

CENTRE FOR TAX SYSTEM INTEGRITY



Offshore Finance Centres: Institutions
of global capital and sites
of cultural practice

Gregory Rawlings



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**OFFSHORE FINANCE CENTRES:
INSTITUTIONS OF GLOBAL
CAPITAL AND SITES OF
CULTURAL PRACTICE**

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The working papers are selected with three criteria in mind: (1) to share knowledge, experience and preliminary findings from research projects; (2) to provide an outlet for policy focused research and discussion papers; and (3) to give ready access to previews of papers destined for publication in academic journals, edited collections, or research monographs.

Abstract

This paper explores the way the concept of ‘culture’ has been harnessed by the corporation as an identifiable object, that is considered either an impediment to growth and productivity or a valuable resource that can be deployed in the marketplace for increased profitability and enhanced share-holder value. This is addressed by considering Offshore Finance Centres (OFCs) as sites of institutional practice, whereby the commentaries and narratives of social actors, particularly corporate lawyers, accountants, fund managers and regulators, provide deep and nuanced perspectives on the institutions they help make. It concretes on the Samoa OFC and the invocation of culture as a means of promoting political stability, a good reputation and how these ideas subtly infuse investment decisions. In doing so it is argued that globalisation makes specific use of particular places (through law), transnational spaces (through mobility), and corporate definitions of culture and its value.

Offshore Finance Centres: Institutions of global capital and sites of cultural practice

