] due to its high level of transparency, compliance, cooperation and

¹⁶¹ According to the Government of Bermuda, "The Bermuda Business Development Agency (BDA) uses targeted marketing and business development strategies to stimulate growth in the Bermuda economy and to create and maintain jobs on the island." *Bermuda Business Development Agency, GOV'T OF BERM.*, <https://www.gov.bm/department/bermuda-business-development-agency> (last visited July 5, 2023) (on file with UC Davis Law Review).

¹⁶² *Why Bermuda*, *supra* note 149.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ WEITZMAN, *supra* note 126, at 26.

¹⁶⁶ BRUNER, *supra* note 11, at 177-78.

¹⁶⁷ *Why Bermuda*, *supra* note 149.

¹⁶⁸ *Id.* The other two industries are infrastructure and technology. *Id.*

¹⁶⁹ The State of Delaware is quick to also denounce allegations that it is a tax haven. *See Facts and Myths*, DEL. CORP. L., <https://corplaw.delaware.gov/facts-and-myths/> (last visited July 7, 2023) [<https://perma.cc/8UQG-U6T9>] (noting that Delaware is not "America's onshore tax haven").

exchange of information.”¹⁷⁰ Perhaps a telling indication of how Bermudians relate to the offshore sector is in some of the visible signs of the sectors’ presence in the lives of residents. In this regard, there are some similarities to the coal industry or other extractive industries; international business reaches far and wide throughout tiny Bermuda.¹⁷¹

One scholar recently indicated that “[t]he international business sector in Bermuda provides some 3,894 jobs and brings visitors to Bermuda who support the local economy.”¹⁷² As of 2019, the island had “23 law firms, 31 fund managers, administrative services, 6 accountancy firms (including KPMG, PWC, Deloitte, and EY), telecommunications and technology companies, [and] a growing compliance function and regulators.”¹⁷³ Consequently, the sector touches a range of communities, and affects even Bermudians who are not directly working in the offshore environment.¹⁷⁴ And Bermuda’s objective performance on the international finance stage has solidified its identity as a major player.¹⁷⁵

¹⁷⁰ *Bermuda’s Transparent and Top-Tier Reputation*, GOV’T OF BERM., <https://www.gov.bm/bermudas-transparent-and-top-tier-reputation> (last visited June 23, 2023) (on file with UC Davis Law Review).

¹⁷¹ DOMINIC THOMAS-JAMES, *OFFSHORE FINANCIAL CENTRES AND THE LAW: SUSPECT WEALTH IN BRITISH OVERSEAS TERRITORIES* 66 (2021).

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Professor Bruner argues that:

Financial services — particularly insurance-related services directed toward North American markets — have loomed very large in Bermuda’s economy, an orientation reflected in the fact that ‘75 percent of the Fortune 100 and their European equivalents’ have subsidiaries in Bermuda. Indeed, it has been estimated that ‘international finance services’ amounted ‘to about 25 percent of the country’s GDP in 2013,’ but that this figure ‘substantially underestimates the Bermudian economy’s reliance on the sector, as it is essentially limited to the employment income of residents working in the sector’ (and accordingly does not account for the ‘indirect impact’ of the sector’s expenditures there).

BRUNER, *supra* note 11, at 52.

¹⁷⁵ Dominic Thomas-James argues that:

Bermuda has developed into a significant international financial and offshore centre, which contributed to 39% of GDP and accounted for 18% of its employment in 2016. Bermuda’s world leading (re)insurance market

2. Economic Competition

Despite its prominence as an offshore financial center, Bermuda has not been content to sit on its achievements. The jurisdiction has continued to innovate and remain competitive.¹⁷⁶ After all, there are at least forty-plus offshore financial centers and would-be offshore financial centers eager to cut into Bermuda's market share.¹⁷⁷ Further, Bermuda was already relatively late in arriving to the offshore finance arena.¹⁷⁸ One reason for the jurisdiction's initial reticence was the "tax haven" reputation that followed these jurisdictions.¹⁷⁹ But jurisdictions such as "Panama, Liberia and The Bahamas"¹⁸⁰ were already in full flight when Bermuda saw an advantage. It could market itself as a non-corrupt, legitimate center, which would run counter to the dominant tax haven narrative.¹⁸¹ "For any respectable individual or foreign company seeking a way round tax regulations of increasing complexity and ferocity, as governed the conduct of business in Great Britain and the

dominates the financial sector, with 15 of the world's top 40 reinsurers based there. This market contributes some \$35 billion over 12 years to cover US catastrophe losses and provides more than a quarter of capacity for Lloyd's of London.

THOMAS-JAMES, *supra* note 171, at 66.

¹⁷⁶ For example, Professor Bruner notes that:

Bermuda continues to innovate, building on its dominant insurance position and competitive strengths. . . . Bermuda's considerable capacity for legislative experimentation gave rise to "segregated portfolio legislation" in the early 1990s. This legal structure permits creation of the so-called 'protected cell company' — essentially "a modern extension of the captive concept" allowing each cell within the company to have its own assets and liabilities (creditors of the cell having recourse only to that cell's assets) and issues its own shares.

BRUNER, *supra* note 11, at 65-66.

¹⁷⁷ See generally Dharmapala & Hines, *supra* note 17 (discussing the relationship between good governance and offshore finance success and providing a comprehensive listing of offshore financial centers/tax havens).

¹⁷⁸ See PHILLIPS, *supra* note 12, at 126.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

United States, Bermuda could offer political and economic stability which, although modest, was sound.”¹⁸²

Bermudians are keenly aware of the competitive nature of the offshore financial sector. For example, in the 1960s — during the still early years of offshore financial services on the island — racial disturbances led to the declaration of a state of emergency.¹⁸³ There was cause for concern because these events interrupted business as usual in the jurisdiction.¹⁸⁴ And some residents were concerned that “[a] longer period of disruption to trade would only serve notice that offshore companies could move their assets to another jurisdiction very quickly, leaving in their wake crippling unemployment and hardship.”¹⁸⁵ According to one commentator, “[t]he well-being of the whole community depended on the exercise by everyone of basic common sense.”¹⁸⁶ Indeed, it was not lost on local businesses and institutions that “racial harmony” has a direct impact on the competitiveness of the jurisdiction — and business leaders urged “tolerance and adjustability.”¹⁸⁷

3. Institutional Investments

Bermudian leaders, undoubtedly influenced by the competitive marketplace, have invested heavily in the legal and regulatory institutions necessary to support the offshore sector.¹⁸⁸ Two institutions bear highlighting: (1) the judiciary with the development of a specialized commercial court;¹⁸⁹ and (2) the Bermuda Monetary

¹⁸² *Id.*

¹⁸³ *Id.* at 160-61.

¹⁸⁴ *Id.* at 161.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* Further, as it relates to the constant threat of competitors, political leader Henry Tucker was said to emphasize that “since Bermuda’s major market — residents of the eastern states of America and Canada — were prepared to journey further afield at little additional cost, it was desirable for the Government to obtain direct flights from Chicago and Atlanta, thus avoiding the inconvenience of the New York stop-over.” *Id.*

¹⁸⁸ See Ian Kawaley, *The Role of Specialist Commercial Courts*, 18 J. COMMONWEALTH MAGISTRATES & JUDGES’ ASS’N 16, 19 (2010).

¹⁸⁹ *Id.*; see *infra* Appendix, Table 4.

Authority (“BMA”), the regulatory agency that oversees the international financial sector.¹⁹⁰

a. Bermuda Commercial Court

The Bermudian government determined that a growing offshore financial sector would generate legal disputes that require high-capacity fora for resolution.¹⁹¹ It therefore invested in a court to handle these disputes.¹⁹² The Bermudian Commercial Court was designed as “a division of the Supreme Court” with a “Commercial List”¹⁹³ to facilitate the high volume of litigation spilling into the jurisdiction.¹⁹⁴ Two commercial judges currently sit on Bermuda’s Commercial Court.¹⁹⁵ In the early period of Bermuda’s Commercial Court’s existence, its proceedings were more “formal than those in Hong Kong, New South Wales and Ontario where only a ‘list’ [was] established and judges are

¹⁹⁰ *About Us*, BERM. MONETARY AUTH., <https://www.bma.bm/about-us> (last visited July 8, 2023) [<https://perma.cc/8VQW-FBUN>] [hereinafter *About Us*, BERM. MONETARY AUTH.].

¹⁹¹ See Kawaley, *supra* note 188, at 19 (discussing the judicial capacity constraints that led to the establishment of the Bermuda Commercial Court).

¹⁹² *Id.*

¹⁹³ *Bermuda*, STANDING INT’L F. OF COM. CTS., <https://sifocc.org/countries/bermuda/> (last visited July 8, 2023) [<https://perma.cc/YCD7-XE4G>]. It bears noting that “[w]hen cases are filed in the Commercial List, they must be heard by a Commercial Judge. In practice, the designated Commercial Judges also preside over a variety of other public and private law cases as well.” *Id.*

¹⁹⁴ In terms of the jurisdiction of the Commercial Court,

Order 72 created both a Commercial Court as a division of the Supreme Court and a Commercial List. It identified as ‘commercial actions’ any claim or counterclaim relating to a business document or contract; the export or import of goods; the carriage of goods by land, sea, air or pipeline; the exploitation of oil and gas reserves or other natural resources; insurance and reinsurance; banking and financial services; the operation of markets and exchanges; the purchase and sale of commodities; the construction of ships; business agency; arbitration; and any application under the Companies Act 1981.

Kawaley, *supra* note 188, at 19.

¹⁹⁵ *Bermuda*, *supra* note 193; see also *infra* Appendix, Table 4.

assigned to it.”¹⁹⁶ And, as of 2016, nearly all the published commercial court opinions had some international aspect.¹⁹⁷ Further, the Commercial Court operates with extraordinary efficiency, returning judgments in a short time frame.¹⁹⁸

b. Bermuda Monetary Authority

Beyond courts, Bermuda has sought to ensure ample regulation of its offshore financial sector. Undoubtedly, this is at least in part to send a message to onshore jurisdictions¹⁹⁹ and intergovernmental organizations such as the OECD that Bermuda is a law-abiding and transparent jurisdiction.²⁰⁰ The BMA oversees the island’s financial

¹⁹⁶ Kawaley, *supra* note 188, at 19. Ian Kawaley further notes that the Bermuda Commercial Court “formally creates a separate division of the Supreme Court, and provides for judges to be designated as ‘Commercial Judges.’” *Id.*

¹⁹⁷ *Bermuda*, *supra* note 193. The SIFCC notes that the cases before the Bermuda Commercial Court touched on legal issues pertaining to “contractual disputes, cross-border insolvency cases (restructuring and liquidations), enforcement of foreign arbitral awards and judgments and shareholder disputes and challenges to tax information exchange agreement requests.” *Id.*

¹⁹⁸ By one account, “[t]he prescribed time limit for the delivery of reserved judgments in standard cases is six weeks and judgments in commercial cases are almost invariably delivered within three months.” *Id.*

¹⁹⁹ Where it concerns oversight of the offshore sector, the U.S. State Department states:

The Bermuda Monetary Authority . . . regulates the financial services sector in Bermuda, providing rigorous vetting, supervision, and inspection of all financial institutions operating in or from within Bermuda. It also assists other authorities in Bermuda to detect and prevent financial crime and develops risk-based financial regulations that it applies to the supervision of Bermuda’s banks, trust companies, investment businesses, and insurance companies.

2017 *Investment Climate Statements: Bermuda*, U.S. DEP’T OF STATE, <https://www.state.gov/reports/2017-investment-climate-statements/bermuda/> (last visited July 8, 2023) [<https://perma.cc/5N2Y-NFAG>] [hereinafter 2017 *Climate Statements*].

²⁰⁰ The mission of the Bermuda Monetary Authority is “[t]o protect and enhance Bermuda’s reputation and position as a leading international financial centre, utilizing a team of highly skilled professionals acting in the public interest to promote financial stability, safeguard our currency and provide effective and efficient supervision and regulation.” *The BMA’s Role*, BERM. MONETARY AUTH., <https://www.bma.bm/the-bma-s->

sector and issues currency for the island.²⁰¹ Established in 1969, over twenty years after Bermuda began its offshore financial services operations, it “provid[es] rigorous vetting, supervision, and inspection of all financial institutions operating in or from within Bermuda.”²⁰² BMA helps to drive regulatory innovation in the financial sector, especially concerning compliance with prevailing global standards.²⁰³ For example, according to the BMA’s 2021 Annual Report, a series of new regulations were proposed for the offshore sector, an important part of which was concentrated on “new classes of registered persons and new investment activities.”²⁰⁴

Indeed, the kind of regulatory framework constructed by the Bermudian government supports the assessment that Bermuda seeks to operate within the parameters set by the international community.²⁰⁵

role#:--:text=Our%20Mission%3A,and%20efficient%20supervision%20and%20regulation (last visited Aug. 22, 2023) [<https://perma.cc/3LBT-7F98>]; see also *infra* Appendix, Table 4.

²⁰¹ 2017 *Climate Statements*, *supra* note 199 (noting that “[t]he BMA is Bermuda’s sole regulatory body for financial services, responsible for the licensing, supervision, and regulation of financial institutions conducting deposit-taking, insurance, investment, and trust business on the island”); see also *About Us*, BERM. MONETARY AUTH., *supra* note 190.

²⁰² 2017 *Climate Statements*, *supra* note 199. The BMA plays a significant role in Bermudian governance. It “manages exchange control transactions, assists other authorities in Bermuda with the detection and prevention of financial crime, and advises the Bermuda Government and other public bodies on banking and other financial and monetary matters.” BERM. MONETARY AUTH., 2021 ANNUAL REPORT 4 (2021).

²⁰³ BERM. MONETARY AUTH., *supra* note 202 (noting the various ways in which the BMA has driven innovation in the financial sector).

²⁰⁴ *Id.* at 21.

²⁰⁵ According to Dominic Thomas-James,

[I]n examining evidence of Bermuda’s legal and regulatory responses to suspect wealth, this analysis has shown that Bermuda complies with many international standards. Its cooperation and compliance record [are] evidenced by positive reviews from international monitoring bodies, including [Caribbean Financial Action Task Force (“CFATF”)] and the OECD. Across the areas measured, Bermuda demonstrates visible adherence to international standards. This is evidenced through enhanced companies register requirements, a centrally maintained beneficial ownership register with recent commitments to make it publicly accessible, [tax information exchange agreements], [Common Reporting Standards] and other international cooperation agreements. Its economic substance laws and modernised, far-

For example, in 2018, Bermuda adopted the Economic Substance Act in response to the EU's Code of Conduct Group's studies.²⁰⁶ When the EU deemed Bermuda to be attracting firms that performed no real economic activities within the jurisdiction, and that thereby primarily enjoyed profit-shifting benefits, Bermuda sought to remedy this perception.²⁰⁷

B. *British Virgin Islands*

British Virgin Islands "is part of an island chain collectively known as the Virgin Islands, which makes up the northeastern extremity of the Greater Antilles."²⁰⁸ The jurisdiction was colonized by Britain in 1672,²⁰⁹ but has a unique history of slavery²¹⁰ and emancipation.²¹¹ "[P]rior to emancipation in 1834, significant numbers of persons of African descent were free and owned land."²¹² Indeed, a portion of slaves in the territory

reaching bribery legislation demonstrate a holistic view as to how Bermuda protects its jurisdiction and financial centre from suspect wealth. Further, its regional engagement with CFATF, and its conducting several recent comprehensive NRAs, demonstrate compliance with the risk-based nature of the international AML/CFT movement.

