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**Reshaping the regulatory landscape:  
Border skirmishes around the Bahamas and Cayman offshore  
financial centres**

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## **ABSTRACT**

Processes of globalization involve changes in the spatialities of power and social relations. This paper develops a theory of regulatory landscapes, as a conceptual tool to aid our understanding of processes of globalization.

Regulatory landscapes vary along two dimensions, both of which relate to scale and boundaries and extend from “bounded” to “trans-boundary”: firstly the degree of boundedness of economic accumulation; and secondly the degree of boundedness of political regulation. Processes of geo-regulatory change then, may be conceived in terms of two analytically separable moments. The first moment of geo-regulatory change is the trans-boundary extension of economic accumulation. The second moment, which is the focus of this paper, is the trans-boundary or extra-territorial extension of political regulation. It is hypothesized that the attempted trans-boundary extension of political regulation - to avoid regulatory underprovision - leads to border skirmishes, battles or negotiations about the nature of boundaries.

These processes of geo-regulatory change are examined through the lens of offshore financial development in the Bahamas and Cayman. Two geo-legal cases or border skirmishes - the Castle Bank and Bank of Nova Scotia cases - are investigated ethnographically to reveal the changing meanings attached to borders during processes of geo-regulatory change.

In conclusion a general model of geo-regulatory change is presented in which border skirmishes, negotiations about the allocation of power and authority or the shape of the regulatory landscape, play a central role.

## **KEYWORDS**

globalization; regulation; geography; scale; sovereignty; offshore

## **INTRODUCTION: GLOBALIZATION AND GEOGRAPHIES**

One might expect Geographers to focus on the spatialities of power and social relations in trying to understand processes of social change (Cox, 1997; Dicken, 1992; Harvey, 1989; Kofman and Youngs, 1996; Swyngedouw, 1997), but scholars of International Relations, Political Science and Sociology too have recently begun to appreciate that in order to understand processes of globalization we must explore their geographies (Cerny, 1995; Giddens, 1990; Rosenau, 1996 and 1997; Ruggie, 1993; Scholte, 1996). Drainville goes so far as to suggest that, “because it serves as a way to focus the analysis of social relations, and to capture power relationships where they are constructed, there is something radically important about conceptualizing the world economy as a social space in the making” (Drainville, 1995: 70). For a variety of commentators, globalization is best understood in terms of changes in the importance and meaning of space, place, distance and borders; the spatialities of power and social relations. Globalization, fundamentally, refers: to the stretching of social relations across space and time (Giddens, 1990); to a “process whereby social relations acquire certain relatively placeless, distanceless, and borderless qualities” (Scholte, 1996); and, to “processes which are not hindered or prevented by territorial or jurisdictional boundaries” (Rosenau, 1996: 5). However, despite their promise, these contributions fall short of a workable theory of globalization.

Cerny points the way towards a testable theory with his discussion of globalization and the changing logic of collective action (Cerny, 1995). In this framework, globalization is about a shift in the appropriate scale for the provision of public goods. Political economies of scale are “particular historical matrices or patterns of imbrication between economic-organizational and political-institutional structures” (Cerny, 1995: 598). These political economies of scale change over time as the nature and spatial mobility of the goods, assets and resources which are central to the international political economy change in a dynamic technological environment. As Cerny explains, “the more that the scale of goods and assets produced, exchanged and/or used in a particular economic sector or activity diverges from the structural scale of the national state ... then the more that the authority,

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legitimacy, policymaking capacity and policy-implementing effectiveness of states will be challenged from both without and within” (Cerny, 1995: 597). Such processes of structural differentiation require new political economies of scale (see also Spruyt, 1994a and 1994b).