Gregory Rawlings

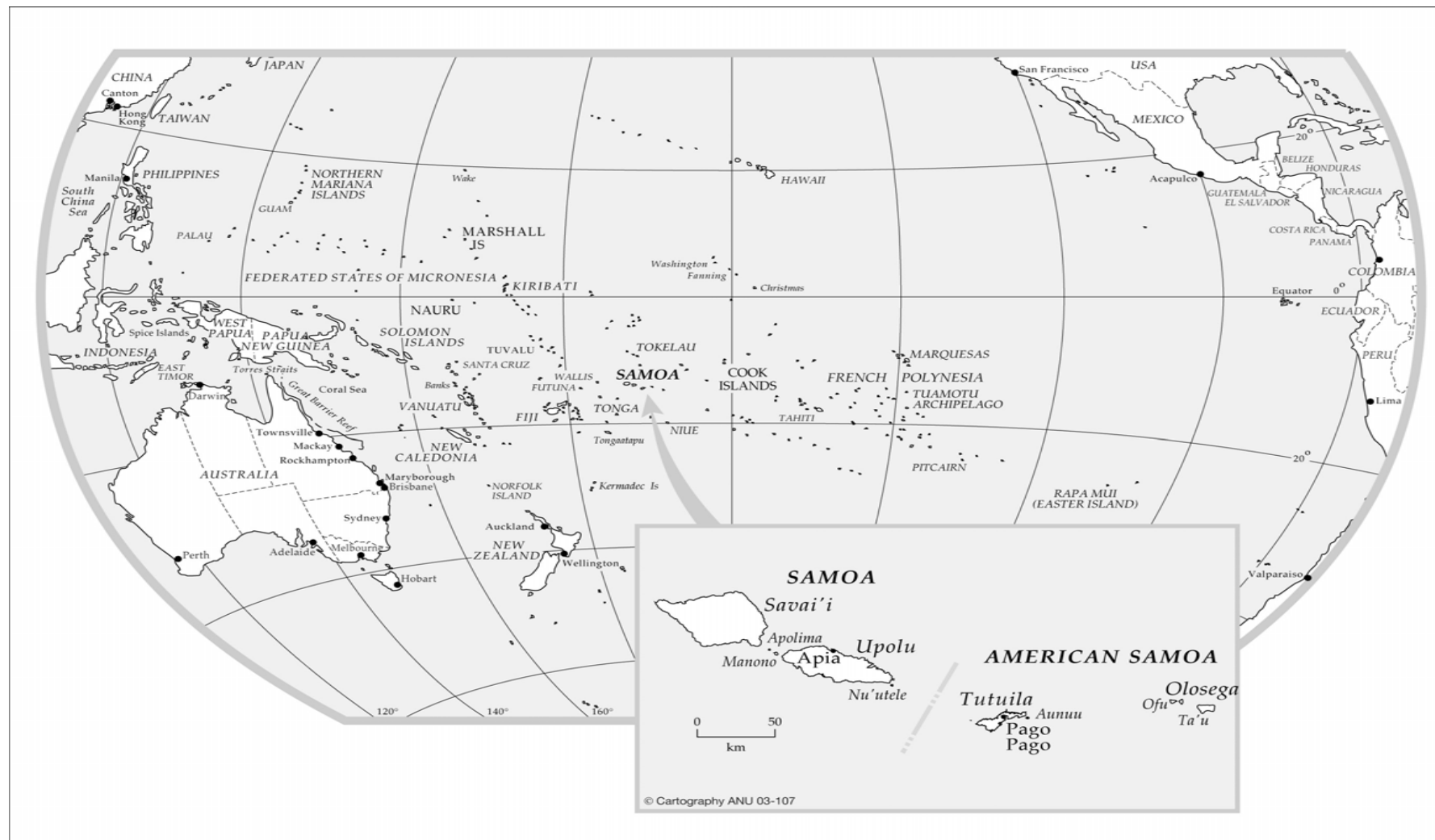
Introduction: The Siva

In Samoa (see Map 1), the terms *siva* and *ula* cover the concept of dance (Seloti, 1998). The *siva* is the most popular expression for dance. Samoan dance emphasises elegance and dignity, skill and grace. Three parts of the human body; legs, arm and head are combined in rhythmic movement, the *siva*. The upper body, the back is largely inactive – except when humour enters the dance; here the movement of hips takes precedence, but it is usually arms, hands, feet and legs that follow the music. In seated dance, women extend their arms and hands, and may use their feet and knees in step with the pulse of the beat. Indeed, dexterity of arms, hands and fingers is highly valued. The scholar of Samoan dance and music, Tialuga Sunia Seloti (1998, p. 798) writes:

The hands and arms make complex movements (*tāga*), which have multiple functions: to allude to sung words, comment on implied concepts, and decorate and connect musical phrases. *Tāga* use flexible wrists. Movements and positions of fingers and palms occur in a limited number of arm positions. Men's and women's hand-and-arm movements may be soft ... *Tāga* use flexible wrists.

Music and dance form an important part of the rich tapestry of cultural life in Samoa. The *siva* is performed by groups for audiences at festivals, official ceremonies and at tourist venues, at the ever popular *fia fia* nights (Mallon, 2002, pp. 204-206). The Samoan cultural critic, Sean Mallon (2002, p. 204) writes:

Today Samoan dance draws upon many styles and cultural influences, but new works remain rooted in a strong conceptual base built upon *fa'asamoa* and reinforcing elements of the Samoan social order. Through negotiating the space of the dance floor, the performers are respecting relationships within Samoan society and giving dignity to the occasion.



Map 1: Samoa

Through practices such as dance, performance and in language, stories and tales, in architecture, agriculture and the lived structures of polity and economy people create culture, symbolically and materially. With cultural agency, places are created and sustained out of landscape, never empty when inscribed with human meaning. The importance of culture, and especially *fa'asamoa*, Samoan culture, was invariably raised in my interviews, not with dancers, but with lawyers, accountants, trustees, company secretaries and fund managers. These people manage and work in financial institutions that collectively constitute the Samoa Offshore Finance Centre, designated as a tax haven by the Organisation for Economic Cooperation and Development (OECD) in 2000 (OECD, 2000). The importance of culture was flagged whenever I asked my interviewees 'how important is political stability for the Samoan Offshore Finance Centre?' One early afternoon, in late November 2002, entering a cream tiled office and retail complex, timber panelled at corners, in down town Apia – the Samoan capital – I made my way to the mezzanine area on the second floor. There, I was hospitably greeted by an engaging offshore financier, a corporate lawyer by training. My research is highly sensitive, I can not use people's names and am reluctant to use pseudonyms, so I will refer to my interlocutors according to their own professional criteria, the other side of identities so crucial to the institutions they make. Sipping strong coffee in the office reception and meeting area, the liberal use of glass providing the right mixture of light and shade, my interviewee responded to my question 'how important is political stability for the Samoan Offshore Finance Centre?', by saying:

Political stability is one of our main selling points, it's possibly even more important than our unique company laws. We have guaranteed political stability and full respect for the rule of law which is upheld on all occasions. From a cultural point of view the *matai* system, which extends a family's connections, titles and genealogies into all the villages, across Savai'i and Upolu, makes it as stable as you can get. All the villages are linked by families in a web of integration, so that no one can take over the government, no one would be allowed because everyone is related to everyone else. Besides we don't even have a military, we don't have an army. We are not like for Fiji for example (Interview, Apia, November, 2002).

The commitment to culture expressed here was sincere and genuine. Yet the idea that culture can also be a 'lucrative selling point', 'one of our best features', resonates with an important debate in organisational anthropology, management studies and the business orientated field of 'human relations'. 'Culture' has been harnessed by the corporation as an identifiable object, that is considered either an impediment to growth and productivity or a valuable resource that can be deployed in the marketplace for increased profitability and enhanced share holder value. The ethnographer of US corporations in Japan, Tomako Hamada (1994, p. 22), observed, 'During the 1980s, the concept of culture was 'displaced' from its anthropological origins by non-anthropologists, who introduced the construct to the general management science readership'. In a 1998 volume on recent trends in the anthropology of corporations, George Marcus (1998, p. 5) describes the relationship between capital and culture as:

What was once primarily the intellectual capital of oppositional groups or critics of corporations now seems to be appropriated by corporate leadership as an integral yet ambivalent characteristic of their own thinking.

In this paper today I am going to examine Offshore Finance Centres (OFCs) as sites of institutional practice. I will discuss these centres of global capital as sites of cultural engagement, whereby the commentaries and narratives of social actors, particularly corporate lawyers, accountants, fund managers and regulators, provide deep and nuanced perspectives on the institutions that they construct and project to the world (Marcus, 1998; Braithwaite, 2003). In doing so I argue that globalisation makes specific use of particular places (through law) and transnational spaces (through mobility), complicating any unilinear and straightforward accounts of the contemporary epoch (Appadurai, 1990; Darian-Smith, 2000; Foster, 1999; Maurer, 1997 & 2000). As such essentialised and non-essentialised notions of culture, indeed displaced from their anthropological origins, inform daily institutional practices and provide explanatory rationalisations of global investment decisions. This presentation will thus cover:

- The global context of offshore finance
- The Samoa Offshore Finance Centre
- Space, place and law: The institutional globalisation of financial capital
- Conclusion & Epilogue: *Offshore Investments: A 'Legal' Opinion*