THOMAS-JAMES, *supra* note 171, at 91- 92.

²⁰⁶ *Id.* at 88.

²⁰⁷ The new economic substance regime makes it mandatory for "every Bermuda-registered entity engaged in a relevant activity . . . to maintain a substantial economic presence in the jurisdiction The requirements stipulate that entities must file an annual economic substance declaration with the Registrar." *Id.*

²⁰⁸ *British Virgin Islands: History, Geography, and Maps*, BRITANNICA, <https://www.britannica.com/place/British-Virgin-Islands> (last visited June 23, 2023) [<https://perma.cc/8F3Y-MXD3>]. It "consists of [four] islands (Tortola, Anegada, Virgin Gorda, and Jost Van Dyke) and 32 smaller islands and islets, of which more than 20 are uninhabited." *Id.*

²⁰⁹ *Id.*

²¹⁰ In terms of demographics, "[t]he great majority of British Virgin Islanders are descendants of African slaves. Those of European descent constitute a small minority, although their number grew markedly since 1960, as the number of immigrants from the United States and Great Britain increased." *Id.*

²¹¹ Bill Maurer, *Orderly Families for the New Economic Order: Belonging and Citizenship in the British Virgin Islands*, 2 IDENTITIES 149, 151 (1995) [hereinafter *Orderly Families*].

²¹² *Id.*

had been freed as of 1750.²¹³ The departure of a large percentage of the white population after abolition left tremendous economic opportunities for Black British Virgin Islanders.²¹⁴ Some gained ownership of abandoned land through a process akin to adverse possession, while others bought property at a reduced price (presumably since the demand for plantations had diminished post-emancipation).²¹⁵ Some residents turned to “growing provision crops on their lands and trading vegetables and cattle for manufactured goods in the nearby Danish colony (and later, [the] U.S. Virgin Island[s]) of St. Thomas.”²¹⁶ Others moved to nearby islands to work on sugar plantations, construction projects, oil fields, and in factories.²¹⁷ This functional independence from Britain would continue into the twentieth century, at which point British Virgin Islanders cultivated an offshore financial sector.²¹⁸

1. Investment Promotion

A merchant class arose in British Virgin Islands during the early post-World War II period²¹⁹ and helped to build the jurisdiction’s post-plantation economy.²²⁰ A few decades later, in the 1980s, British Virgin Islands entered the offshore finance arena,²²¹ which was much later than places such as Bermuda and Cayman Islands.²²² Like other OFCs, British Virgin Islands’ offshore adventure began with the crafting of legislation — “The International Business Companies Ordinance of 1984”

²¹³ Anthropologist Bill Maurer notes that “[t]he territory was settled by Quakers, many of whom freed their slaves by 1750 and granted them rights to land in perpetuity.” *Id.*

²¹⁴ *See id.*

²¹⁵ *Id.*

²¹⁶ *Id.* at 152.

²¹⁷ *Id.* (discussing the various places that British Virgin Islanders migrated to).

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Connell, *supra* note 11, at 89.

²²² PALAN ET AL., *supra* note 154, at 126-28; PHILLIPS, *supra* note 12, at 126.

(“IBCO”).²²³ But this legislation had dual significance. It represented an opportunity for economic progress and a means of expressing national identity.²²⁴

British Virgin Islands’ political leaders proudly claim the IBCO as a unique product of the jurisdiction and its people.²²⁵ Indeed, they suggest that “now other countries copy their laws.”²²⁶ Importantly, the content of the legislation isn’t as critical as the fact of authorship.²²⁷ Based on a detailed anthropological study of British Virgin Islands, Professor Bill Maurer notes that the larger British Virgin Islands population: “[has] no idea what an [International Business Company] is or how one works, much less how IBCs contribute to the government coffer.”²²⁸ Indeed, “[p]eople [vaguely] refer to all aspects of the offshore financial services sector [] as ‘trust company business’ or ‘the banks.’ What is important to [British Virgin Islanders’] everyday discourse is not what the IBCO says or does; what is important is that it is ‘ours’ and ‘our own.’”²²⁹

In British Virgin Islands, an identity construction similar to that described by environmental sociologists in West Virginia’s coal industry

²²³ Maurer, *Writing Law*, *supra* note 11, at 275 (noting that “[t]he International Business Companies Ordinance of 1984, in addition to being touted as the first truly local law of the BVI, heralded a new era in offshore financial services worldwide”).

²²⁴ *Id.* at 276.

²²⁵ *Id.* (noting that BVI sees itself as going “from being imitators to being the source” of novel legislation).

²²⁶ *Id.* (noting that “the IBCO has become the benchmark against which to measure all new legislation coming through the Legislative Council”).

²²⁷ *Id.* Professor Maurer argues that “[a]lthough the BVI is a colony and therefore not a ‘nation,’ its people do claim a ‘national’ identity as a distinct ‘people’” Maurer, *Orderly Families*, *supra* note 211, at 163. Further:

In the BVI, the self-authoring of law, heralded as historic for the nation, has encouraged the marketing of the BVI as a unique and distinctive jurisdiction in the worlds of tourism and transnational finance. The fact of authorship of the laws, often without regard for their content, has been crucial to the articulation of a BVI national identity.

Maurer, *Writing Law*, *supra* note 11, at 259.

²²⁸ *Id.* at 276.

²²⁹ *Id.*

has occurred.²³⁰ But in the case of British Virgin Islands, the identity construction has arguably emerged from the local community rather than being imposed from corporate or foreign interests.²³¹ Signs of the offshore sector are all around.²³² They exist in commercial buildings throughout the territory, such as trust companies, law firms, and consulting offices.²³³ Newspapers discuss the matters of importance to the international business companies. And in the homes, at least in the 1990s, families saw the offshore sector as a place for their children to find employment and long-term careers.²³⁴ And, in the 1980s, “the government revenue generated by the offshore finance sector also allowed for the expansion of the civil service and made loans more easily obtainable by citizens with property.”²³⁵

²³⁰ See *id.* at 277 (noting that “although most people have no idea what goes on inside ‘the trust companies,’ they cannot miss the public presence of the world of international finance in the BVI”).

²³¹ Of course, some commentators have argued that offshore finance was introduced to UKOTs and British ex-colonies by the City of London as part of a larger web of international finance that it benefits directly from. See SHAXSON, *supra* note 6, at 87-106.

²³² Writing in the 1990s, Professor Maurer explained that:

New buildings housing lawyers and consultants are springing up throughout the capital city of Road Town. The road coming from the east into this town of 8,000 is flanked on both sides by these new ‘trust company’ buildings, and the seaward façade of Main Street is dominated by two such structures. Each week, 1 to 3 pages of each of the BVI’s two 20-page weekly newspapers are taken up by IBC incorporation and dissolution notices.

Maurer, *Writing Law*, *supra* note 11, at 277-78.

²³³ *Id.*

²³⁴ Again, as with the coal industry in West Virginia, young people see the international business sector as viable and as a natural source of a social and economic future. Professor Maurer observed in the 1990s that:

High school students see ‘working for the trust companies’ as lucrative, prestigious, and glamorous — even when the only jobs available for them are limited to front-end office work. Indeed, teachers bemoan the fact that the best and the brightest of the BVI High School are looking to ‘the banks’ for careers, instead of pursuing vocational training or college degrees. People who get ‘trust company’ jobs, meanwhile, are relatively highly paid and so themselves make the best advertisement for the ‘trust company’ career path.

Id. at 278.

²³⁵ Maurer, *Orderly Families*, *supra* note 211, at 152.

Today, British Virgin Islands' government actively promotes its offshore financial services sector.²³⁶ According to the official government website, the jurisdiction's economy comprises of financial services, tourism, agriculture, and fishing.²³⁷ One area of recent attention in the legal scholarship is British Virgin Islands' financial ties to China. For example, Professor Moon notes that "British Virgin Islands is the second largest foreign direct investor into mainland China."²³⁸ This status is arguably the result of "shrewd marketing."²³⁹ In addition to generally attractive tax and governance rules that have led British Virgin Islands to be a "default choice in Hong Kong and later in China," the jurisdiction has done more to make itself attractive to Chinese investors.²⁴⁰ Specifically, it has invested in "[b]espoke legislation, such that specifically designed for foreign joint ventures investing in China."²⁴¹ According to one commentator, this approach has preserved the jurisdiction's advantage with Chinese investors.²⁴² British Virgin Islands also works with "intermediaries in Asia" who help to direct firms to the jurisdiction.²⁴³ Indeed, another commentator notes that "over 40% of all assets managed by [British Virgin Islands] companies can be traced back to Mainland Chinese and Hong Kong capitalists."²⁴⁴

²³⁶ See *Our Economy*, GOV'T OF THE VIRG. IS., <https://bvi.gov.vg/content/our-economy> (last visited July 9, 2023) [<https://perma.cc/TZ2V-RXCE>].

²³⁷ *Id.*

²³⁸ Moon, *Delaware's Global Competitiveness*, *supra* note 10, at 1710 n.126, 1715 (noting that "Chinese companies routinely claim foreign issuer exemptions, often claiming that their 'home' country is the Cayman Islands or the British Virgin Islands"); see also Ken Davies, *While Global FDI Falls, China's Outward FDI Doubles*, 1 *TRANSNAT'L CORPS. REV.*, no. 4, 2009, at 20, 21.

²³⁹ J.C. Sharman, *Chinese Capital Flows and Offshore Financial Centers*, 25 *PAC. REV.* 317, 328 (2012).

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² See *id.*

²⁴³ Justin Robertson, *Global Financial Networks Confront Headwinds: China's Shifting Offshore Relationship with the British Virgin Islands*, 34 *PAC. REV.* 177, 182 (2021) (referencing a study that "found that over 70% of offshore business in the [British Virgin Islands] comes via intermediaries").

²⁴⁴ *Id.* at 178.

2. Economic Competition

British Virgin Islands is viewed as “one of the leading offshore financial [centers], principally because of the demand internationally for [its] business companies.”²⁴⁵ But competition has been a central feature of the jurisdiction’s development and success. The British origins of offshore financial centers among the British ex-colonies and UKOTs have shaped competition among these jurisdictions.²⁴⁶ And inter-jurisdictional competition has in turn shaped the character of the legal regimes and services offered in each territory.²⁴⁷ Much of British Virgin Islands’ competition is for incorporations, but the jurisdiction offers other services beyond incorporations.²⁴⁸ For example, “[British Virgin Islands] is also a significant offshore domicile for mutual funds,” where it competes with Cayman Islands.²⁴⁹

British Virgin Islands has had to be innovative to attract firms to their shores, rather than to the shores of Bermuda, Cayman Islands, or Delaware. Where competitors offer suites of regulations, British Virgin Islands has sought to offer more competitive alternatives.²⁵⁰ According to one commentator, when competitors such as “Jersey, Guernsey, Panama[] charged minimal income tax on investments earnings or mandated that boards of directors meet once a year on tax haven soil,” British Virgin Islands took another approach.²⁵¹ By declining to place either of “these constraints on offshore investors, [British Virgin Islands] rapidly rose to prominence among the world’s tax havens.”²⁵²

²⁴⁵ Michael J. Burns & James McConvill, *Navigating the Highs and Lows of the British Virgin Islands as an International Offshore Financial Centre: The Strengths, Weaknesses, Opportunities and Threats*, 7 ORIGINAL L. REV. 105, 105 (2011).

²⁴⁶ SHAXSON, *supra* note 6, at 87-106 (discussing the origins of offshore financial centers in the Commonwealth Caribbean).

²⁴⁷ See Clegg & Gold, *supra* note 28, at 128-29 (discussing the various offshore finance expertise of Bermuda, British Virgin Islands, and Cayman Islands).

²⁴⁸ Burns & McConvill, *supra* note 245, at 105-106. (noting that “[British Virgin Islands] is the envy of many ‘competitor’ offshore financial centres — particularly those that have popped up across the globe in the last few years to try to gain a piece of the large (and lucrative) BVI incorporations pie”).

²⁴⁹ *Id.* at 106.

²⁵⁰ Maurer, *Writing Law*, *supra* note 11, at 276.

²⁵¹ *Id.* at 275-76.

²⁵² *Id.* at 276.

The jurisdiction also used a second strategy to attract investors. Local leaders promoted British Virgin Islands as a well-governed jurisdiction that is a safe place for investors to put their money and contrasted the quality of their governance with those of politically “unstable” jurisdictions.²⁵³

3. Institutional Investments

a. *British Virgin Islands Commercial Court*

Like Bermuda, British Virgin Islands hosts a specialist Commercial Court, which resolves commercial disputes.²⁵⁴ However, there is a difference between Bermuda’s Commercial Court and British Virgin Islands’ Commercial Court. As an initial matter, British Virgin Islands is part of a group of nine small islands that utilize the Eastern Caribbean Supreme Court (“ECSC”).²⁵⁵ Historically, the ECSC heard all commercial disputes for all member islands.²⁵⁶ But “recognising that the volume of commercial matters generated by the financial services sector in [British Virgin Islands] was threatening to overwhelm two resident High Court Judges, a decision was taken to establish a commercial division of the [ECSC] in [British Virgin Islands].”²⁵⁷ The creation of the

²⁵³ Maurer, *Orderly Families*, *supra* note 211, at 162 (discussing how BVI “[t]rade publications urge investors to avoid jurisdictions with ‘unstable’ governments”).

²⁵⁴ Burns & McConvill, *supra* note 245, at 108; *see also infra* Appendix, Table 4.

²⁵⁵ *See* Hélène Anne Lewis, *BVI Commercial Court Enhances Jurisdiction’s Profile*, IFC REV. (Oct. 1, 2011), <https://www.ifcreview.com/articles/2011/october/bvi-commercial-court-enhances-jurisdiction-s-profile/> [<https://perma.cc/S6B7-FWGJ>] (discussing the history of the Commercial Court in BVI); *see also Brief History of the Court*, E. CARIBBEAN SUP. CT., <https://www.eccourts.org/brief-history-of-the-court/> (last visited July 9, 2023) [<https://perma.cc/33AK-QNN2>]. Lewis notes that the High Court and Court of Appeal judges “sit[] on a rotational basis in each of the nine jurisdictions during the court year . . .” Lewis, *supra*. The Eastern Caribbean Supreme Court is funded by an allotment from the “individual member countries’ national budget.” *OECS Examining Possibility of Establishing Trust Fund to Finance Regional Court*, OBSERVER (Nov. 7, 2018), <https://antiguaobserver.com/oecs-examining-possibility-of-establishing-trust-fund-to-finance-regional-court/> [<https://perma.cc/JKC4-GMCW>]. But more recently it was determined that the funds received from the member countries was too low to support the court and it was suggested that a trust fund might be a way to finance the institution. *Id.*

²⁵⁶ *See* Lewis, *supra* note 255.