Agnew and Corbridge (1995) develop a similar approach to understanding changes in the international political economy with their concept of “geopolitical order”. By order they mean “the routinized rules, institutions, activities and strategies through which the international political economy operates in different historical periods” (Agnew and Corbridge, 1995: 15). They suggest that orders are necessarily geographical, involving particular spatialities of power and social relations; that orders can be distinguished by their geographies (Ruggie, 1993); and that changes in the geopolitical order involve changes in the differentiation of the spatial fields of practice, that is, changes in the location, function and understanding of borders. Geopolitical orders are organized in terms of two dimensions: the scale of accumulation or economic activity; and the scale of political regulation. Agnew and Corbridge outline two ideal types of economic activity - territorial (intensive) and interactional (extensive) - and three ideal types of political regulation - nation-state, imperial state and international state. As technological and economic conditions change, the scales of economics and politics change too; the geopolitical order is transformed. The empirical focus of their analysis is the period from 1815-1990, a period in which they see three geopolitical orders: the concert of Europe and British geopolitical order (1815-1875); the geopolitical order of the inter-imperial rivalry (1875-1945); and, the Cold war geopolitical order (1945-1990). Further, they suggest that the emerging geopolitical order may be characterized as transnational liberalism, an era in which the centrality of territorial states is increasingly undermined. One might quibble with their periodization of history and with their selection of ideal types, but this sort of approach to understanding social change seems to me the right way to go; it encourages a clarity of thought and foregrounds the spatialities of power and social relations. It is this approach which I develop with my concept of “regulatory landscapes”.

## **REGULATORY LANDSCAPES**

In using the term “regulatory landscape” I mean to suggest that the international political economy in some ways resembles the physical landscape. It is a landscape of places and actors; a landscape which is re-shaped by actors within it, at the same time as the actors’ behaviour is shaped by the existing landscape; a landscape made up of individual places and actors and the connections between them; a landscape which is uneven; a landscape in which there are flows of people, goods, money, and other types of assets and information which flow in different ways depending upon their characteristics, particularly, their spatial mobility or immobility; and, a landscape which is reproduced and transformed by the flows of these goods and assets. Most importantly, regulatory landscapes are socially constructed (Burch and Denmark, 1997), and scaled in particular ways.

The concept of scale is crucial here: “geographical scale is the focal setting at which spatial boundaries are defined for a specific social claim, activity or behaviour” (Agnew, 1997: 100). The politics of scale provides an important conceptual tool to help us to understand processes of globalization; scale is about boundaries, and boundaries are about power. As Swyngedouw explains: “the making and unmaking of scale-dependent forms of regulation simultaneously contain and form the arena in which the social struggle for power over everyday spatial practices unfolds” (Swyngedouw, 1992: 61), or, more concisely, “the scale of struggle and the struggle over scale are two sides of the same coin” (Smith, 1992: 74). Scales are socially constructed and are reproduced and transformed by social practice. But, scales and the borders which constitute them, change only intermittently because they are institutionalized, for a time, through the discourse and practice of law. As Rosenau puts it: “[w]hen a particular balance is codified and legally sanctioned, the evolutionary process enters a period of intermittent pause, a period that lasts as long as the new legal codes are effective and sustain the balance between the opposing forces that press for a resumption or reversal of the prior trend-line” (Rosenau, 1997: 217). The politics of globalization, then, is all about who has the power to draw boundaries around places and peoples, at what scale

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such boundaries are drawn, and, what the boundaries signify. If we neglect the politics of scale and boundaries - the spatialities of power and social relations - we miss the central feature of processes of globalization, the reshaping of regulatory landscapes, or, as Ruggie puts it, “a shift not in the play of power politics but of the stage on which that play is performed” (Ruggie, 1993: 139).

In order to put the “regulatory landscapes” approach to work, we need to disaggregate and recombine the component parts of regulatory landscapes, develop a typology of landscapes, and generate testable hypotheses about their dynamics, in effect moving along the continuum from thought-provoking metaphor to testable theory.<sup>i</sup> Regulatory landscapes are organized in terms of two dimensions or axes: the degree of boundedness of economic activity; and, the degree of boundedness of political regulation.<sup>ii</sup> Each of these axes stretch from “bounded” to “trans-boundary” poles.<sup>iii</sup> “Bounded” economic activity refers to the production, distribution and consumption of commodities within a defined territory, for instance the state; “trans-boundary” economic activity refers to situations where commodity flows cross (state) borders. The scale and hence boundedness of economic activity depends upon the technological environment and the characteristics - particularly the potential spatial mobility - of the commodities in question. “Bounded” regulation means that rules refer to specific defined territories or jurisdictions; “trans-boundary” regulation signifies that rules extend beyond national borders. The scale and boundedness of political regulation depends upon the technological environment and decisions made by national regulators about the optimal scale of political regulation for the commodities in question. Combining these two dimensions generates a typology of regulatory landscapes, or geo-political economies, as illustrated by Figure 1.