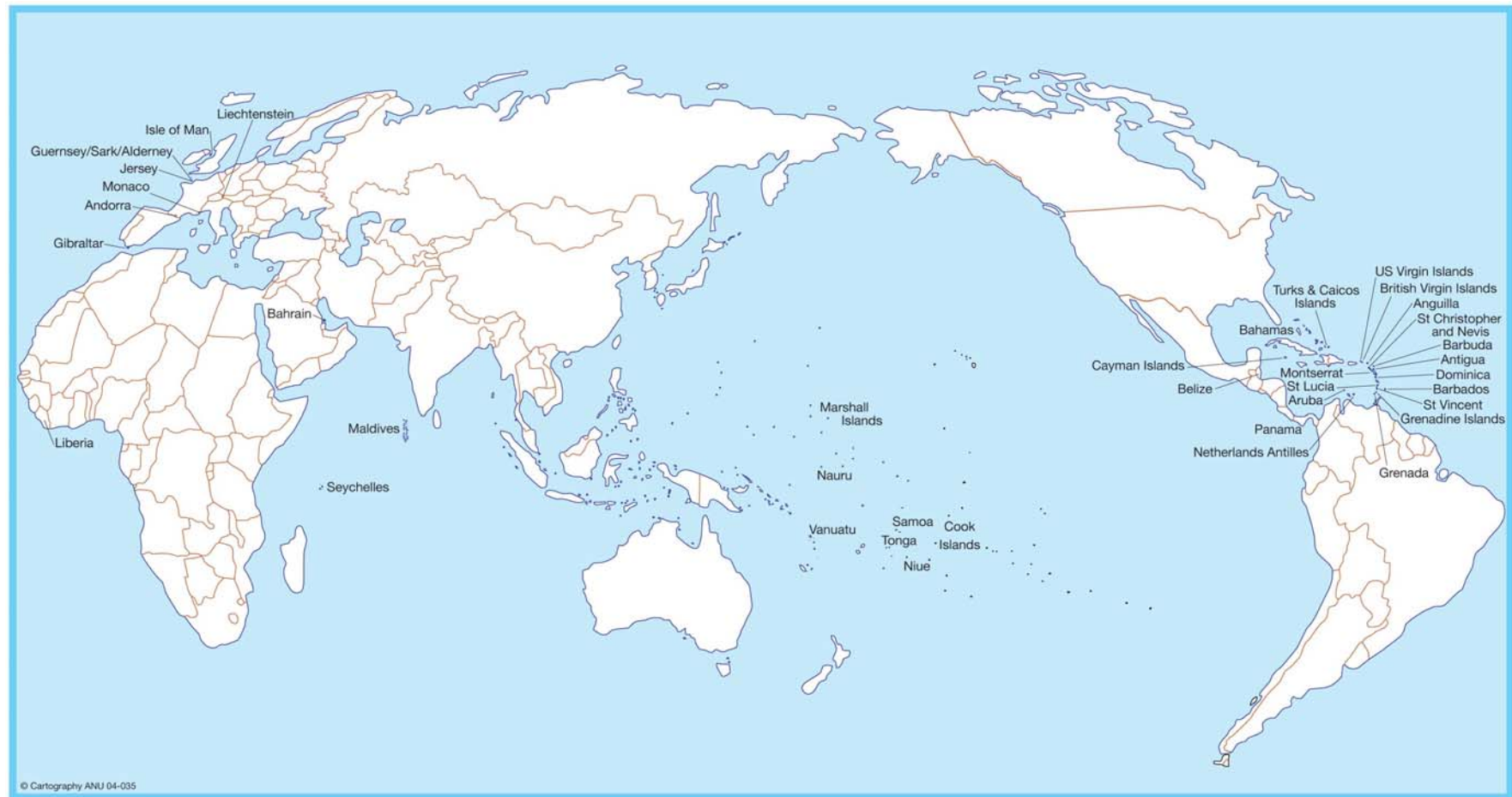
The global context of offshore finance

The past thirty years of financial deregulation and globalisation, paralleled by new forms of corporate governance has witnessed the rapid emergence of OFCs as key nodes in the world economy. In 1994 the International Monetary Fund (IMF) valued offshore assets at US\$2.1 trillion, representing 20 per cent of total global private wealth (Cassard, 1994 in Palan, 1999, p. 23). By 1998 a British Parliamentary report estimated that this had increased to over US\$6 trillion (The Edwards Report, 1998, p. 4). This is reportedly still growing (Hampton and Christensen, 2002, p. 1). In 2000, the OECD identified 35 Offshore Finance Centres, most of these classic ‘tax-havens’, from Andorra to Vanuatu. (OECD, 2000; see Map 2).

Entire countries now actively invoke their sovereignty to trade, sell and seek out segments in the highly competitive and lucrative offshore market for the vehicles that facilitate the ‘hypermobility’ (Agnes, 2000) of global finance – International Business Companies (IBCs), Asset Protection Trusts (APTs), hedge funds and bearer instruments such as bearer shares and debentures. These can be used to reduce taxation liabilities. They can also be used for asset protection, risk management, enhanced profitability, insurance and reinsurance, foreign exchange trading and expatriate financial products. This depends on an extensive network of financial corporate institutions managed by highly trained lawyers, accountants and financial advisers based in both onshore and offshore locations. It was professionals such as these that I interviewed in Samoa in November and December 2002. I have also been carrying out interviews and attending meetings with officials in the Tax Office and OECD over the last year.