²⁵⁷ *Id.*

Commercial Court in British Virgin Islands has been linked to the jurisdiction's prominence in the international finance sphere.²⁵⁸ One sitting judge presides over commercial cases.²⁵⁹ The Commercial Court is also fitted with the technology necessary to efficiently resolve disputes.²⁶⁰

b. Financial Services Commission

In addition to the judicial capacity to resolve commercial disputes, British Virgin Islands has also created a Financial Services Commission

²⁵⁸ Burns & McConvill, *supra* note 245, at 108. According to scholars:

As a demonstration of the BVI's status as the leading financial center in the Eastern Caribbean region, in April 2009 the specialist Commercial Court (a division of the Eastern Caribbean Supreme Court) was established in the BVI to hear commercial disputes from the [nine] Eastern Caribbean jurisdictions (Anguilla, Antigua & Barbuda, Dominica, Grenada, Montserrat, St. Kitts & Nevis, St. Vincent, St. Lucia and the BVI).

Id. at 108. Omonike Robinson-Pickering also notes that "One of the reasons the BVI was chosen by the [Eastern Caribbean Supreme Court] . . . was the realization that over the years the BVI has been the jurisdiction of choice for international commercial matters." Omonike Robinson-Pickering, *The New Commercial Court Opens in the British Virgin Islands*, 16 TRS. & TRS. 60, 61 (2010).

²⁵⁹ See *Supreme Court (High Court)*, GOV'T OF THE VIRG. IS., <https://bvi.gov.vg/supreme-court-high-court> (last visited July 9, 2023) [<https://perma.cc/4G2G-JUJ8>]. "The Court's first judge, Edward Bannister QC, was a highly experienced silk at the Chancery bar in England before joining the Commercial Court." Burns & McConvill, *supra* note 245, at 108. One commentator further notes that "[British Virgin Islands] lawyers are drawn from the UK's Top Tier firms and the English and West Indian Bars. Leading English Queen's Counsel are also frequently admitted to practice in the BVI in the increasing number of complex cases which are heard by its courts." Robinson-Pickering, *supra* note 258, at 61.

²⁶⁰ In 2009, "[a] dedicated building was constructed to house the Commercial Court . . . with state of the art facilities including video link and transcription technology." Burns & McConvill, *supra* note 245, at 108. Further, "[t]he building is completely soundproof and the design was created by specialist court design experts in London." Robinson-Pickering, *supra* note 258, at 60. According to Burns and McConvill, "[f]rom all accounts, the Commercial Court has been a tremendous success, and has become well known and respected in international quarters in the rather short time since it was established." Burns & McConvill, *supra* note 245, at 108.

(“Commission”) to oversee its financial services sector.²⁶¹ The Commission was created in 2001,²⁶² almost twenty years after the jurisdiction began its offshore financial services operations.²⁶³ Among other things, its mission is to ensure that British Virgin Islands is “a well-regulated international finance [center]” and to protect the “general public and market participants” from crime and illegitimate business activities.²⁶⁴ The Commission has jurisdiction over a wide range of activities touching on financial services: “insurance, banking, fiduciary services, trustee business, company management, investment business, and insolvency services, as well as the registration of companies, limited partnerships[,] and intellectual property.”²⁶⁵ A key goal of the Commission is to help the public to understand how the financial sector works to gain an appreciation for the types of products available — akin to a consumer protection function.²⁶⁶ In addition to a governing board composed of individuals from various professional backgrounds, the Commission must provide “regular report[s] to the Premier, Virgin Islands Cabinet and House of Assembly.”²⁶⁷

C. Cayman Islands

Cayman Islands has its own unique offshore finance development success story. The jurisdiction came under British rule in 1670, and was

²⁶¹ See *About Us*, BRITISH VIRG. IS. FIN. SERVS. COMM’N, <https://www.bvifsc.vg/content/about-us> (last visited July 9, 2023) [<https://perma.cc/7LUL-258M>] [hereinafter *About Us*, BRITISH VIRG. IS. FIN. SERVS. COMM’N] (noting that the Financial Services Commission was created in 2001 and is “an autonomous regulatory authority responsible for the regulation, supervision, and inspection of all financial services in and from the BVI”).

²⁶² *Id.*

²⁶³ See *infra* Appendix, Table 1.

²⁶⁴ *Mission*, BRITISH VIRG. IS. FIN. SERVS. COMM’N, <https://www.bvifsc.vg/mission> (last visited July 9, 2023) [<https://perma.cc/EN4R-NVYF>]; see also *infra* Appendix, Table 4.

²⁶⁵ *About Us*, BRITISH VIRG. IS. FIN. SERVS. COMM’N, *supra* note 261.

²⁶⁶ *Functions*, BRITISH VIRG. IS. FIN. SERVS. COMM’N, <https://www.bvifsc.vg/functions> (last visited Sept. 15, 2023) [<https://perma.cc/Y2TG-D25Z>].

²⁶⁷ *Accountability*, BRITISH VIRG. IS. FIN. SERVS. COMM’N, <https://www.bvifsc.vg/accountability> (last visited July 9, 2023) [<https://perma.cc/NW7B-NGTM>].

governed from the larger island colony of Jamaica between 1863–1962.²⁶⁸ Unlike Jamaica and several other Caribbean islands, however, Cayman Islands was not one of the “farming colonies of sugar and slaves.”²⁶⁹ Consequently, the usual colonial format, whereby settlers from Britain would travel to the islands and develop institutions around slavery and sugar production was conspicuously absent.²⁷⁰ In terms of the early economy, “turtle fishing and boat building” served as the major commercial activities.²⁷¹ In short, due to its lack of economic potential, the territory was not one of Britain’s most valued colonial prizes in the Caribbean region.²⁷² Nevertheless, Cayman Islands found a way to promote economic growth and surpass many of its island neighbors in the decades following the early 1960s.²⁷³

1. Investment Promotion

Cayman Islands’ local leaders have managed to skillfully transition the territory from a place known for the commercial activities of fishing and boat building to a major international financial center.²⁷⁴ Professors Tony Freyer and Andrew Morriss have argued that “Cayman was unusual, however, because its government constructed a financial regulatory system that enabled the territory to achieve more economic development and diversification than its peers, bringing it the highest per capita wealth in the Caribbean and putting Cayman on par with the

²⁶⁸ Fergus, *supra* note 12, at 2. According to Howard Fergus, “the Cayman Islands share the dubious distinction of being a colony of colony with Anguilla and the Turks and Caicos Islands.” *Id.*

²⁶⁹ *Id.*

²⁷⁰ Howard Fergus notes that “Cayman Islands were decidedly not a sugar colony and the usual process of the advent of small[,] advanced party of white settlers followed by an influx of African slave hands . . . did not apply.” Fergus, *supra* note 12, at 2. Fergus further notes that “in 1830, that is eight years before emancipation, the Islands had only 1500 slaves.” *Id.* at 3. In 1828, the white population amounted to 350. *Id.* This was different from other colonies such as Montserrat, which had a larger slave population of 7,500 compared to “only 315 whites.” *Id.*

²⁷¹ Fergus, *supra* note 12, at 2.

²⁷² *See id.*

²⁷³ *See id.*

²⁷⁴ Freyer & Morriss, *supra* note 17, at 1300.

prosperity of Britain.”²⁷⁵ According to these scholars, the territory’s business and political leadership have structured a form of “collaborative policy-making process that involved local leaders, expatriate professionals, and British officials” to effectively build and market the jurisdiction’s offshore sector.²⁷⁶

For example, Cayman’s Legislative Assembly implemented its Companies Law during the 1961–1962 period, with the specific goal of gaining access to the international business sector.²⁷⁷ There was an economic impetus for this. By 1959, Cayman Islands’ ties with Jamaica had been severed, and there was a pressing need to secure the territory’s economic future.²⁷⁸ At this juncture, Cayman Islands actively sought “to secure sufficient legal and fiscal autonomy from Britain while creating a climate of fiscal stability that could attract business and fund the infrastructure necessary for both business and development.”²⁷⁹ Based on strong societal support for a continued affiliation with Britain after Jamaica achieved political independence, the jurisdiction negotiated with the metropole for more self-government.²⁸⁰ Greater legislative authority afforded Cayman Islands the ability to adopt legislation that would bolster offshore financial services.²⁸¹

Ultimately, Cayman Islands’ “1960 Companies Law [began to promote] foreign investment, replacing Jamaican incorporation with the Cayman registration of firms.”²⁸² Cayman’s Financial Secretary in the early 1970s, Vassel Johnson, played an important role in cultivating the early offshore financial services sector by coordinating public and private parties toward identifying, crafting, and implementing the most attractive policies for investors.²⁸³ For example, lawyers James

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 1297.

²⁷⁷ *Id.* at 1317.

²⁷⁸ *Id.*

²⁷⁹ *Id.* 1316–17.

²⁸⁰ *Id.* at 1319.

²⁸¹ *Id.*

²⁸² *Id.* at 1316.

²⁸³ See JOHNSON, *supra* note 11, at 103–226; Fryer & Morriss, *supra* note 17, at 1327, 1339.

MacDonald and William Walker,²⁸⁴ both originally from Canada, visited the territory in the 1960s and eventually moved there to engage with the nascent offshore sector.²⁸⁵ In the case of MacDonald, he “soon became a Cayman resident, and began to aggressively promote Cayman’s [status as an OFC].”²⁸⁶ Walker contributed to the creation of Cayman’s “Trust Companies Regulation Law (copied from The Bahamas) and the Trusts Law (drafted with an English barrister, Milton Grundy).”²⁸⁷

The efforts made by MacDonald and Walker and other professionals and entrepreneurs to craft an international business identity for Cayman are noteworthy. Undoubtedly, these business leaders were interested in their own economic advancement, but the territory benefitted from their collective determination and entrepreneurial spirit.²⁸⁸ Consider that in the early 1960s there was little development on the island, including major infrastructure, proper communication technologies, or legal institutions.²⁸⁹ But the need for economic and physical development, as well as self-determination is precisely the reason the offshore sector has deep meaning to Cayman’s population.²⁹⁰ In a 1981 Budget speech, Secretary Johnson noted that every Caymanian had ties to the offshore financial sector because the sector drove

²⁸⁴ Walker was actually “born in British Guiana and educated in Barbados before studying law at Cambridge University and in London” before practicing law in Canada. Freyer & Morriss, *supra* note 17, at 1326.

²⁸⁵ *Id.* at 1320.

²⁸⁶ *Id.* at 1316.

²⁸⁷ *Id.* at 1326.

²⁸⁸ For example, MacDonald has been credited with the growth of the early offshore sector. Freyer and Morriss note that “[t]he number of Caymanian-registered companies increased steadily: The 1960 Companies Law promoter MacDonald’s registered firms grew from 20 to ‘hundreds’ in a few years.” *Id.* at 1330.

²⁸⁹ According to Professor’s Freyer and Morriss, at one point Walker noted that when he arrived in Cayman there were “[c]ows wandering through Georgetown, only one bank, only one paved road, and no telephones.’ There were just three other lawyers on the islands and ‘almost no Caymanian law, a dearth of legislation,’ and no attorney general (‘instead a magistrate on contract’).” *Id.* at 1326.

²⁹⁰ Quoting Cayman’s “Ten-Year National Strategic Plan” for 1999-2008, Howard Fergus noted: “[t]he aim of this growth management plan is ‘to achieve a balance between accommodating growth and preserving what is desirable in a country’s character, environment and quality of life.’” Fergus, *supra* note 12, at 9.

economic activity throughout the island.²⁹¹ For example, Secretary Johnson stated that even “the ‘many’ seamen who ‘went into construction’ also had a stake in the ‘financial industry’ since it ‘demanded buildings.’”²⁹² As in the case of extractive sectors such as coal mining,²⁹³ the offshore sector is present throughout the Caymanian society — and not only in the lives of a wealthy few. Yet another Financial Secretary, T.C. Jefferson, would emphasize that “[c]onsiderable employment is generated in accountancy and law firms and in other companies providing financial services.”²⁹⁴ Accordingly, “[t]he benefit is felt in every sector of the economy, whether it be trade, real estate, or hotels and restaurants.”²⁹⁵

2. Economic Competition

While Cayman Islands had a roughly two-decade lead over British Virgin Islands, it was a relative latecomer when compared to other jurisdictions in the offshore arena.²⁹⁶ For example, The Bahamas and Bermuda were ahead of Cayman by several years. Indeed, in the case of The Bahamas, offshore banking had emerged in the 1930s.²⁹⁷ But “[o]ver several decades, Cayman created a political system that enabled it to successfully compete in world financial markets for transactions, participate in major international efforts to control financial crimes, and avoid the political, economic, racial, and social problems that plague many of its Caribbean neighbors.”²⁹⁸ But in the 1940s Cayman Islands lacked basic institutions, such as a local newspaper or secondary schools

²⁹¹ See Freyer & Morriss, *supra* note 17, at 1355.

²⁹² *Id.*

²⁹³ See Bell & York, *Community Economic Identity*, *supra* note 23, at 120 (discussing how the coal industry in Central Appalachia touches on most aspects of the daily lives of residents).

²⁹⁴ Freyer & Morriss, *supra* note 17, at 1359 (citing HC Deb (19 Nov. 1982) at 15 (Cayman Is.)).

²⁹⁵ *Id.*

²⁹⁶ *Id.* at 1316.

²⁹⁷ PALAN ET AL., *supra* note 154, at 127.

²⁹⁸ Freyer & Morriss, *supra* note 17, at 1297.

for its young people.²⁹⁹ However, Cayman managed to catch up with its competitors by creating attractive tax legislation and incorporations — by way of the “English Companies Act,” which protected the individual.³⁰⁰ “[B]y 1968, the collaborative policy making [process] enabled Cayman to seize a competitive advantage.”³⁰¹ Cayman benefitted from the turn of events in The Bahamas in the late 1960s.³⁰² Post political independence, The Bahamas experienced some racial tensions and key members of its financial community left the island — undermining the offshore sector.³⁰³ Cayman took advantage of the apparent chaos in The Bahamas to do several key things. First, it swiftly adopted the “Banks and Trust Companies [Regulation] Law” to lure investors to the territory.³⁰⁴ Cayman then promoted itself as the safe alternative to The Bahamas.³⁰⁵ In the end, “[m]any firms shifted operations to Cayman.”³⁰⁶ Fortunately for Cayman, it — like Delaware — was ready to service the new influx of clients.³⁰⁷

²⁹⁹ See, e.g., Fergus, *supra* note 12, at 11 (noting that Cayman lacked a local newspaper and secondary schools in the 1940s). “In contrast, Montserrat had the *Montserrat Herald* in 1898 and *Jack Spaniard* before that, both edited by [B]lack middle-class Montserratians; and secondary schools had emerged in the British Leeward Islands generally between 1884 and 1928.” *Id.*

³⁰⁰ Cayman was also not first to the incorporations game. “Cayman was entering an existing international business. For example, the Bahamas, Bermuda, and the Channel Islands had been in the registry business for tax purposes since the 1930s, and Switzerland, Liechtenstein, and Luxembourg had been since the 1920s.” Freyer & Morriss, *supra* note 17, at 1315-16.