Figure 1: A typology of regulatory landscapes

Political regulation

**Bounded**

**Trans-Boundary**

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<b>Bounded</b>	Domestic political economies (sovereignty)	Political globalization (extra-territoriality)
<u>Economic accumulation</u>		
<b>Trans- Boundary</b>	Economic globalization (competitive deregulation)	Global political economy (borderless world)

Regulatory landscapes can be differentiated in terms of the ways in which scales of economic accumulation and political regulation are combined. That is, in terms of the degree of boundedness or territoriality<sup>iv</sup> of activities and rules. In a regulatory landscape of “domestic political economies”, borders are all important; this is a landscape of economic autonomy and political sovereignty. In a “global political economy”, borders are unimportant; this is a borderless landscape. In the case of “political globalization”, rules transcend borders whilst commodity flows do not; this is a landscape characterized by extra-territoriality. In the case of economic globalization, commodity flows cross borders whilst rules do not; this is a landscape characterized by tendencies towards competitive deregulation and regulatory underprovision. In short, regulatory landscapes are socially constructed spatial configurations or scalings of economic activity and political regulation, in which borders are more or less important; particular spatialities of power and social relations, particular geographies.

In recent years, in the context of contemporary challenges to sovereignty, increased attention has been given to the historical geography of power (Agnew, 1994; Anderson, 1996; Barkin and Cronin, 1994; Biersteker and Weber, 1996; Camilleri and Falk, 1992; Kratochwil, 1986; Lapidoth, 1992; Rosow, Inayatullah and Rupert, 1994; Ruggie, 1993; Spruyt 1994a and 1994b; Taylor 1994 and 1995; Walker, 1991 and 1993). Much of this recent scholarship builds on historical sociologies of the development of the state in Western Europe (Giddens, 1985; Holton, 1985; Mann, 1984, 1986 and 1993; North, 1981; North and Thomas, 1973; Tilly, 1975). Until recently however, scholars in International Relations have

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tended to take “sovereignty” - the bounded territorialization of power and social relations - as an adequate description of the regulatory landscape. The discourse/practice of sovereignty has provided the link between regulation and geography, or power and space, linking power with space in bounded sovereign state-territorial parcels. Sovereignty sets up a dichotomy of inside/outside: inside is the domestic arena of politics and community; outside is characterized by anarchy and international relations (Walker, 1993). Externally, territories are defined through mutual recognition in the inter-state system; internally, sovereignty allows the state to shape what goes on within its territory. Discourses and practices of sovereignty mark out territories in space and confer the power to regulate what takes place within them. In this way International Relations has frequently fallen into the “territorial trap” (Agnew, 1994). But, as history shows, and my typology makes clear, other spatialities of power and social relations are possible; state territoriality is not the only form which the regulatory landscape can take. As Ruggie complains: “it is truly astonishing that the concept of territoriality has been so little studied by students of international politics; its neglect is akin to never looking at the ground that one is walking on” (Ruggie, 1993: 174). The theory of regulatory landscapes seeks to put territoriality at the heart of a spatialized International Political Economy (IPE).

The theory of regulatory landscapes generates a series of research questions about the production of regulatory landscapes, their dynamism, and the implications which follow from the development of different types of landscape. Processes of geo-regulatory change involve two analytically separable moments; the trans-boundary extension of economic accumulation, and, the trans-boundary extension of political regulation. In this paper I examine both moments of geo-regulatory change, although my focus is mainly on border skirmishes as the second moment of geo-regulatory change. Regarding the first moment of geo-regulatory change the hypothesis is that increased potential spatial mobility of the assets or commodities in question, in conjunction with the potential for great profitability, leads to an extension of economic activity beyond the existing borders, which are, as a result, rendered more porous. This first moment of geo-regulatory change is illustrated through the development of new

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forms of money - eurocurrencies - and the collapse of the Bretton Woods monetary system. The theory of regulatory landscapes, with its focus on the role of borders, generates two hypotheses about the implications of this first moment of geo-regulatory change, both of which relate to a situation of regulatory mismatch and potential regulatory underprovision as the (trans-boundary) scale of economic activity (temporarily) exceeds the (bounded) scale of political regulation.