The Samoa Offshore Finance Centre

Samoa was established as an Offshore Finance Centre in 1987. This was facilitated by the Trustee Companies Act (1987), the International Companies Act (1987) modelled on that of the British Virgin Islands (BVI), the International Trusts Act (1987), the Offshore Banking Act (1987), and the International Insurance Act (1988), (Briggs, 1999, p. 54). Various Samoan governments in the last ten years have enacted additional laws and amendments to that first suite of legislation to strengthen the country’s offshore regime.



Map 2: Tax Havens identified by the OECD (OECD, 2000)

Its main speciality has been in the provision of International Business Companies (IBCs). IBCs are holding companies. They are shelf companies. They have no minimum capital requirement, so they can be worth one dollar or alternatively hold assets worth \$10 million in Switzerland or Singapore or anywhere else for that matter. IBCs can be used to own and hide assets. They can be used to structure profits and losses. IBCs are also known as Special Purpose Vehicles (SPVs,) or Special Purpose Entities (SPEs), particularly in the United States. SPEs have a slightly broader meaning than the International Business Company, and can include offshore trusts and foundations, but they basically serve the same purpose. These gained notoriety a few years ago when it was discovered that Enron had 500 SPVs registered as subsidiaries in the Cayman Islands that had been used to hide losses. What is important to mention here is that Samoa specialises in the provision of these SPEs namely, IBCs. When used in conjunction with trusts, these can be used to structure assets, profits and losses and minimise taxes.

In Samoa the number of IBC incorporations has increased from 126 in 1989 to 7300 in 2000, to approximately 10 500 in 2002. The main market for Samoan IBCs is South East Asia. They can be utilised in the following way. A Hong Kong Company wins a tender for a major engineering project in rural China; lets say to build a bridge. They need to raise \$200 million on the world's financial markets to complete this project. This needs to be done quickly, in a matter of weeks if not days. In putting together a deal to raise this capital they need a range of subsidiary companies and trusts to minimise their tax liabilities on the expected profit of \$30 million. Hong Kong does not tax worldwide income, only profits derived from inside the SAR (Special Autonomous Region), inside Hong Kong (Halkyard & Shek, 2002, p. 143). Therefore the company needs non-Hong Kong corporate entities to structure its business venture. It also needs some of these to be registered in Chinese script characters. Therefore the company lets just call it, The Bridge Development Corporation, turns thousands of kilometres away to Samoa, which will provide IBCs. These have a number of advantageous features. They may be incorporated in Chinese script characters, have no minimum capital requirements, are not required to file annual statements and returns, appoint an auditor, hold an Annual General Meeting and are not liable for any form of taxation including stamp duty. One lawyer highlighted the efficiency of a rival trust company in the provision of bulk IBCs:

... she used to be their secretary, but now manages the office here in Samoa and is in charge of bulk IBC incorporations; can do hundreds at a time. A client might come along and say 'I need 50 or 100 IBCs for this project in China, can you get them to me by the end of the week' and she'll do it (Interview, Apia, November 2002).

Within a week a whole subsidiary corporate structure for the Bridge Development Corporation could be available, involving maybe IBCs from Samoa and the BVI, Asset Protection Trusts (APTs) in the Cook Islands, bank accounts in Jersey, hedge funds in Bermuda a few Wyoming Limited Life Corporations (LLCs) along with their Hong Kong parent companies, which can be used to manage assets, raise loans, lend money and channel profits out of Hong Kong and into tax-free realms. In this way financial products and services are mobilised on a global scale.

Space, place and law: The globalisation of financial capital

The flows of such vast amounts of money through multiple locations and legal entities (some would say 'legal fictions'), in and out of various OFCs, taking full advantage of globalised financial circuits, seems to resonate with Marc Augé's (1995) 'non-places of supermodernity'. For Augé, institutions (and he [Augé 1995, p. 96] lists some of them as 'airports, airlines, Ministry of Transport, commercial companies, traffic police, municipal councils') are emblematic of such 'non-places'. SPVs, APTs and IBCs may well be instruments that rely on mobility, transnationality and flexible financing paralleling Augé's observations, but they also rely on place and especially the ability of sovereign places to craft their own laws and in doing so offer incentives to globally mobile capital. The legal anthropologist, Eve Darian-Smith (2000) argues that with globalisation, law has become an instrument of the nation-state and a tool for 'shaping new arenas of transnational legal activity that best serve the increasing demands of a global political economy' (Darian-Smith, 2000, p. 811). She argues that globalisation:

... intrinsically relies upon the continuing enforcement of law through the nation-state and its international agencies and capacities ... State sovereignty and state law *have* been important in sustaining, servicing, and enforcing global economic

operations, and *will remain so* in the foreseeable future (Darian-Smith, 2000, p. 811).