³⁰¹ *Id.* at 1328.

³⁰² See *id.* at 1329 (discussing the some of the criminal activities alleged to have been present in The Bahamas at the time).

³⁰³ According to commentators, there were tensions between the new Bahamian government, of which a majority of its members were Black, and “white business elites” led to “an exodus of financial industry firms from the Bahamas.” *Id.* at 1328-29.

³⁰⁴ *Id.*

³⁰⁵ According to one perspective, “Cayman saw a chance to distinguish itself, focusing on being a ‘clean spot’ in contrast to the Bahamas, where unrest surrounding Bahamian independence and some taint of the casinos in Nassau, ‘which were often suspected of money laundering,’ made foreigners suspicious.” *Id.* at 1328.

³⁰⁶ *Id.* at 1329.

³⁰⁷ In describing the events, William Walker noted that as turmoil in The Bahamas unfolded, the expatriate community “packed up their files and companies and money and left and we, under fortunate circumstances, were ready.” *Id.* at 1329.

3. Investments

a. *Specialized Commercial Court*

As Cayman Islands' offshore financial sector grew in the 1970s and 1980s, it became apparent that it required a robust regulatory framework to sustain it.³⁰⁸ Cayman has sought to ensure that both the appropriate laws and institutions are in place to support international business. With respect to legal institutions, in 2009 Cayman created a Commercial Court — the Financial Services Division (“FSD”) of the Grand Court³⁰⁹ — to manage the disputes stemming from the offshore sector.³¹⁰ The FSD has jurisdiction over “proceedings relating to mutual funds, exempt insurers, contracts of insurance, regulatory laws, administration actions and trust claims, company matters (including winding-up), partnership disputes, claims against professional service providers and arbitration claims.”³¹¹ Professor Pamela Bookman explains that “[w]hile this subject-matter requirement seems to restrict cases to those involving Cayman Islands registered companies, it should be remembered that the Cayman Islands is a magnet incorporation jurisdiction for companies whose principals, employees, and places of

³⁰⁸ Former financial secretary for the Cayman Islands, Vassel Johnson, noted that it was crucial that government provides keen oversight of the financial sector to enable its effective growth. *Id.* at 1335.

³⁰⁹ In Cayman Islands, “[t]he Grand Court is a Superior Court of Record of First Instance, having unlimited jurisdiction in both criminal and civil matters and the FSD is a separate division within the Grand Court.” *Cayman Islands*, STANDING INT’L F. OF COM. CTS., <https://sifocc.org/countries/cayman-islands/> (last visited July 3, 2023) [<https://perma.cc/NMX4-SCDV>].

³¹⁰ *Id.* (noting that “[t]he Financial Services Division of the Grand Court [of Cayman] (the FSD) was created in 2009 in recognition of the need for special procedures and skills for dealing with the more complex civil cases that arise out of the financial sector in the Cayman Islands”); see also Moon, *Delaware’s New Competition*, *supra* note 4, at 1438; *infra* Appendix, Table 4.

³¹¹ *Cayman Islands*, *supra* note 309.

business are located elsewhere.”³¹² This makes many of the disputes before the FSD transnational in nature.³¹³

In terms of judges, the FSD has seven judges who are “business law experts.”³¹⁴ Half of these judges are full-time and the other half part-time.³¹⁵ In terms of institutional design, there are key bureaucratic positions that support the Commercial Court, including a Registrar and a Listing Officer.³¹⁶ The institutional structure of the FSD “closely resemble[s] the London Commercial Court,” but only lawyers admitted to practice in Cayman are allowed to appear “before the courts, except if accompanied by a local lawyer.”³¹⁷ The Judicial Committee of the Privy Council in London hears final appeals.³¹⁸

³¹² Pamela Bookman notes that “Bermuda, the British Virgin Islands, and the Cayman Islands, the place of incorporation for many foreign firms, have established new business courts that ‘look a lot like commercial arbitration.’” Pamela K. Bookman, *Arbitral Courts*, 61 VA. J. INT’L L. 161, 165 (2021). Professor Bookman further notes that “[f]or some of these categories, the amount in controversy must exceed CI\$1 million (approximately US\$1.2 million in February 2021).” *Id.* at 198.

³¹³ *Id.* at 198.

³¹⁴ Bookman, *supra* note 312, at 199; *Cayman Islands*, *supra* note 309. Professor Bookman notes that the judges are “not necessarily Cayman nationals. The former Chief Justice of Bermuda is an FSD judge, as is a Malaysian-born British national and a Turks and Caicos Belonger who was previously a judge in that country.” Bookman, *supra* note 312, at 199.

³¹⁵ *Cayman Islands*, *supra* note 309.

³¹⁶ See Bookman, *supra* note 312, at 198 n.230 (noting that the FSD was established to “meet the needs of large scale and complex litigation which require courts to respond to the need of urgent applications often with an international dimension”).

³¹⁷ *Id.* at 199.

³¹⁸ *Id.* According to Professor Bookman:

The FSD’s procedures are modeled after the London Commercial Court’s, and are responsive to user’s needs in the aggregate, even if not more than usual in a particular court proceeding. Like many arbitral courts, an elite group of lawyers designed the procedures. A User’s Committee continues to meet regularly to review “developments and the operation of the FSD.” As a result, the procedures tend to mimic English common law and also reflect the interest of the firms’ corporate clients. For possible disputes where such clients might be on both sides of the “v,” this system may yield fair and efficient proceedings. But in other contexts, the results may be more slanted.

Id.

b. *Cayman Islands Monetary Authority*

The Cayman Islands Monetary Authority (“CIMA” or “Authority”) oversees the territories’ financial sector. CIMA was created by legislation and began its operations in 1997, approximately three decades after the Cayman Islands began its foray into offshore financial services.³¹⁹ This suggests that, as in Bermuda and British Virgin Islands, the jurisdiction’s offshore sector was sufficiently entrenched before it invested in building the current form of the regulatory agency. CIMA is a “merger of the Financial Services Supervision Department of the Cayman Islands Government and the Cayman Currency Board” and assumed the former responsibilities, duties, and activities of these two bodies.³²⁰ One key reason for CIMA’s creation and continued existence is to protect Cayman’s reputation.³²¹ Indeed, CIMA is seen as a “regulatory innovation that [is] aimed to secure Cayman’s future competitive advantage.”³²² Notwithstanding Cayman’s collaborative policy making process, there has been concern that domestic politics could interfere with the international business sector, especially as the territory has developed local political parties.³²³ To this end, CIMA has “operational independence”:³²⁴ (1) it issues the territory’s currency;

³¹⁹ See Freyer & Morriss, *supra* note 17, at 1376 (noting that “CIMA was created after the early-1990s global collapse of the Luxembourg-chartered Bank of Commerce and Credit International (‘BCCI’) led to increased demands from governments, NGOs, and bankers for more effective financial regulation . . .”).

³²⁰ *About Us*, CAYMAN IS. MONETARY AUTH., <https://www.cima.ky/about-us> (last visited July 4, 2023) [<https://perma.cc/T63W-4Q2V>].

³²¹ Freyer & Morriss, *supra* note 17, at 1369 (noting that “[c]oncerns about maintaining Cayman’s positive reputation undoubtedly influenced incorporation of [the Financial Services Department (FSSD)] into the new [CIMA]”).

³²² *Id.*

³²³ *Id.* at 1376 (noting that “[a] critical step amidst the evolution from team to party politics was the further insulation of the financial regulatory system from politics”).

³²⁴ CAYMAN IS. MONETARY AUTH., *REGULATORY HANDBOOK* 63 (2017), <https://www.cima.ky/upimages/commonfiles/1499504698Feb2017-RHBAppendices.pdf> [<https://perma.cc/WWJ7-KM73>]. Professors Freyer and Morriss remark that:

CIMA quickly established an international reputation for effective financial regulation. . . . CIMA also adapted institutional independence to the government’s preexisting collaborative policymaking. Thus, among its “priorities” the Authority began “intensive discussions with Cayman’s private

(2) it ensures that financial services are undertaken according to applicable regulations; (3) it cooperates with “overseas regulatory authorities;” and (4) provides advice regarding “monetary, regulatory, and cooperative matters.”³²⁵ CIMA has developed such a strong reputation for its regulatory oversight of Cayman’s financial sector that Cayman is said to serve as a model for other UKOTs in the Caribbean region.³²⁶

IV. THE NON-DOMINANT OFFSHORE UKOTs IN THE CARIBBEAN

Beyond the Market Dominant UKOTs of Bermuda, British Virgin Islands, and Cayman Islands, three other Caribbean island Offshore UKOTs are known to be offshore financial centers: Anguilla, Montserrat, and Turks and Caicos Islands.³²⁷ Between the end of the 1970s and the beginning of the 1980s, these jurisdictions saw it profitable to pursue offshore finance as a growth strategy.³²⁸ By this time frame, models for the Caribbean offshore enterprises had already existed in The Bahamas, Bermuda, and Cayman Islands, and the governments in jurisdictions that were would-be competitors

sector. In order to remain conversant with their issues and concerns, the Authority maintains an open door policy to all institutions operating within [Cayman’s] financial industry to enable dialogue and monitoring of financial issues as they arise.”

Freyer & Morriss, *supra* note 17, at 1378.

³²⁵ CAYMAN IS. MONETARY AUTH., CIMA FACTS: OVERVIEW OF THE CAYMAN ISLANDS MONETARY AUTHORITY 1 (2017), https://www.cima.ky/upimages/publicationdoc/CIMAFacts-Septemb_1594603684.pdf [<https://perma.cc/QU7C-G2GP>].

³²⁶ See Freyer & Morriss, *supra* note 17, at 1377. According to Professors Freyer and Morriss:

For decades British officials required other Caribbean dependencies “to follow the Cayman Islands precedent. In the case of money laundering, Bermuda, the Channel Islands, and the Isle of Man are also following the Cayman Islands’ ‘lead.’ Most of the independent countries have adopted or are in the course of adopting broadly similar legislation.”

Id.

³²⁷ See, e.g., Marshall, *supra* note 6, at 259 (listing major offshore financial centers, including several Caribbean islands).

³²⁸ See, e.g., *id.* at 260-62 (noting how states in the Caribbean built “sophisticated legal and financial infrastructure to facilitate import-trading activities”).

coordinated with investors to provide the type of legal and institutional environment that would be attractive to foreign investment.³²⁹ And, while the Offshore UKOTs have achieved some limited success, the offshore financial sector appears less entrenched in their societies. Indeed, the offshore sector contributes less in terms of GDP per capita or in terms of revenue to each country when compared to the Market Dominant UKOTs.³³⁰

All three Offshore UKOTs had agriculture and slave economies beginning in the 1600s and 1700s and required a more diversified economic structure in modern times.³³¹ In the case of these jurisdictions, one or more of the factors that reflect a commitment to offshore financial services are either underdeveloped or missing. Specifically, investment promotion, inter-jurisdictional competition, and institutional investments are relatively weak in comparison to the Market Dominant UKOTs.³³² I discuss each of these three indicators in turn below. I suggest that internal and external factors have made it difficult for an offshore finance CEI to develop in these jurisdictions. In turn, the quality institutions that correlate with economic success — as in the case of the Market Dominant UKOTs — are not present, which may explain their comparatively lower economic success.³³³

³²⁹ Political economy scholar Don Marshall explains that:

The state in the individual countries supported [offshore financial services], and together with foreign capital constructed and/or enhanced port facilities, air- and seaports. The state also moved to encourage the growth of auxiliary professions (for instance, accountants, lawyers, management consultants), created national banks, and a few island-governments introduced legislation supportive of the establishment of insurance companies and an offshore industry.

Marshall, *supra* note 6, at 261.

³³⁰ See *infra* Appendix, Table 1.

³³¹ See *id.* Professor Connell notes that the Caribbean (island) UKOTs “exhibited most of the familiar development problems of small island states; among them a small population, thinly scattered over a wide area; a small land area, without natural resources; a limited local market; a narrow range of economic activities; and weak integration of the domestic economy.” Connell, *supra* note 11, at 90.

³³² See Sybblis, *Identity Hurdle*, *supra* note 5.

³³³ See *infra* Part IV.A–C.

A. Investment Promotion

As in the cases of the Market Dominant UKOTs, offshore financial services have been built on the early tourism sector on the Offshore UKOTs as well.³³⁴ Thus, unsurprisingly, both offshore financial services and tourism are often marketed together.³³⁵ But while Anguilla and Montserrat promote tourism, offshore financial services receive meager promotion efforts — at least in the government’s business promotion materials.³³⁶ This may be related to the relatively small size of the sector in each of these jurisdictions.³³⁷ In Turks and Caicos Islands, where offshore financial services occupy the largest sector of the economy (in comparison with Anguilla and Montserrat),³³⁸ with seventeen percent of gross domestic product per capita coming from the sector, the Government of the Turks and Caicos Islands highlights the jurisdictions’ strengths to potential investors. On the Government’s official website, it states that “[s]ignificant investment opportunities exist on many of [the jurisdiction’s] 40 islands and cays in the areas of tourism (resort and niche areas such as medical, eco and adventure), real estate development, financial services, light manufacturing, agriculture, technology and mari-culture.”³³⁹ Indeed, offshore financial services blend well with the jurisdiction’s focus on developing its “wealth tourism” sector.³⁴⁰

³³⁴ See Connell, *supra* note 11, at 89.

³³⁵ John Christensen & Mark P. Hampton, *Exploring the Relationship Between Tourism and Offshore Finance in Small Island Economies: Lessons From Jersey* 26 (Kent Bus. Sch., Working Paper No. 76, 2005).

³³⁶ See *About Us*, GOV’T OF MONTSERRAT, <https://www.gov.ms/about-us/> (last visited Sept. 6, 2023) [<https://perma.cc/8AJC-37Y8>]; *Businesses*, GOV’T OF ANGUILLA, <http://www.gov.ai/businesses.php> (last visited July 5, 2023) [<https://perma.cc/B64R-QE8V>]; *Tourism*, GOV’T OF ANGUILLA, <http://www.gov.ai/tourism.php> (last visited July 5, 2023) [<https://perma.cc/GT9Y-UACU>]; VISIT MONTSERRAT, <https://www.visitmontserrat.com> (last visited July 5, 2023) [<https://perma.cc/B6UP-6RAZ>].