The first hypothesis is that regulatory mismatch leads to regulatory underprovision and the potential for competitive deregulation. The idea of competitive deregulation suggests that national regulatory authorities (states), in trying to maintain their competitiveness in a globalizing economy, undermine their own powers. Competing against other states to attract mobile capitals they have progressively deregulated<sup>v</sup> their own jurisdictions, in effect giving up some of their political sovereignty in an effort to benefit economically. As Cerny explains “the globalization of finance has played a disproportionate role by cutting across structures of state power in such a way as to channel state power into reinforcing the structural power of private financial markets, thereby increasingly undermining state power itself and institutionalizing that of the global marketplace” (Cerny, 1994: 322). The loss or trade-off of regulatory powers by states is a result of their position in a dynamic competitive system without central coordination. The globalization of economic activity and the resultant scale mismatch with the states’ basis of political authority makes the provision of territorial regulation by individual states problematic and insufficient for activities which span state boundaries. As Cerny puts it: “[t]here is a new disjuncture between institutional capacity to provide public goods and the structural characteristics of a much larger scale, global economy” (Cerny, 1995: 598). The collapse of the Bretton Woods international monetary system provides an important example of this challenge. The fundamental problem was that finance was going global whilst the Bretton Woods regulatory framework remained inter-national with the US dollar at the centre; this was a challenge to territorial regulation as the organizing principle of the international political economy. The Euromarkets, “a set of money and credit markets which existed beyond the effective jurisdiction of any national or

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international regulatory authority” (Leyshon, 1992: 260), exacerbated this problem. Leyshon continues that “the postwar model of an international order comprised of a set of interrelated but economically sovereign nation states was finally exploded by an invigorated ... increasingly mobile international financial capitalism” (Leyshon, 1992: 261). As Strange puts it: “in a nutshell, one may say that the markets are predominantly global, while the authorities are predominantly national” (Strange, 1988: 89). In such a situation of mismatch, regulation is likely to be underprovided by states: *inter-national* regulation is insufficient for a *globalizing* economy.

The second hypothesis, which has attracted much less attention within IPE, and is the focus of this paper, is that as political regulators - recognizing regulatory underprovision as a threat to their power and autonomy - seek to catch up with the scale of economic accumulation, the regulatory landscape will be characterized by border skirmishes. Border skirmishes are legal battles, often characterized as “extra-territoriality” (Meessen, 1996; Picciotto, 1983), over the role, meaning and porosity of boundaries. As states attempt to extend their laws extra-territorially, to catch up with their economic activity or to prevent competitive deregulation, conflicts of legal authority or sovereignty result. The increasing prominence of issues of extra-territoriality can be seen in, for instance, the USA’s Helms-Burton Act concerning trade with Cuba, and attempts to apply environmental or labour standards extra-territorially, in contravention of the World Trade Organization’s multilateral framework. As financial activity and other business spreads increasingly across the borders which have marked the limits of national laws, and states attempt to retain some control over these transnational activities, these laws are likely to come into conflict. A state such as the US, which exports financial activity through the Eurodollar and offshore market for instance, may well seek to extend its laws outside its territory. The US, in defining its interests as regional or global - scaling the regulatory landscape in a particular way (Harvey, 1996) - comes into conflict with other jurisdictions which are keen to defend their sovereignty and regard US efforts to regulate their territories as illegitimate interference. It is this hypothesis, that the second moment of geo-regulatory change - the attempted

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trans-boundary extension of political regulation - leads to border skirmishes, which is explored in the remainder of this paper.