For Darian-Smith 'nation-states are crucial in modifying and negotiating the outer limits and substantive content' of globalisation. OFCs have been able to position themselves in a global market of 'tax-efficient' funds that seek new offshore states that have the capacity and right to draft and enforce their own tax codes, to choose to tax or not tax, and author all manner of financial products that complement these extremely attractive fiscal environments for today's manager of global portfolios.

In its first 1998 report on 'harmful tax practices', the OECD Committee on Fiscal Affairs took the position that 'Globalisation has also had negative effects of opening up new ways in which companies and individuals can exploit these opportunities by developing tax policies aimed at primarily diverting financial and other geographically mobile capital' (OECD, 1998, p. 17). Under US pressure, it has now modified this stance and restricted its mandate to outright tax evasion and improving KYC ('Know Your Customer') and due diligence checks on clients within the offshore sector. As one OECD official said in an interview recently 'Clearly it is not the OECD's intention to drive funds out of Switzerland, out of Europe, or out of the South Pacific for that matter' (Interview, Sydney, 2003).

Conclusion & Epilogue

Offshore investments: A 'legal opinion'

Indeed tax efficient funds continue to flow into Oceania. The second major market for Samoan financial products are High Wealth Individuals (HWIs). The accountancy firm Merrill Lynch enthusiastically reported that the numbers of HWIs (people with assets exceeding US\$1 million) grew in 2002 to 7.1 million people or 0.114% of the global population who own and controls half of the planet's wealth, or US\$26 trillion (Merrill Lynch, 2002), (the UN reports that the worlds total stock of wealth is valued at about US\$52 trillion, so 0.114% of the world's population own half of this). Much of the management of this wealth has been sent offshore to places like Samoa. The manager of

one trust company in Apia (that ‘didn’t advertise), reflecting on the impact of the OECDs attempts to regulate the offshore sector observed:

We ought to survive. We have an established client base. New clients are referred by their friends ... There hasn’t been much change for private individuals, those with connections to established outfits. High Wealth Individuals and multinationals - families that own multinationals - they’re still the core; hasn’t been much change with them (Interview, Apia, December, 2002).

While in Samoa I attended the Pacific History Association Conference and there heard a very compelling paper presented by a PhD Scholar at the University of Hawai’i, Masami Tsujita. In this paper, Tsujita described the experiences of some of the 1000 young Samoan women who work at an electronic wire-harnessing factory just outside of Apia. This factory was owned and operated by the Yazaki Corporation, a Japanese supplier of electronic componentry for various car assembly operations. They first opened a plant in Melbourne in 1974, supplying Australian automobile assembly plants, including Toyota, Nissan, Chrysler and Mitsubishi. In 1991 and 1992, Yazaki closed its Australian operations, made its Australian workforce redundant, and re-located in Samoa. The Samoan government offered Yazaki free land, low rent factory premises and exemptions from all forms of direct taxation for an indefinite period.

Yazaki employs 1800 factory workers, including 1000 young Samoan women. The workforce, is non-unionised and is paid AUD 0.89 cents an hour (WST1.56, USD 52 cents), for 12 hours a day, seven days a week, in a hot, non-air-conditioned, poorly ventilated concrete and corrugated iron factory. The factory gates are closed five minutes after opening each morning at 7.00am and late arrivals are shut out and deducted a days pay. There were the reports, archetypical of factory conditions throughout much of the ‘third world’, of restrictions on toilet breaks. In her research Tsujita found that while there was a high staff turn over and the young women working on the factory floor did not like the strict rules and regulations, they valued the economic independence it gave them in a country where paid employment is scarce. However, they tended to agree that it was ‘exhaustive work for small pay’. The main raw material used in this factory is wire, supplied from New Zealand. *The Samoa Observer* (10 April 2003) reports that this wire is

‘intricately weaved over computerised patterns according to the needs of each model and make. The plant supplies Holden, Mitsubishi and Toyota car assembly plants in Australia’. These components, manufactured by young Samoan women, are essential to vehicle security and electronic fuel ignition systems. Thus the 1998 Nissan Pulsar’s remote keyless entry system uses componentry manufactured by 1000 young women paid AUD 0.89 cents an hour in a tax-free Samoan factory (Australian Arrow Pty Ltd, 2003: <http://www.austrlianarrow.com.au/corphist.html>).