³³⁷ See *infra* Appendix, Table 1 and accompanying text.

³³⁸ See *infra* Appendix, Table 1 and accompanying text (noting that in 2019, Anguilla saw its offshore financial services sector contribute approximately 8.4% of GDP and Montserrat expected 8.03% contribution from “financial intermediation”).

³³⁹ *Invest Turks & Caicos Islands*, GOV’T OF THE TURKS & CAICOS IS., <https://www.gov.tc/investment> (last visited July 5, 2023) [<https://perma.cc/54AQ-A2XR>].

³⁴⁰ THOMAS-JAMES, *supra* note 171, at 100.

Early and successful offshore financial centers in the Caribbean region have provided a basic blueprint for offshore financial services, but it appears that Turks and Caicos Islands have not been as successful as these earlier movers.³⁴¹ Notwithstanding its efforts to market its strengths, such as a “pro-business climate” and “strong legal system,” commentators note that “[Turks and Caicos] attracted a number of dubious corporations, [and] the global economic climate was not conducive to the development of an offshore finance industry”³⁴² Ultimately, “[Turks and Caicos Islands] never achieved the rate of economic growth of the Cayman Islands and Bermuda.”³⁴³ Corruption in government also came to the fore when the Chief Minister was arrested in 1985 “on drug trafficking charges.”³⁴⁴ Evidence that “official corruption” was present in other aspects of the territory’s government was also found in the wake of this arrest.³⁴⁵ And, “in 2010, once again, a crisis emerged in the Turks and Caicos, with direct rule [by the UK] declared following evidence of gross corruption and mismanagement on the part of the government.”³⁴⁶

These high-profile negative events arguably do at least two things. First, they undermine the jurisdiction’s credibility to investors. Scholars have suggested that good governance is critical to the development and success of offshore financial centers.³⁴⁷ Indeed, investors are looking for safe and stable jurisdictions for their funds — not places known for corruption.³⁴⁸ And, unfortunately, “corruption and unaccountability has been a significant problem in [Turks and Caicos] history.”³⁴⁹ Second, the attention paid to corruption and the need for direct rule on two occasions distract from a sustained narrative about the strengths and importance of the offshore sector to the Turks and Caicos community,

³⁴¹ Connell, *supra* note 11, at 89.

³⁴² *Id.* at 88; *see also* Hintjens & Hodge, *supra* note 44, at 195.

³⁴³ Connell, *supra* note 11, at 89.

³⁴⁴ Hintjens & Hodge, *supra* note 44, at 195.

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *See generally* Dharmapala & Hines, *supra* note 17 (discussing the importance of good governance for tax haven status).

³⁴⁸ *See id.*

³⁴⁹ THOMAS-JAMES, *supra* note 171, at 111.

as well as the global business community.³⁵⁰ In essence, the usual narrative about the importance of the offshore enterprise and the pride that stems from its existence — not to mention successes — is arguably lost in the fog of corruption and mismanagement.

B. Economic Competition

By all accounts, the Offshore UKOTs were late to the offshore finance market — entering in the 1980s and, in the case of Anguilla, the 1990s.³⁵¹ But timing is not dispositive, as evidenced by the success of British Virgin Islands, which began offshore financial services in earnest in the 1980s. However, some of the conditions that helped to bolster British Virgin Islands' offshore sector were missing in some of the other UKOTS.³⁵² For example, one difference between British Virgin Islands and Cayman Islands on the one hand and Turks and Caicos Islands on the other is how innovation was approached.³⁵³ For example, Dominic Thomas-James observes, “[w]hile their offerings are typical of offshore [centers], [Turks and Caicos’] are not as sophisticated or innovative as some of its competitors.”³⁵⁴ A ready example exists in the area of trust services. “[W]hile trust services are available [in Turks and Caicos], special and complex trusts are more commonly seen in jurisdictions like [British Virgin Islands].”³⁵⁵ This would suggest that Turks and Caicos has not effectively responded to the competition its offshore finance neighbors provided.

Regarding Anguilla, given that its offshore sector is comparatively “less sophisticated” than those of the other Market Dominant UKOTs, there are concerns that the island may lack the ability to attract and maintain the kind of skilled workforce that the sector requires.³⁵⁶ And with regard to the type of regulatory framework present in a place like Cayman Islands, one commentator suggests that “establishing a

³⁵⁰ See *id.* at 99 (describing the periods of Turks and Caicos’ direct rule).

³⁵¹ See *infra* Appendix, Table 1 and accompanying text.

³⁵² See *supra* Part III.

³⁵³ THOMAS-JAMES, *supra* note 171, at 101.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.* at 146.

compliance framework and recruiting people when the industry is not as visible in Anguilla presents challenges.”³⁵⁷

Further, in 2017, the island was devastated by Hurricane Irma, which caused immense damage to “nearly 90 percent of government buildings and the island’s electricity infrastructure.”³⁵⁸ Indeed, one government official noted that residents needed alternative housing for several months after the hurricane and lacked access to running water and electricity during this time.³⁵⁹ This kind of experience necessarily hinders tourism and offshore activities, and undermines investment in the sectors by both the Anguilla Government and international investors. Indeed, to assist with disaster recovery efforts, the United Kingdom provided a significant aid package to the island.³⁶⁰

With respect to Montserrat, natural disasters have also hampered the jurisdiction’s offshore competitiveness.³⁶¹ In 1989, Hurricane Hugo caused severe damage to “about 90 [percent] of all island property.”³⁶² And, in 1995, not long after recovering from the devastation wrought by the hurricane, Montserrat experienced the eruption of a volcano, which caused residents to leave the island.³⁶³ Arguably, the eruption of Montserrat’s volcano, and not offshore financial services, is what “brought Montserrat to international attention.”³⁶⁴ According to the IMF, “the volcano left more than half of the island uninhabitable, including the former capital, airport, port, and the best agricultural land.”³⁶⁵ Indeed, in the wake of the (Soufriere Hills) volcano’s eruption,

³⁵⁷ *Id.*

³⁵⁸ Samantha Raphelson, *Caribbean Island of Anguilla Bounces Back After Intense Hurricane Season*, NPR (Dec. 15, 2017, 3:43 PM EST), <https://www.npr.org/2017/12/15/571147493/caribbean-island-of-anguilla-bounces-back-after-intense-hurricane-season> [<https://perma.cc/8LG8-VRB6>].

³⁵⁹ THOMAS-JAMES, *supra* note 171, at 147.

³⁶⁰ Raphelson, *supra* note 358.

³⁶¹ See Tracey Skelton, *Political Uncertainties and Natural Disasters: Montserratian Identity and Colonial Status*, 2 INTERVENTIONS 103, 114 (2000).

³⁶² *Id.*

³⁶³ *Id.* at 106.

³⁶⁴ *Id.* at 104.

³⁶⁵ IMF, *United Kingdom — Montserrat — British Overseas Territory: 2011 Article IV Consultation Discussions*, at 3, Country Report No. 12/9 (2012), <https://www.imf.org/>

a significant portion of the population left the island, including highly skilled individuals.³⁶⁶

C. Institutional Investments

Good governance and strong domestic institutions notwithstanding, the small size and relative isolation of some Caribbean islands make them (and their economies) especially vulnerable to natural disasters.³⁶⁷ Anguilla presents such a case.³⁶⁸ In Anguilla, there appears to be an effort on the part of the government to entrench offshore financial services in the jurisdiction.³⁶⁹ For example, since the early 1990s, the jurisdiction has seen growth in the offshore finance sector.³⁷⁰ And its offshore financial services “offerings are diverse, including [International Business Corporations (IBCs)], corporate and trust services, company management, captive insurance, foundations and offshore banking.”³⁷¹

Turks and Caicos Islands has spent much of the past decade addressing matters of “economic crime and suspect wealth.”³⁷² Indeed,

external/pubs/ft/scr/2012/cr1209.pdf [https://perma.cc/3FK3-G83B] [hereinafter IMF Montserrat Country Report].

³⁶⁶ *Id.* (noting that “[t]he volcano led about three quarters of the population to emigrate . . . [and] [t]he population shrank from about 14,000 persons to a low of around 3,500, . . .”); see also William Fleeson, *The Caribbean’s Crowds-Free “Irish” Isle*, BBC (Mar. 25, 2022), <https://www.bbc.com/travel/article/20220324-the-caribbeans-crowds-free-irish-isle> [https://perma.cc/6WGQ-8F53].

³⁶⁷ See generally Portes & Smith, *supra* note 18 (studying the role of institutions in development); Dharmapala & Hines, *supra* note 17 (discussing the importance of good governance for offshore financial services).

³⁶⁸ Anguilla requires ongoing assistance with trade and commerce. THOMAS-JAMES, *supra* note 171, at 147. For example, the territory’s size also makes it “incapable of hosting larger international air traffic,” which is problematic for tourism and, ultimately, visits from potential investors. *Id.*

³⁶⁹ *Id.* at 131.

³⁷⁰ *Id.*

³⁷¹ *Id.* Thomas-James outlines in detail the composition of the Anguilla’s offshore financial services sector. Further, Thomas-James observes that, “like Bermuda, Anguilla’s FinTech offerings are increasing and, as the OECD notes [as of 2020,] the registration for Anguillan web domain addresses is projected to significantly outperform revenue than that received in respect of company registrations, fees and filings.” *Id.* It has recently been noted that “Anguilla’s FinTech offerings are increasing.” *Id.*

³⁷² *Id.* at 125.

the jurisdiction's history of corruption and prior temporary loss of autonomy has had a profound impact on its trajectory as an offshore financial center.³⁷³ With respect to the jurisdiction's offshore financial services, "[s]ystemic corruption findings not only affected its development, in that it lost millions in concessions, thousands of acres of Crown land, and experienced a loss of autonomy, but it also inhibited [Turks and Caicos Islands'] regulatory and compliance developments."³⁷⁴

With respect to legal institutions, Anguilla and Montserrat benefit from the Commercial Court in British Virgin Islands, since they are members of the ECSC.³⁷⁵ But there is no similar court physically located in its jurisdiction.³⁷⁶ Turks and Caicos Islands is not a member of the ECSC and therefore does not utilize the Commercial Court located in British Virgin Islands. All three Offshore UKOTs (Anguilla, Montserrat, and Turks and Caicos Islands) have financial services commissions that oversee their offshore financial sectors, but these agencies do not reflect the same level of investment in terms of human resources as Bermuda's BMA or Cayman Islands CIMA.³⁷⁷ BMA and CIMA have more managers and experts than the financial service commissions in the Offshore UKOTs.³⁷⁸ For example, on the one hand, Bermuda has an approximately forty-two-member management team, Cayman Islands an approximately sixty-member team, and British Virgin Islands an approximately twenty-eight member team.³⁷⁹ On the other hand, Anguilla's management team has approximately thirteen members, Montserrat's has three-to-eight members, and Turks and Caicos Islands has twelve members.³⁸⁰

Variations in the size of the management teams could reflect differences in population size among these jurisdictions,³⁸¹ especially

³⁷³ *Id.* at 124.

³⁷⁴ *Id.*

³⁷⁵ See Lewis, *supra* note 255; see also *Brief History of the Court*, *supra* note 255.

³⁷⁶ See *infra* Appendix, Table 4 and accompanying text.

³⁷⁷ See *infra* Appendix, Table 4 and accompanying text.

³⁷⁸ See *infra* Appendix, Table 4 and accompanying text.

³⁷⁹ See *infra* Appendix, Table 4 and accompanying text.

³⁸⁰ See *infra* Appendix, Table 4 and accompanying text.

³⁸¹ See *infra* Appendix, Table 3.

given that Montserrat has a small population of approximately 5,000 and Cayman Islands a larger population of approximately 70,000.³⁸² But, these variations are arguably more a reflection of the size of each jurisdiction's offshore sector. Smallness has historically been an attribute of successful offshore financial centers,³⁸³ and The Bahamas (a sovereign offshore finance jurisdiction), with a population of almost 358,508 people,³⁸⁴ has a comparatively smaller governance team of twenty-three to Bermuda's or Cayman Islands' monetary authorities.³⁸⁵ This highlights the offshore finance dominance of Bermuda and Cayman Islands and the degree to which these two jurisdictions have invested in their offshore regulatory regime.

In summary, a variety of factors make it unlikely that the Offshore UKOTs have deeply internalized offshore financial services. Some of these factors, such as natural disasters, are costly to their populations, both in terms of human lives and the expense of rebuilding. They also spark emigration and deter visitors and investors.³⁸⁶ Others, such as corruption, are a distraction and spur distrust among firms and individuals looking for a secure and established place to place their investments.³⁸⁷ Finally, the physical limitations of some places, such as Anguilla, constrain the influx of visitors.³⁸⁸ Understandably, it is difficult to build — whether organically or intentionally — a financial center when access to the jurisdiction proves difficult. Hence, it is highly doubtful that the Offshore UKOTs have developed a CEI in connection to offshore financial services. The type of commitment that is required to build high quality legal institutions to support this sector, such as

³⁸² See *infra* Appendix, Table 3.

³⁸³ See, e.g., BRUNER, *supra* note 11 (discussing the role of size in the success of what the author terms “Market Dominant Small Jurisdictions”).

³⁸⁴ CIA *Factbook: Bahamas*, CENT. INTEL. AGENCY, <https://www.cia.gov/the-world-factbook/countries/bahamas-the/> (last visited Sept. 29, 2023) [<https://perma.cc/A3CF-ULX9>].

³⁸⁵ See *Board of Directors*, BAH. FIN. SERVS. BD., <https://bfsb-bahamas.com/about/board-of-directors/> (last visited July 8, 2023) [<https://perma.cc/R7DE-2A3G>].

³⁸⁶ IMF Montserrat Country Report, *supra* note 365, at 3 (discussing the impacts a volcanic eruption had on Montserrat's population and economy).

³⁸⁷ See generally Sybblis, *State Capacity*, *supra* note 4 (discussing the role of institutions in building competitive OFCs).

³⁸⁸ THOMAS-JAMES, *supra* note 171, at 147.

those in the Market Dominant UKOTs, is conspicuously absent in these jurisdictions.³⁸⁹ And without these types of institutions it is unlikely that Offshore UKOTs will be able to meaningfully compete in the offshore financial services market.³⁹⁰

V. IMPLICATIONS

Understanding how jurisdictions choose institutions to support their economic growth agendas is important for policymaking.³⁹¹ Based on the case studies in Parts III and IV, there appears to be a correlation between CEI, institutional development, and economic success.³⁹² Without rigorous empirical analysis, it is difficult to determine whether there is a causal relationship between these variables. However, it is reasonable to conjecture that CEI is relevant to both institutional development and economic success.³⁹³ Consequently, I address three implications from a CEI analysis of jurisdictions in this Part.