## **OFFSHORE CASES**

Over the last thirty years one of the more interesting developments in the geography of the international political economy has been the appearance of “new places” on the map. These places are offshore financial centres (OFCs); places which host banking, insurance, and other financial activities, away from the onshore regulatory authorities. Such centres include the Bahamas and Cayman in the Caribbean, Gibraltar and Jersey in Western Europe, Bahrain in the Middle East, Singapore and Hong Kong in East Asia, and Vanuatu in the South Pacific. There has been little research conducted into the development of offshore financial centres. As small and apparently marginal places in the international political economy they have merited scant attention (although see Johns, 1983; Johns and Le Marchant, 1993; Hampton, 1994 and 1996; R. Roberts 1994; S. Roberts 1994 and 1995). However, their small size belies their importance in the workings of the international political economy. The development of OFCs is intertwined with processes of financial globalization and the shift from a state-centred international monetary system to a more decentralized flexible system (Agnew and Corbridge, 1995; Helleiner, 1994). By facilitating dollar banking beyond the regulatory reach of the USA, OFCs both contributed to, and were given a boost by, the collapse of the Bretton Woods international monetary system in the early 1970s.

Many commentators have suggested that international finance provides the best window through which to look at contemporary processes of socio-spatial change. International finance, and offshore finance specifically, involves the circulation of increasingly mobile commodities, providing an excellent case for putting the theory of regulatory landscapes through its empirical paces. Abbott and Palan suggest that OFCs have become “nothing less than the cornerstone of the process of globalization” (Abbott and Palan, 1995: 19), and Rosenau argues that, “[i]n some deep and significant sense, in short,

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the authority of states has, like money, moved offshore” (Rosenau, 1997: 220). In the remainder of this paper the development of the Bahamas and Cayman OFCs is examined in an effort to improve our understanding of processes of globalization.

This paper works with primary data collected through semi-structured interviews with offshore financiers, politicians and regulators in the Bahamas, Cayman, London, and the USA in 1994<sup>vi</sup>, focusing in particular on two geo-legal episodes or border skirmishes, the Castle Bank and Bank of Nova Scotia cases. These cases are crucial to understanding the reshaping of the regulatory landscape of international and offshore finance. Discourses and practices of law provide a measure of stability, a temporary institutionalized pause in the continuous re-construction of the regulatory landscape (Rosenau, 1997: 217). Thus, it is in specific geo-legal cases that regulatory landscapes are challenged and renegotiated. As Rosenau puts it, international determinants of the values which attach to sovereignty “tend to acquire momentum through specific acts in which interventionary efforts are initiated. As such, as the bases of successful or failed attempts to intervene in the domestic affairs of states, international determinants are readily discernible in trend-setting events which sustain an aggregative process” (Rosenau, 1997, p.229).

A focus on “trend-setting events” demands an examination of the social practices involved in the reconstruction of the regulatory landscape. Case studies and ethnographic work are important here to capture the detail and the meanings attached to processes of socio-spatial change. This ethnographic approach to studying the international political economy, in combination with other research methods, is a useful way of investigating the social practices and institutions through which the international political economy is constituted (Onuf, 1989; Burch and Denmark, 1997). Ethnography is useful in this context because “[b]orders are not inherently significant, they are significant because we attach significance to them. We can change the significance of borders without changing their location by changing what they signify - what comes along with them” (Ford, 1996, p.1194). Ethnography enables us to uncover the meanings which actors attach to borders.