The reason I mention this factory is because it often came up as a topic of conversation in my interviews. I found it to be a fascinating account of the globalised corporate form. However, corporations do not only follow the trail of tax concessions and cheap labour, but their investment decisions also echo some of my opening remarks about the essentialised notions of culture as a resource in the hands of capital, informing so-called ‘common sense’, or perhaps we should say, corporate views of the world.

An interview with a lawyer, one late December afternoon, the air heavy with heat, high clouds rolling in from the Ocean’s horizon, shrouding Mt Va’ea in deep mist; Mt Va’ea on whose foothills at Vailima rests the home of Robert Louis Stevenson. The lawyer, wearing light blue short-sleeved shirt, dark blue lava-lava and brown leather sandals, was outgoing and gregarious, welcoming me into his large office, crammed full of papers and files. Our interview covered the kind of work he carried out in the offshore sector. Paralleling my other interviewees, he said that South East Asia provided his main client base, followed by Australia, the UK and New Zealand adding that there was a ‘reasonable amount of work from Australia and New Zealand’ (Interview, Apia, December, 2002). He noted that Samoa, like Hong Kong, is a common law jurisdiction, and that the country’s corporate vehicles are valid, sound and secure, recognised by other states. He said that ‘there are no sovereignty issues’, meaning that their IBCs are completely legitimate in law, adding that they were ‘properly authorised, sealed’ and undergo ‘standard due diligence procedures’.

We then came to the end of our interview, concluding with a discussion about, in his words, the ‘need for more foreign investment in Samoa’:

Lawyer: Have you been to the factory?

Interviewer: No. Do you mean the car, wire-harnessing factory? I listened to a very good paper about it at the conference a few days ago.

Lawyer: Yes, that's the one, the Japanese electronic wire factory. It's been great news for Samoa. It's really made a big contribution to our economy. It employs about, about 2000 people the last I heard. That's the kind of investment we need here. Only then will we begin to attract the Barclays, the Arthur Anderson's and the HSBCs. You know why they came here don't you?

Interviewer: Apparently they were given land and tax concessions?

Lawyer: Yes, yes, but it's not the only reason. You see they were based in Adelaide, or was it Melbourne, some where in Australia for years. But it's very intricate ... repetitive work. You know the factory girls have to weave it, the wire, over the electronic circuitry, over and over again. Back in Oz, their workers kept on getting RSI. Demands for compensation, for the RSI, kept on growing, until the company said 'enough, we're going somewhere else'. They couldn't continue to afford the compo pay-outs. So they looked all over the world for some new place suitable for their factory. They considered Indonesia; there wasn't any workers compensation there at the time. Then they realised that workers in factories in Auckland, South Auckland, didn't seem to get RSI at all. They had lots of Pacific Islanders, mainly Samoans working in these factories. So the Japanese owners thought of relocating to Mangere [South Auckland]. Then they discovered, even better for them, they could move directly to Samoa instead, and get the land subsidy, the factory's already here and pay no tax. Better still they only had to pay one tala, 50 sene [WST1.50] an hour; what's that, about 50 US cents? Who wants to pay \$7 or \$10 an hour in New Zealand, when you can pay 50 cents? Besides, the factory girls here in Samoa are really good workers. They never get RSI. It's their hands; they have very flexible wrists. You know why that is don't you?

By this stage I was sceptical about these claims that Samoan workers were some how immune from getting RSI, but tried not to show my scepticism and replied:

Interviewer: 'No, no I don't?'

To which my offshore lawyer replied:

Lawyer: 'Oh – it's because they can do the *siva*!'

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