First, when seeking to use laws and legal institutions for the purposes of promoting economic prosperity, perhaps policymakers should prioritize the cultivation of an economic identity before pursuing the relevant reforms.³⁹⁴ Second, migration patterns matter when thinking about institutions and growth. Without a critical mass of trained personnel to undertake the jurisdiction's desired economic activity, developing that activity as part of the community's identity will likely be difficult. It would also be challenging to justify investing in the legal institutions that would support that economic activity. Third, for intergovernmental organizations that are interested in governing the offshore finance space, such as the OECD and EU, differences in the

³⁸⁹ See *supra* Part III.

³⁹⁰ See generally BRUNER, *supra* note 11 (discussing the features that make a category of OFCs (which the author refers to as Market Dominant Small Jurisdictions) successful); Moon, *Delaware's New Competition*, *supra* note 4 (discussing the legal innovations that make the Market Dominant UKOTs competitors to Delaware).

³⁹¹ See generally Sybblis, *Identity Hurdle*, *supra* note 5 (theorizing how jurisdictions prioritize reforms considering CEI).

³⁹² See *supra* Parts III, IV.

³⁹³ See generally Sybblis, *Identity Hurdle*, *supra* note 5 (discussing the relationship between CEI, legal reform, and economic development).

³⁹⁴ See generally *id.* (theorizing how jurisdictions prioritize reforms considering CEI).

degree of commitment to offshore financial services means that governance initiatives from the OECD and the EU (as well as the United States) could lead to unanticipated outcomes.³⁹⁵ Burdensome commitments could serve to penalize jurisdictions that are already committed to maintaining well-run offshore financial sectors, and have minimal effect on those jurisdictions that are less committed to the sector.³⁹⁶

A. Prioritizing CEI

The offshore financial sector contributes significant revenues to the governments in the Market Dominant UKOTs and generates employment throughout their societies.³⁹⁷ For example, in 2018, Cayman Islands' offshore sector comprised 32.7% of GDP³⁹⁸ and its GDP per capita was \$85,232.³⁹⁹ According to Cayman Islands' Government, its offshore financial services and tourism operations are “the two pillars of the Cayman Islands economy.”⁴⁰⁰ In 2020, British Virgin Islands government estimated that financial services comprised 22.8% of GDP⁴⁰¹ and helped to provide the jurisdiction with a per capita GDP of \$48,273 that year.⁴⁰² Indeed, according to the Government of the British

³⁹⁵ Professor Shu-Yi Oei explains that “it is impossible to understand the evolution and transformation of global tax norms, policies, institutions without understanding the key role that the OECD has played in constituting such norms, policies, and institutions.” Oei, *supra* note 43, at 209.

³⁹⁶ See *infra* Part V.C.

³⁹⁷ See *supra* Part III; see also *infra* Appendix, Tables 1 & 2 (summarizing the size of the offshore sector and the GDP per capita between 2016 and 2020 in Bermuda and the Caribbean UKOTs).

³⁹⁸ CAYMAN IS. MONETARY AUTH., FACT SHEET (2021), https://www.cima.ky/upimages/publicationdoc/CIMAFACTSHEET-De_1643727282.pdf [<https://perma.cc/CF2C-F27K>] [hereinafter FACT SHEET].

³⁹⁹ *Per Capita GDP at Current Prices — US Dollars*, UNDATA, <https://data.un.org/Data.aspx?d=SNAAMA&f=grID%3A101%3BcurrID%3AUSD%3BpcFlag%3A1> (last visited July 8, 2023) [<https://perma.cc/57P5-9Q26>].

⁴⁰⁰ *Our Finance & Economy*, CAYMAN IS. GOV'T, <https://www.gov.ky/economy> (last visited July 8, 2023) [<https://perma.cc/6ZMQ-9G9B>].

⁴⁰¹ MINISTRY OF FIN., GOV'T OF THE VIRGIN IS., 2021 BUDGET ESTIMATES, at lxii (2020), <https://bvi.gov.vg/pub/2021%20Budget%20Estimates%20Final.pdf> [<https://perma.cc/P6ZG-RFQY>] [hereinafter VIRGIN IS. 2021 BUDGET].

⁴⁰² *Per Capita GDP at Current Prices — US Dollars*, *supra* note 399.

Virgin Islands, incorporations by foreign companies provide fees that “now generate an estimated 51.4% of Government revenues.”⁴⁰³

In 2021, Bermuda’s offshore sector comprised 28.1% of GDP.⁴⁰⁴ That year the jurisdiction’s GDP per capita was \$111,774.⁴⁰⁵ In 2022, the Government of Bermuda reported that economic success in the jurisdiction was “driven by growth in the [offshore finance] sector and the continuous [post-COVID] recovery in the [t]ourism industry.”⁴⁰⁶ None of the Offshore UKOTs have as large an offshore finance sector or GDP per capita as the Market Dominant UKOTs.⁴⁰⁷

The divergent offshore experiences of the Market Dominant UKOTs and Offshore UKOTs have important implications for the role of institutions in facilitating economic growth.⁴⁰⁸ In short, beyond the basic infrastructure for the rule of law,⁴⁰⁹ the decision to commit to a

⁴⁰³ *Our Economy*, GOV’T OF THE VIRGIN IS., <https://bvi.gov.vg/content/our-economy> (last visited July 8, 2023) [<https://perma.cc/PA2Q-DX3F>].

⁴⁰⁴ DEP’T OF STAT., GOV’T OF BERM., ANNUAL GROSS DOMESTIC PRODUCT: 2021 HIGHLIGHTS 4 (2022), <https://www.gov.bm/sites/default/files/GDP-2021-annual-publication.pdf> [<https://perma.cc/FY3V-LR8R>].

⁴⁰⁵ *Data: GDP Per Capita (Current US\$) — Bermuda*, WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=BM> (last visited July 8, 2023) [<https://perma.cc/3J59-ZAWT>].

⁴⁰⁶ MINISTRY OF FIN., GOV’T OF BERM., NATIONAL ECONOMIC REPORT OF BERMUDA 2022, at 1 (2023), <https://www.gov.bm/sites/default/files/National-Economic-Report-2022-Final.pdf> [<https://perma.cc/N9WR-93TK>].

⁴⁰⁷ See *infra* Appendix, Tables 1 & 2 (summarizing the size of the offshore sector and the GDP per capita between 2016 and 2020 in Bermuda and the Caribbean UKOTs).

⁴⁰⁸ See *supra* Parts III, IV.

⁴⁰⁹ In an influential article on the “relationship between law and development,” Professors Kevin Davis and Michael J. Trebilcock outlined the various conceptualizations for the rule of law. Davis & Trebilcock, *supra* note 18, at 895. For example, they note that the rule of law can be viewed from a minimalist perspective, requiring merely that the state treat its citizens fairly and that there is access to an independent judiciary for dispute resolution purposes. *Id.* at 914 (referencing the work of Brian Tamanaha (BRIAN Z. TAMANAHA, *ON THE RULE OF LAW: HISTORY, POLITICS, THEORY* (2004); Brian Z. Tamanaha, *The Lessons of Law-and-Development Studies*, 89 AM. J. INT’L L. 470 (1995) (book review))). The rule of law can also be viewed as requiring more features to be considered legitimate. Citing the work of legal scholars, such as Lon Fuller, they note that an appropriate rule of law regime may require the following:

- (1) be of general application, (2) be publicized or at least made available to affected parties beforehand, (3) be prospective in application, (4) be

particular economic enterprise as a vehicle for economic growth should come before the choice of more specific and sophisticated legal institutions.⁴¹⁰ As evidenced by the once popular World Bank Doing Business report, there is no universal set of laws or legal institutions that will promote growth regardless of context.⁴¹¹ And reforms are more likely to be adopted and effectively implemented in places where citizens are convinced that they directly apply to their circumstances and well-being.⁴¹² In the case of the Market Dominant UKOTs, sophisticated legal institutions, such as the financial sector regulatory agencies and specialized commercial courts, were built to support an arena that the jurisdictions were already committed to pursuing.⁴¹³ Consider that Cayman Islands had already set its sights on the offshore sector in the 1960s when it began to negotiate a series of constitutional reforms to allow it the type of autonomy required to compete in the offshore finance arena.⁴¹⁴

understandable, (5) be coherent (i.e., not contradictory), (6) not require conduct beyond the powers of the affected party, (7) not be subject to frequent changes, and (8) reflect congruence between rules as announced and their actual administration.

Id. at 913 (referencing LON L. FULLER, *THE MORALITY OF LAW* 39 (rev. ed. 1969)).

⁴¹⁰ See *id.* at 922-23 (arguing that a country does not need wealth to build high quality institutions).

⁴¹¹ See Davis, *supra* note 19, at 537-41 (discussing how unlikely it is that one set of laws will promote growth in every context); Press Release, World Bank, World Bank Group to Discontinue Doing Business Report (Sept. 16, 2021), <https://www.worldbank.org/en/news/statement/2021/09/16/world-bank-group-to-discontinue-doing-business-report> [<https://perma.cc/H29Z-DGYD>]. See generally Davis & Kruse, *supra* note 18 (discussing the World Bank's Doing Business rankings as a tool of institutional reform for economic growth).

⁴¹² See generally Berkowitz et al., *supra* note 19, at 179-83 (theorizing about the type of legal transplants that are likely to be receptive in a jurisdiction); Sybblis, *Identity Hurdle*, *supra* note 5 (discussing how CEI shapes legal reform priorities).

⁴¹³ See *supra* Part III.

⁴¹⁴ According to Cayman Islands' former financial secretary Vassel Johnson, "[i]n the early stages of Cayman's rise to international prominence as an offshore centre, it became necessary to study and to grasp quite fully the basic needs and requirements to achieve and maintain that position." JOHNSON, *supra* note 11, at 110. Johnson and other leaders determined that "flexible laws" were a key component of their future success. *Id.* In a detailed study of Cayman Islands growth as an offshore financial center, Professors Tony Freyer and Andrew Morriss outline the series of constitutional reforms

Creating a CEI and, thereby, a jurisdictional commitment to an economic activity is admittedly complex and subject to a variety of contingencies.⁴¹⁵ But leadership matters.⁴¹⁶ CEI cultivation requires leaders to artfully provide a narrative of the capacities of their jurisdiction and the potential for economic success through the development of a particular industry.⁴¹⁷ This was done by the State of Delaware, which transitioned from a manufacturing hub to a place for incorporations.⁴¹⁸ While there was corporate friendly legislation in Delaware from the late 1800s,⁴¹⁹ the ability of Delaware's lawyers and policymakers to envision the State as home to corporate charters was critical to the subsequent investment in more specialized legislation to attract corporations.⁴²⁰

In the case of Delaware, the development of the incorporations franchise occurred according to a "multi-step development" model.⁴²¹ This model speaks to a series of self-reinforcing steps along the law and economic development ladder. First, there was a desire to compete with New Jersey for corporate charters, which inspired policymakers to

that the jurisdiction pursued and achieved to support the offshore financial sector. *See generally* Freyer & Morriss, *supra* note 17 (discussing the constitutional developments pursued by Cayman Islands to advance the jurisdiction's offshore financial sector).

⁴¹⁵ *See supra* Part II.C.

⁴¹⁶ *See supra* Part II.C.; *see also* Sybblis, *Identity Hurdle*, *supra* note 5, at 888-90.

⁴¹⁷ *See Sybblis, Identity Hurdle*, *supra* note 5, at 888-90.

⁴¹⁸ Like several other states, Delaware had the basic legal infrastructure for incorporations before entering the corporate charter race, but its rise as a corporate law powerhouse occurred with its need for economic growth in the 1700s and early 1800s. *See* Joel Seligman, *A Brief History of Delaware's General Corporation Law of 1899*, 1 DEL. J. CORP. L. 249, 254 (1976) (noting that "[a]lmost overnight, the requirements of the United States economy and politics transformed the business corporation into an important instrument of economic development"); *see also* Marcel Kahan & Ehud Kamar, *The Myth of State Competition in Corporate Law*, 55 STAN. L. REV. 679, 730-34 (2002) (discussing how Delaware benefited from Governor Woodrow Wilson's legal reforms in New Jersey). *See generally* WEITZMAN, *supra* note 126 (discussing the rise of Delaware as the dominant leader in the United States where it concerns incorporations).

⁴¹⁹ *See generally* Seligman, *supra* note 418 (discussing the history of "Delaware General Corporation Law of 1899").

⁴²⁰ *See* WEITZMAN, *supra* note 126, at 21-114 (discussing the history and development of Delaware's incorporation "Franchise").

⁴²¹ *See id.*; *see also* Khanna, *supra* note 35, at 30-33 (discussing the multi-step approach to developing legal institutions that support economic growth).

replicate some of New Jersey's corporate friendly legislation.⁴²² In turn, success led to further legislative reforms. Professor Vikramaditya Khanna argues that an interactive process also occurred in the case of India's home mortgage industry.⁴²³ In the 1990s, an imperfect but practically useful criminal law regime facilitated economic activity in the mortgage market.⁴²⁴ Economic growth in this market ultimately led to a demand for "better law."⁴²⁵ And the better law in turn facilitated more robust growth.⁴²⁶ Recognizing the intricacies of the "law, institutions, and growth" interaction, Professor Khanna reminds us that "the story of development is quite complicated and involves the law, institutions, and growth often developing in an iterative 'rolling' manner, being endogenously determined, co-evolving, being highly contextual while depending on the surrounding institutions, and at times emerging in an *ad hoc* manner while taking advantage of institutional voids."⁴²⁷

CEI further complicates this dynamic. One way — albeit not the only way — of starting the series of interactions between law, institutions, and growth is to cultivate an underlying commitment to an economic activity. This is a sociological endeavor.⁴²⁸ If community leaders can paint an attractive and realistic picture of the potential for an economic activity to have important implications for the flourishing of the community, they are likely to receive community support for legal institutions that bolster that activity. Community members, however, must first believe that their shared destiny is linked to the selected industry.⁴²⁹

⁴²² WEITZMAN, *supra* note 126, at 12 (noting that "[Delaware] had not been an innovator" where it concerned corporate law).

⁴²³ Khanna, *supra* note 35, at 30-33.

⁴²⁴ *Id.* at 18.

⁴²⁵ *See id.* at 29-33.

⁴²⁶ *See id.*

⁴²⁷ *Id.* at 30.

⁴²⁸ *See generally* Sybbilis, *Identity Hurdle*, *supra* note 5 (discussing the sociology of collective identity and legal reform).

⁴²⁹ For example, residents of the British Virgin Islands historically viewed the IBCO legislation as linked to their national identity. *See Maurer, Writing Law*, *supra* note 11, at 275.