## **THE BAHAMAS AND CAYMAN OFFSHORE FINANCIAL CENTRES**

The development of offshore financial centres in the Bahamas and the Cayman Islands began in the 1960s, building on their existing “tax haven” status, and can be explained briefly through a combination of internal and external factors. Internally, in the 1960s, both countries were searching for suitable development strategies, as their traditional sources of income dwindled. Both countries are island micro-states in the Caribbean with limited resources and small local markets. Development through industrialization is not possible and the range of strategies open to them is limited (Connell, 1988). In some ways their best resource for development is their jurisdiction, their allocation of authority within the regulatory landscape, their legal sovereignty to construct themselves as attractive places<sup>vii</sup> for investment. Baldacchino suggests that microstates are treated as anomalous or deviant, and have been neglected by mainstream development theory with its focus on industrialization (Baldacchino, 1993). He describes the strategies of microstates as “pseudo-development”, arguing that they adopt a rentier development strategy of insertion into the world economy. For microstates “economic development is a problem of management - of timing, sequencing, and manipulating in an unending effort to perceive or create, and in any case to exploit, a multiplicity of little openings and opportunities” (Best, 1971: 30 - cited in Baldacchino, 1993: 37). The smallness and nature of microstates’ economies, lacking internal linkages and relying on imports, can also mean that “there is little difficulty in designing a set of tax advantages which not only do not weaken the domestic tax base but actually widen it beyond what the local economy itself could achieve” (Dommen and Hein, 1985: 12). Offshore finance, based upon jurisdiction, or the sovereign right to construct a place through regulation, appeared to offer the Bahamas and Cayman feasible development strategies.

This search for a suitable development strategy was combined in the 1960s with the desire of external actors - international business and finance - for a safe and profitable location for their financial activities. This desire was stimulated particularly by restrictions on

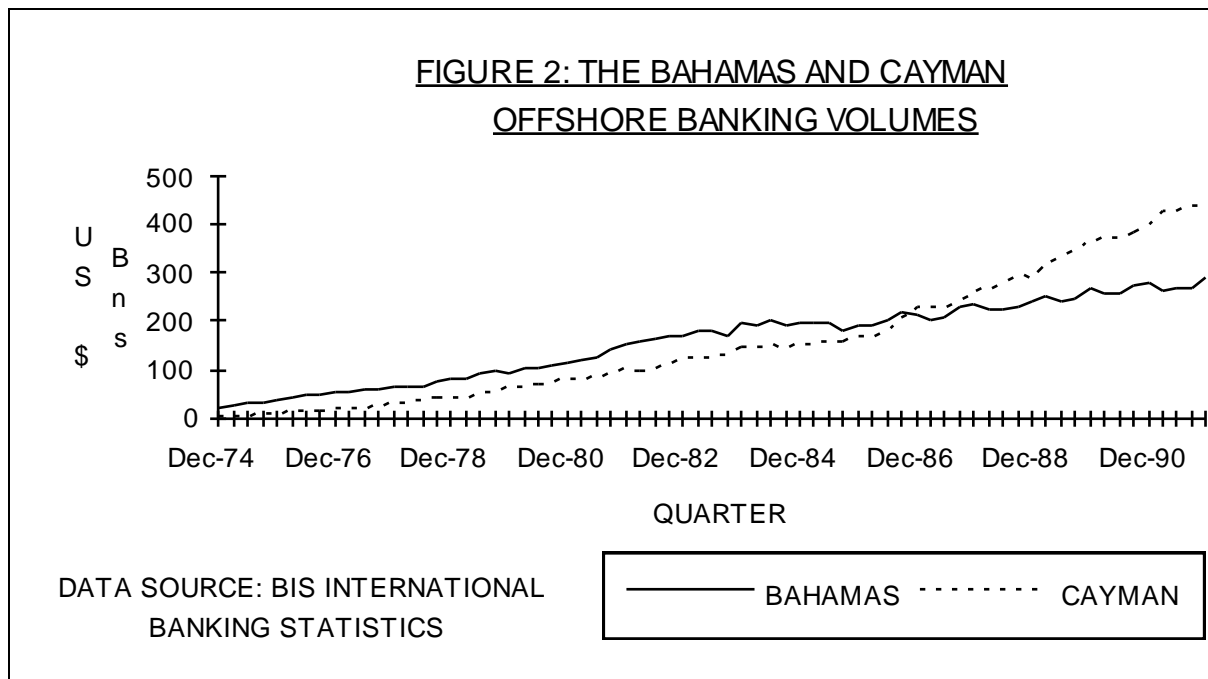
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banking imposed in the USA in an effort to control the outflow of capital which threatened to undermine the role of the dollar and the Bretton Woods international monetary system, restrictions such as regulation Q and the Interest Equalization Tax which was imposed from 1963 to 1974 (Hawley, 1986). Johns explains how “national friction structures and distortions” in the US regulatory environment stimulated the development of the Euromarkets and offshore finance (Johns, 1983). Prohibitions on inter-state banking (McFadden Act, 1927), the divide between commercial and investment banking (Glass-Steagall Act, 1933), and the existence of interest rate ceilings (Regulation Q) and reserve requirements (Regulation D), hindered the on-shore competitiveness of major US banks and pushed them off-shore. Thus the Euromarkets, dollar-denominated offshore business based chiefly in London, developed rapidly (Aliber, 1979). Some of the smaller banks, faced with the high infrastructural costs of a London base, realized that the Caribbean OFCs offered a cheaper and equally attractive regulatory environment - free of exchange controls, reserve requirements and interest rate ceilings, and in the same time zone as New York. In addition the Caribbean OFCs offered a secure, politically stable environment, with increasingly good communications facilities. US and other banks moved their Euromarket operations to the Caribbean, increasing the scale of finance and extending their activities offshore, beyond the US borders. The number of overseas branches of US banks increased from 180 in 1965 to 732 in 1975; the Caribbean component increasing from 5 to 164 branches (Johns, 1983: 29). This was the first moment of geo-regulatory change.

Two pieces of legislation provide the fundamental regulatory building blocks for the construction of the Bahamas and Cayman OFCs. These regulatory building blocks are the tax and secrecy laws of each country. There are no direct taxes in the Bahamas or Cayman and the confidentiality of their financial systems is supported by strict secrecy laws. These two sets of laws work to make the Bahamas and Cayman OFCs attractive places or regulatory environments for financial activity. The tax laws make them a potentially profitable place; the secrecy laws make them a private place where the tax laws can be skilfully used for evasion and avoidance. Even O'Brien - the chief protagonist of the end of geography thesis -

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admits: “many location decisions also have a deliberate geographical rationale, such as the booking of business in offshore financial centres for tax reasons, tax jurisdiction being a particularly ‘geographical’ concept” (O’Brien, 1992: 2). The territorial allocation of authority, codified in the form of the OFCs’ tax and secrecy laws is central to their development. As Dodd argues, “it is from differences between individual regulatory environments - which are based on the sovereign right of each state to legislate independently - that commercial incentives are derived” (Dodd, 1994: 100).



Upon this basis, and in the context of the collapse of the Bretton Woods system, the rise of the Eurodollar markets, the oil-price hikes and the increasing internationalization of economic activity, the Bahamas and Cayman OFCs developed rapidly in the late 1970s and 1980s and put the Bahamas and Cayman on the international financial map (Roberts, 1994 and 1995). By 1991 the numbers of banks with a presence in the centres had reached 400 and 544 for the Bahamas and Cayman respectively, whilst the volumes of offshore banking hosted had reached \$287 bn in the Bahamas and \$442 bn in Cayman (see Figure 2).

The USA, particularly the Treasury and Justice Departments, has long been opposed to the development of the Bahamas and Cayman OFCs.<sup>viii</sup> The OFCs have allowed dollar banking to take place beyond the regulatory reach of the USA, with adverse consequences for

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the US. The extension of economic activity beyond national borders links national regulatory environments; regulators in one jurisdiction therefore become increasingly concerned with regulations elsewhere. The OFCs have undoubtedly facilitated tax evasion and avoidance by US citizens, and the laundering of money from narcotics trafficking and organized crime. From the US perspective the development of OFCs had created a mismatch of scales, and led to regulatory underprovision. As one commentator explained: “The Bahamas [and other OFCs] must do things which are not allowed in the US because to do things which are allowed in the US is non-competitive, since in every instance the US does it better than the Bahamas do. The Bahamas are therefore compelled in banking and trust operations to appeal to unallowable activities and by inference to appeal to activities disallowed in the US” (Blum, 1984: 144-5).