Even if a community were to attempt institution building without a CEI-type commitment, it may still be feasible to cultivate this commitment over time to bolster support for a newly adopted institution. For example, in the case of the Offshore UKOTs, the basic regulatory structure for offshore finance and a nascent offshore sector already exists. Consequently, a concerted effort by each of these jurisdictions' leaders to promote and encourage community enthusiasm about the offshore sector could make a difference to the development of the sector and the jurisdictions' economies.⁴³⁰

B. Migration Matters

CEI has implications for areas of law outside of the traditional package of legislation and legal institutions historically promoted by NIE scholars. While these scholars have emphasized contract, property law, corporate and commercial laws, as well as independent courts, CEI suggests that immigration rules also have an important role to play in institution building.⁴³¹ To cultivate CEI, migration policy could be most instrumental, especially where specific skillsets are required for an industry, such as finance or technology.⁴³² Generally, people interested in certain jobs or commercial activities tend to gravitate to places with more abundant opportunities in their areas of choice.⁴³³ For example, in the United States, individuals may move from Florida to Northern California for work in Silicon Valley due to their interests in the

⁴³⁰ See *supra* Part II.

⁴³¹ See, e.g., Gordon H. Hanson, *Immigration and Economic Growth*, 32 CATO J. 25, 25-26 (2012) (noting that “[i]mmigration policy affects the pace of innovation in the U.S. economy, the supply of labor by high-skilled workers, the ability of regional economies to adjust to business cycle fluctuations, and the integrity of local, state, and federal government finances”).

⁴³² See, e.g., Ronald J. Gilson, *The Legal Infrastructure of High Technology Industrial Districts: Silicon Valley, Route 128, and Covenants Not to Compete*, 74 N.Y.U. L. REV. 575 (1999) (discussing the relationship between legal rules regarding the mobility of workers and the development of the technology industry in Massachusetts (Route 128) and California (Silicon Valley)); ANNALEE SAXENIAN, *REGIONAL ADVANTAGE: CULTURE AND COMPETITION IN SILICON VALLEY AND ROUTE 128* (1994) (discussing the role of social networks and open labor markets in Silicon Valley's (California) rise over Route 128 (Massachusetts)).

⁴³³ See *supra* note 432.

technology industry.⁴³⁴ Because these people are moving from other parts of the country or world in large enough numbers their presence in the new community increases the shared affinity for the technology sector and thereby the culture of the community.⁴³⁵

A similar phenomenon has taken place in Cayman Islands.⁴³⁶ The population in the tiny islands grew from just over 6,000 in the 1950s to almost 70,000 in 2020 due to immigration tied to tourism and the financial services sector.⁴³⁷ And the vast number of immigrants in recent decades are economic migrants who are responding to Cayman Islands' demand for skilled labor.⁴³⁸ By one account, there are 120 nationalities currently residing in Cayman Islands.⁴³⁹ Interestingly, a former Premier of the Cayman Islands, Alden McLaughlin, has noted that there is social tension over the perceived job loss by native Caymanians, who are concerned about the pace at which skilled immigrants are gaining new opportunities.⁴⁴⁰ However, the Premier explains that the society understands that the immigration of skilled workers is vital to the high quality of life that they enjoy on the islands.⁴⁴¹

The increase in immigration of workers with a focus on the offshore financial services sector enhances the awareness and shared commitment to the sector of a broad cross section of the Caymanian

⁴³⁴ See generally CAROLYN CHEN, *WORK PRAY CODE: WHEN WORK BECOMES RELIGION IN SILICON VALLEY* (2022) (discussing the importance of the technology industry in the lives of employees).

⁴³⁵ See generally *id.* (discussing how work in the technology sector has become a form of shared religion for workers and in the process made traditional forms of worship appear less relevant to them).

⁴³⁶ See Vered Amit, *A Clash of Vulnerabilities: Citizenship, Labor, and Expatriacy in the Cayman Islands*, 28 *AM. ETHNOLOGIST* 574, 583 & 587-88 (2001); Interview by Marla Dukharan with Alden M. McLaughlin Jr., Premier of Cayman Is., *The Cayman Islands Formula: Building a Nation on Fiscal Resilience* (Apr. 26, 2020), <https://marladukharan.com/webcast/the-cayman-islands-formula-building-a-nation-on-fiscal-resilience/> [<https://perma.cc/KP7G-5YK9>] (discussing the impact of immigration tied to Cayman Islands' offshore finance sector on the social landscape on the islands).

⁴³⁷ See Interview by Marla Dukharan, *supra* note 436; see also *infra* Appendix, Table 3.

⁴³⁸ See Interview by Marla Dukharan, *supra* note 436.

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.*

community.⁴⁴² And this social commitment to offshore financial services undoubtedly makes it easier for a leader, such as Premier McLaughlin, to encourage the passage and implementation of novel offshore finance legislation and to build related institutions.

The example of migration to Cayman Islands reveals how the movement of people can influence the CEI of a community. Consequently, legal institution building for purposes of promoting economic growth must consider a broad spectrum of rules and arenas that can meaningfully influence how a community views a particular economic activity. A CEI analysis therefore allows us to think even more creatively about the interconnectedness of law, institutions, and economic growth.

C. Global Governance of OFCs

The OECD and EU seek to govern a broad swath of jurisdictions that they deem to be OFCs,⁴⁴³ and to place OFCs that they deemed non-cooperative with regard to transparency and the exchange of information for tax purposes on public lists — as a means of “naming and shaming.”⁴⁴⁴ But not all of these jurisdictions are equally committed to providing offshore financial services.⁴⁴⁵ Some jurisdictions are more

⁴⁴² *Id.*

⁴⁴³ See generally Sybblis, *Equality Offshore*, *supra* note 21 (discussing how intergovernmental organizations, such as the OECD, and the wealthy countries it represents influence the legal and policy developments in weaker and less powerful OFCs).

⁴⁴⁴ For example, on October 6, 2020, the EU listed Anguilla to its “list of non-cooperative jurisdictions,” delisted a year later, on October 5, 2021, only to relist it on October 4, 2022. *Timeline — EU List of Non-Cooperative Jurisdictions*, COUNCIL OF THE EUR. UNION, <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/timeline-eu-list-of-non-cooperative-jurisdictions/> (last visited July 8, 2023) [<https://perma.cc/32NU-VG7J>]; see also Dean & Waris, *supra* note 103, at 1667; *List of Unco-operative Tax Havens*, ORG. FOR ECON. COOP. & DEV., <https://www.oecd.org/ctp/harmful/list-of-unco-operative-tax-havens.htm> (last visited July 8, 2023) [<https://perma.cc/3PML-5X9S>]; *EU List of Non-Cooperative Jurisdictions for Tax Purposes*, COUNCIL OF THE EUR. UNION, <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/> (last visited July 8, 2023) [<https://perma.cc/QC2H-VP9V>].

⁴⁴⁵ See, e.g., *Jurisdictions Committed to Improving Transparency and Establishing Effective Exchange of Information in Tax Matters*, ORG. FOR ECON. COOP. & DEV.,

entrenched in the offshore financial sector than others. These are jurisdictions that likely have an economic identity connected with the sector and that have prioritized building institutions that support the sector.⁴⁴⁶ For example, the Market Dominant UKOTs have invested tremendous resources in building their offshore financial sector.⁴⁴⁷ They have actively promoted the sector, innovated ceaselessly to stay ahead of competitors, and built formal legal institutions to support the sector.⁴⁴⁸ For a variety of reasons, offshore financial services are not entrenched as CEI in other UKOTs in the same region, such as the Offshore UKOTs.⁴⁴⁹ It is more likely that jurisdictions where offshore financial services are entrenched and part of their economic identity, even if placed on one of the OECD's or EU's list, may be more willing — notwithstanding the financial or human resource costs — to quickly make reforms to get themselves removed.⁴⁵⁰

The theory is that jurisdictions that have an offshore finance economic identity are more inclined to want to swiftly protect this identity and associated reputation and will therefore undertake the requested reforms from the OECD and EU — regardless of whether they believe the reforms are justified. Jurisdictions that do not have an

<https://www.oecd.org/countries/monaco/jurisdictions-committed-to-improving-transparency-and-establishing-effective-exchange-of-information-in-tax-matters.htm> (last visited July 8, 2023) [<https://perma.cc/2RUS-BKQV>] (providing a list of jurisdictions that the OECD deems insufficiently committed to transparency in connection with global tax standards); see also Sybblis, *Equality Offshore*, *supra* note 21, at 2714-42 (arguing that OFCs have varying histories and capacity constraints that should be considered by intergovernmental organizations when they seek to engage in international tax governance).

⁴⁴⁶ See *supra* Parts II, III.

⁴⁴⁷ See *supra* Part III.

⁴⁴⁸ See *supra* Part III.

⁴⁴⁹ See *supra* Part IV.

⁴⁵⁰ For example, on February 18, 2020, Cayman Islands was listed by the EU as a “non-cooperative jurisdiction for tax purposes,” and then delisted on October 6, 2020. See *Timeline — EU List of Non-Cooperative Jurisdictions*, *supra* note 444; *The Council Conclusions on the Revised EU List of Non-Cooperative Jurisdictions for Tax Purposes*, Doc. No. 6129/20 (Feb. 18, 2020), <https://www.consilium.europa.eu/media/42596/sto6129-en20.pdf> [<https://perma.cc/7X4F-DQ3G>]; *The EU List of Non-Cooperative Jurisdictions for Tax Purposes*, Doc. No. 11054/1/20 (Sept. 28, 2020), <https://data.consilium.europa.eu/doc/document/ST-11054-2020-REV-1/en/pdf> [<https://perma.cc/749Z-EUUX>].

offshore finance economic identity are less inclined to move as swiftly, either because they have not built the institutional capacity to do so, or because they are not as concerned about harms to their economic identity or reputation.⁴⁵¹ While empirical research is required to test this thesis, at this juncture it is reasonable to accept that some jurisdictions are more committed to the offshore financial sector than others. Consequently, efforts by the OECD and EU to promote reforms in these places could lead to unexpected results.

Two decades ago, corporate law scholar Katharina Pistor warned that “developing international legal standards[] and adapting legal systems around the world to these standards is a costly undertaking, and thus requires some justification.”⁴⁵² One reason for Professor Pistor’s words of caution is that context matters.⁴⁵³ Specifically, “however perfectly designed a law that is supplied from the outside may be, its impact is ultimately determined by how it is understood by lawmakers, law enforcers, and law users at the receiving end.”⁴⁵⁴ If there is a chasm between the rule supplied and how that rule is understood in the receiving jurisdiction, the rule may prove less effective than intended.⁴⁵⁵

⁴⁵¹ The lack of institutional capacity could be an indicator that the jurisdiction is not invested in the offshore sector. For example, consider the case of Montserrat where offshore financial services do not contribute significantly to the jurisdiction’s gross domestic product. See *infra* Appendix, Table 1 and accompanying footnotes (noting that in 2019, Anguilla saw its offshore financial services sector contribute approximately 8.04% of GDP and Montserrat expected 8.03% contribution from “financial intermediation”).

A close reader may wonder about the case of a jurisdiction with an offshore finance economic identity but low institutional capacity. According to the conceptual framework outlined in Part II and the discussion in Parts III and IV of this Article, I suggest that any jurisdiction with an offshore finance CEI would, by definition, have sufficient institutional capacity to support its offshore finance industry. At the very least, it would be actively working toward building this kind of capacity. However, the typical resource scarcity and natural institutional limitations of small jurisdictions will make complying with the global governance requirements of the OECD and EU more difficult. See Sybblis, *Equality Offshore*, *supra* note 21, at 2716-21 (discussing the capacity constraints of small developing jurisdiction OFCs).

⁴⁵² Pistor, *supra* note 18, at 103.

⁴⁵³ *Id.* at 111-12.

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.* at 112.

A CEI analysis is a unique and helpful way to understand local context for three reasons. First, it seeks to assess the nature of the social environment underpinning a legal rule or proposed reform. In this regard, it serves as a proxy for how committed a community is to a particular economic sector and therefore how likely the reform is to take root.⁴⁵⁶ Second, where a new reform is accepted and effectively implemented, the outcome could diverge depending on whether the jurisdiction is committed to the targeted sector. In the case of offshore financial centers, a jurisdiction that is committed to maintaining their offshore finance identity and reputation would presumably want to stay off various OECD and EU “non-cooperating” lists, given that these lists send negative signals about a jurisdiction.⁴⁵⁷ This desire to stay off these lists would also presumably lead them to adapt and implement reforms proposed by the OECD and EU.⁴⁵⁸ But these efforts to comply with the requirements of the OECD and EU could lead to greater investment in the institutions that support the offshore sector and, consequently, a greater commitment to maintaining the sector.

Third, jurisdictions with an offshore finance CEI might find the sunk social costs of the investments in the offshore financial sector to be far too much to walk away from. Unlike economic costs, which can be accepted as a loss or as the cost of doing business, the act of walking away from one’s identity commitments may be more difficult. In other words, even if offshore revenue were to diminish and funding for legal institutions were to fade, these jurisdictions might still hold on to their

⁴⁵⁶ See Sybblis, *Identity Hurdle*, *supra* note 5, at 886-87.

⁴⁵⁷ See Kenneth Mohammed, *Europe Put Tax Havens in the Caribbean — And Now Punishes Them for It*, *GUARDIAN* (Aug. 22, 2022, 2:15 EST), <https://www.theguardian.com/global-development/2022/aug/22/europe-put-tax-havens-in-the-caribbean-and-now-punishes-them-for-it> [<https://perma.cc/JQ7U-72NA>]. See generally Dean & Waris, *supra* note 103 (discussing the role of race in the global governance of offshore financial centers).

⁴⁵⁸ Consider the case of Barbados, an offshore financial center in the Caribbean. In the wake of various listings by the EU and OECD, the Barbadian government took the time and used valuable resources to repeal the law that gave preferential treatment to international business companies (“IBCs”). Sybblis, *State Capacity*, *supra* note 4, at 252-53; see also Henderson Holmes, *Barbados: A Global Business Centre*, *BUS. BARB.* (Mar. 16, 2020), <https://www.businessbarbados.com/industries/barbados-global-business-centre> [<https://perma.cc/5XFP-7BA3>].

offshore sectors because that is where they have invested their society's efforts and hopes, and how they have come to be known to the global community.⁴⁵⁹ Indeed, as Professor Moon has revealed, these jurisdictions offer more than tax benefits.⁴⁶⁰ They also offer attractive corporate governance rules related to derivative suits, "inspection of corporate books and records," and "fiduciary duties of directors and officers."⁴⁶¹ Consequently, efforts to contain offshore financial centers from a Base Erosion and Profit Shifting ("BEPS") perspective could entrench and enhance their corporate governance offerings.⁴⁶²

Other jurisdictions, such as the Offshore UKOTs, where there is less of an identity associated with the offshore sector, would likely find it easier to withdraw from the enterprise. The result could be the elimination or drastic reduction in offshore financial services in some places and the further entrenchment of those same services in other jurisdictions. Detailed quantitative and qualitative research is required to verify this theoretical account of CEI and the global governance efforts of the OECD and EU, but it is an area worth pursuing because it could inform how resources are deployed by both small offshore financial centers (with limited state capacity) and intergovernmental organizations with respect to the offshore finance arena.

CONCLUSION

This Article has introduced a new approach to understanding the role of legal institutions in economic development. It has shown that a jurisdiction's economic identity plays a key role in the relevance and choice of specific legal institutions. By using the cases of UKOTs that are OFCs in the North Atlantic and Caribbean regions, it suggests that the commitment to an economic sector likely precedes the choice of, and subsequent commitment to, sophisticated legal institutions that

⁴⁵⁹ See Sybblis, *Identity Hurdle*, *supra* note 5, at 935-36 (discussing how collective identity may cause communities to hold on to failing industries and resist reforms that could prove more economically beneficially).

⁴⁶⁰ See Moon, *Delaware's New Competition*, *supra* note 4, at 1427.

⁴⁶¹ *Id.* at 1445-49.

⁴⁶² See generally Oei, *supra* note 43 (discussing the OECD's ongoing efforts to reduce BEPS activities by firms).

support economic prosperity.⁴⁶³ In the case of the Market Dominant UKOTs, offshore financial services have become entrenched in their economies and societies, which bolsters social backing for legal institution building for the sector. In turn, the investment in legal institutions, such as specialized courts and robust financial regulatory agencies, enhances the profile and credibility of these OFCs.⁴⁶⁴ However, the case of the Offshore UKOTs reveals that the mere presence in a jurisdiction of an economic activity, such as offshore financial services, does not always mean that it is entrenched in that society. If the economic endeavor is not entrenched, as a CEI is, it is less likely that the community will adequately commit to legal institution building related to that activity.⁴⁶⁵

Scholars and policymakers have long underappreciated the relationship between identity, legal institutions, and economic growth — especially in post-colonial jurisdictions.⁴⁶⁶ These jurisdictions, such as the UKOTs, the other ex-colonies in the Caribbean region, and many African nations, are actively seeking self-determination in the post-colonial period.⁴⁶⁷ But to achieve true self-determination, they must overcome the harms of colonialism and build institutions that both fit their shared modern identities and are resilient in the face of neocolonialism.⁴⁶⁸ This is a tall order. According to Caribbean historian Eric Williams, the countries in this region of the world, as well as in Africa, “face today the problems faced by all developing countries — both the internal problem of satisfying the aspirations of [their] peoples and correcting the deficiencies left behind by the colonial regime [and] the external problem of protecting [their] developing economies from the more powerful economies of developed countries”⁴⁶⁹ In this

⁴⁶³ See generally ADAPTING LEGAL CULTURES, *supra* note 34 and accompanying text (outlining various theories regarding the relationship between community cultures and legal transplanted).

⁴⁶⁴ See *supra* Parts II, III.

⁴⁶⁵ See *supra* Parts III, IV.

⁴⁶⁶ See generally Sybblis, *Identity Hurdle*, *supra* note 5 and accompanying text (providing a new theory regarding the relationship between identity and legal reform).

⁴⁶⁷ See GETACHEW, *supra* note 70, at 142 (referencing Eric Williams, Former Prime Minister, Trin. & Tobago, Speech to Students in Dakar, Senegal (1964)).

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.*

regard, economic development without attention to shared community histories and identities can prove elusive.

APPENDIX

Table 1

UKOT	Pre-1960s Colonial Economy	Year Offshore Operations Began	Size of Offshore Sector (% of GDP)
Anguilla	Minimal Agriculture, Tobacco, Cotton, and Sugar ⁴⁷⁰	1994 ⁴⁷¹	8.4% (2019) ⁴⁷²
Bermuda	Agriculture, Potatoes, and Tobacco ⁴⁷³	1945 ⁴⁷⁴	28.1 % (2021) ⁴⁷⁵
British Virgin Islands	Small Scale Agriculture, Fishing, and Charcoal Production ⁴⁷⁶	1984 ⁴⁷⁷	22.8% (2020) ⁴⁷⁸
Cayman Islands	Turtle Fishing ⁴⁷⁹	1966 ⁴⁸⁰	32.7% (2018) ⁴⁸¹
Montserrat	Sugar ⁴⁸²	Circa 1985 ⁴⁸³	Unclear ⁴⁸⁴

⁴⁷⁰ DAVIES, *supra*, note 107, at 19-20; *History of Anguilla*, BRITANNICA, <https://www.britannica.com/place/Anguilla-island-West-Indies/History> (last visited July 8, 2023) [<https://perma.cc/TU8F-DAYZ>]; *Anguilla Profile*, BBC NEWS (Aug. 25, 2023), <https://www.bbc.com/news/world-latin-america-20142904> [<https://perma.cc/7FKV-3GT4>].

⁴⁷¹ THOMAS-JAMES, *supra* note 171, at 131.

⁴⁷² *Id.*

⁴⁷³ PHILLIPS, *supra* note 12, at 9.

⁴⁷⁴ Connell, *supra* note 11, at 88.

⁴⁷⁵ DEP'T OF STAT., GOV'T OF BERM., *supra* note 404, at 4.

⁴⁷⁶ Colleen Ballerino Cohen & Frances E. Mascia-Lees, *The British Virgin Islands as Nation and Desti-Nation: Representing and Siting Identity in a Post-Colonial Caribbean*, 33 SOC. ANALYSIS 130, 131 (1993).

⁴⁷⁷ Maurer, *Writing Law*, *supra* note 11, at 275.

⁴⁷⁸ VIRGIN IS. 2021 BUDGET, *supra* note 401.

⁴⁷⁹ See Fergus, *supra* note 12, at 6.

⁴⁸⁰ *Id.* at 7.

⁴⁸¹ CAYMAN IS. MONETARY AUTH., FACT SHEET, *supra* note 398.

⁴⁸² See Fergus, *supra* note 12, at 3.

⁴⁸³ See David. B. Weaver, *Alternative Tourism in Montserrat*, 16 TOURISM MGMT. 593, 601 (1995).

⁴⁸⁴ As of 2018, one report noted that “it seems unlikely that there are more than a dozen employees primarily concerned with international finance or that the

UKOT	Pre-1960s Colonial Economy	Year Offshore Operations Began	Size of Offshore Sector (% of GDP)
Turks and Caicos Islands	Salt Mining ⁴⁸⁵	1981 ⁴⁸⁶	17% (2019) ⁴⁸⁷

Table 2. GDP Per Capita (US Dollars)⁴⁸⁸

UKOT	2016	2017	2018	2019	2020	Average
Anguilla	21,518	18,718	21,241	24,495	16,583	20,511
Bermuda	109,404	112,877	113,668	116,333	107,474	111,951
British Virgin Islands	47,178	43,472	45,554	47,006	48,273	46,297
Cayman Islands	78,858	81,255	85,232	89,869	83,326	83,708
Montserrat	12,357	12,698	14,420	14,507	15,067	13,810
Turks and Caicos Islands	26,995	25,659	26,832	27,795	20,882	25,633

Table 3. Population 1950–2020⁴⁸⁹

UKOT	1950	1960	1970	1980	1990	2000	2010	2020
Anguilla	5,118	6,032	6,771	7,285	8,899	11,252	13,438	15,003
Bermuda	37,260	44,400	55,000	54,670	59,326	61,833	65,124	63,893
British Virgin Islands	7,440	8,053	9,830	11,471	17,489	20,313	27,796	30,423
Cayman Islands	6,417	8,500	10,500	17,100	26,000	39,700	54,100	67,300
Montserrat	13,519	11,957	11,534	11,607	10,615	4,929	4,899	4,992

contributions to GDP exceeds EC\$2m (Eastern Caribbean currency).” MOTT MACDONALD, ECONOMIC GROWTH STRATEGY AND DELIVERY PLAN FOR MONTSERRAT (2018), <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC175862/> [<https://perma.cc/VVV2-8FJ8>]. In terms of percentage contribution of “financial intermediation,” the Statistics Department of Montserrat estimated that in 2019, 8.03% of GDP came from this sector. STATS. DEP’T, GOV’T OF MONTSERRAT, STATISTICS COMPENDIUM 2016–2019, at 17 (2018), <https://statistics.gov.ms/wp-content/uploads/2021/08/Statistics-Compendium.pdf> [<https://perma.cc/NSZ6-JY8M>].

⁴⁸⁵ DAVIES, *supra*, note 107 at 45.

⁴⁸⁶ THOMAS-JAMES, *supra* note 171, at 101.

⁴⁸⁷ *Id.*

⁴⁸⁸ *Per Capita GDP at Current Prices — US Dollars*, *supra* note 399.

⁴⁸⁹ *World Population Prospects 2022*, U.N. DEP’T OF ECON. & SOC. AFFS., <https://population.un.org/wpp/> (last visited July 8, 2023) [<https://perma.cc/9LMA-8MHT>].

Turks and Caicos Islands	5,051	5,825	5,837	7,984	12,115	20,171	32,658	38,718
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Table 4

Institutional Investments in the Offshore Sector				
UKOT	Commercial Court		Regulatory Agency	
Anguilla	<u>Institution Name:</u>	Member State of the Eastern Caribbean Supreme Court (“ECSC”)	<u>Institution Name:</u>	Anguilla Financial Services Commission
	<u>Description:</u>	<ul style="list-style-type: none"> • ECSC oversees a Commercial Division with jurisdiction over commercial disputes. • The Commercial Division Court is located in British Virgin Islands.⁴⁹⁰ 	<u>Management:</u> ⁴⁹¹	<u>Members:</u> Total - 12
	<u>Judges:</u> Total - 1	1 judge	<u>Board of Directors</u>	6
			<u>Management Team</u>	5
<u>Legal Counsel</u>			1 Senior Legal Counsel ⁴⁹²	
Bermuda	<u>Institution Name:</u>	Supreme Court of Bermuda: Commercial Court Division & Commercial List	<u>Institution Name:</u>	Bermuda Monetary Authority

⁴⁹⁰ See Lewis, *supra* note 255.

⁴⁹¹ See *Members*, ANGUILLA FIN. SERVS. COMM’N, <http://fsc.org.ai/staff.php> (last visited July 8, 2023) [<https://perma.cc/5DRU-Y8RZ>].

⁴⁹² There are five staff members that support the Management Team and Board of Directors. *See id.*

Institutional Investments in the Offshore Sector				
UKOT	Commercial Court		Regulatory Agency	
	Judges: Total - 2	2 Judges ⁴⁹³	Management:	Members: Total - 42
			Board of Directors	12 (1 Executive Director and 11 non-executive directors) ⁴⁹⁴ Management
			Team	32 ⁴⁹⁵
British Virgin Islands	Institution Name:	Member State of the Eastern Caribbean Supreme Court (“ECSC”) ⁴⁹⁶	Institution Name:	British Virgin Islands Financial Services Commission ⁴⁹⁷
	Description:	<ul style="list-style-type: none"> • ECSC oversees a Commercial Division with jurisdiction over commercial disputes. • The Commercial Division Court is located in British Virgin Islands • Registry provides administrative 	Management:	Members: Total - 30

⁴⁹³ See *Bermuda*, *supra* note 193.

⁴⁹⁴ See *Board of Directors*, BERM. MONETARY AUTH., <https://www.bma.bm/board-of-directors> (last visited July 8, 2023) [<https://perma.cc/AJB7-M75U>].

⁴⁹⁵ See *BMA Management Team*, BERM. MONETARY AUTH., <https://www.bma.bm/management-team> (last visited July 8, 2023) [<https://perma.cc/FW8S-NCNF>].

⁴⁹⁶ See *Lewis*, *supra* note 255.

⁴⁹⁷ *Governance*, VIRGIN IS. FIN. SERVS. COMM’N, <https://www.bvifsc.vg/about-us/governance/board-of-commissioners> (last visited July 8, 2023) [<https://perma.cc/H485-38CZ>]; *Management*, VIRGIN IS. FIN. SERVS. COMM’N, <https://www.bvifsc.vg/about-us/governance/management> (last visited Sept. 27, 2023) [<https://perma.cc/NB5D-X3HA>].

Institutional Investments in the Offshore Sector				
UKOT	Commercial Court	Regulatory Agency		
		support to Commercial Division (a total of four administrators)		
	Judges: Total - 1	1 Judge	Chairperson	1
			Deputy Chairperson	1
			Board of Commissioners	6 (including CEO)
			Management Team	23 (including CEO)
Cayman Islands	Institution Name:	Financial Services Division (“FSD”), Cayman Islands Grand Court	Institution Name:	Cayman Islands Monetary Authority (“CIMA”)
	Judges: Total - 6	6 Judges ⁴⁹⁸	Management:	Members: Total - approx. 60
			Board of Directors	8
			Management Team	46 ⁴⁹⁹
Montserrat	Institution Name:	Member State of the Eastern Caribbean Supreme Court (“ECSC”)	Institution Name:	Montserrat Financial Services Commission ⁵⁰⁰

⁴⁹⁸ *Financial Services Division*, CAYMAN IS. JUD. ADMIN., <https://www.judicial.ky/courts/grand-court/financial-services-division> (last visited July 8, 2023) [<https://perma.cc/3XYF-JWWF>].

⁴⁹⁹ *Management Team*, CAYMAN IS. MONETARY AUTH., <https://www.cima.ky/managementteam> (last visited July 8, 2023) [<https://perma.cc/VB4J-WMWM>].

⁵⁰⁰ *Corporate Governance*, MONTSEERRAT FIN. SERVS. COMM’N, <https://www.fscmontserrat.org/corporate-governance/> (last visited July 8, 2023) [<https://perma.cc/K2MC-E6CR>].

Institutional Investments in the Offshore Sector				
UKOT	Commercial Court	Regulatory Agency		
	<p>Description:</p> <ul style="list-style-type: none"> • ECSC oversees a Commercial Division with jurisdiction over commercial disputes. • The Commercial Division Court is located in British Virgin Islands⁵⁰¹ 		<p>Management:</p>	<p>Members: Total - approx. 3 to 6</p>
	<p>Judges: Total - 1</p>	1 judge	<p><i>Commissioner (acting as an ex officio director)</i></p>	1
			<p><i>Other Commissioners</i></p>	2-5
Turks and Caicos Islands	*No Separate Commercial Court		<p>Institution Name:</p>	Turks and Caicos Financial Services Commission
			<p>Management:</p>	<p>Members: Total - approx. 12</p>
			<p><i>Board of Commissioners</i></p>	7 ⁵⁰²
			<p><i>Audit and Risk Committee</i></p>	3 (including 2 Commissioners)
			<p><i>Governance Committee</i></p>	4 (including 2 Commissioners)
			<p><i>Human Resources Committee</i></p>	4 (including 2 Commissioners)

⁵⁰¹ See Lewis, *supra* note 255.

⁵⁰² *Governance*, TURKS & CAICOS IS. FIN. SERVS. COMM'N, <https://tcifsc.tc/board-of-directors/> (last visited July 12, 2023) [<https://perma.cc/K7FL-UB3L>].