Mindful of the consequences of regulatory underprovision in the sphere of international finance - tax evasion, tax avoidance, money laundering, banking crises, securities fraud - US agencies have tried to limit the role of the OFCs in various ways over the last twenty years. US regulatory authorities have sought to extend their reach beyond US territorial borders. In 1981 the Internal Revenue Service (IRS) Gordon Report into tax havens and their use by US tax(non)-payers suggested that the US might adopt more aggressive tactics (Gordon, 1981). The report threatened drastic measures against the OFCs in the event of their not submitting to key US tax laws, including: the closure of all offshore US bank branches; the taxing of all loans from OFCs as income; and the elimination of airline links to the US. Such threats continued through the 1980s, and were illustrated in a speech made in the Bahamas by the prominent US lawyer Lloyd Cutler, which provides graphic illustration of the power asymmetries involved in the reshaping of the regulatory landscape. A local Bahamas newspaper, *The Tribune*, reported on his speech:

“To maintain ‘legitimate offshore banking’, an influential Washington lawyer strongly urged the Bahamian government to enter into a reciprocal agreement with the US. Lloyd Cutler acknowledged the US’s determination to ‘penetrate’ off-shore bank secrecy and said the US

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was an 800 pound gorilla which might not show proper deference to smaller animals. Critics of his remarks called him an ‘ugly American’ ” (Tribune, 15/3/1986).

Such exchanges were typical of relations between the US and the OFCs in the 1980s. Even in 1988, after Mutual Legal Assistance Treaties (MLATs) had been agreed with the Bahamas and Cayman, the US Congress passed the Kerry (Democrat, Massachusetts) amendment to the Anti-Drug Abuse Act. The amendment instructed the US Federal Government to reach enforcement agreements with offshore havens and urged harsh penalties for non-compliance with US tax laws, including measures such as exclusion from the US \$ clearing system and checks on the electronic transfer of funds to and from the OFCs (New York Times, 29/3/1992). Such drastic measures would have destroyed the Caribbean OFCs, but were seen by many of my Caribbean interviewees firstly as idle threats, and secondly as a continuation of heavy-handed US tactics against OFCs in the region, tactics which went back to at least the mid-1970s and episodes such as the Castle Bank Case.

## **BORDER SKIRMISHES**

### **The Castle Bank case**

Caribbean OFCs received early warnings of the US’s determination to penetrate their secrecy laws and reduce their role in facilitating tax evasion and money laundering. In 1965 the Internal Revenue Service (IRS) Intelligence Division established ‘Operation Tradewinds’, “to gather relevant information about American criminals’ illicit activities in The Bahamas” (Block, 1991: 6). This operation continued into the 1970s, with its main success being the penetration of Castle Bank, a small bank-cum-trust company with branches in the Bahamas and Cayman. Castle Bank was involved in a complex web of financial transactions, laundering money from the Mafia, hiding funds from the IRS, and counted clients such as the eccentric billionaire Howard Hughes, the casino operator Meyer Lansky, the Colombian drug baron Robert Vesco, the Bahamas’ Prime Minister Lynden Pindling, the CIA, and possibly Richard Nixon. In Block’s view Castle Bank was “a tireless engine of criminality secretly

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owned and run by American attorneys from Chicago and Miami” (Block, 1991: 13). Castle Bank was an important catch for the IRS. Block proclaims that “getting inside Castle Bank was the Intelligence Division’s alpha and omega. For the first time ever, it possessed the inner workings of a functioning tax haven” (Block, 1991: 179).

Although US investigations centred on the Bahamas, the key impact of the Castle Bank case on the OFCs initially concerned the Cayman branch. In the early 1970s there was a debate within Castle Bank as to whether it should move its operations to Cayman following Bahamian Independence.<sup>ix</sup> A compromise was reached involving the duplication of documents and their placement in Cayman so that operations could be moved at a moment’s notice. The Resident Manager of Castle Bank in Cayman was Tony Field. He was required to secure top-secret documents, something achieved (or attempted) through buying a strong safe, depositing this with a British lawyer in Cayman (Paget-Brown) and depositing the key to the safe with a second lawyer.

On the 12th of January 1976, as a result of IRS investigations of Castle Bank, Tony Field was subpoenaed as he waited to board a Cayman-bound flight at Miami airport. He was required by the US to testify in cases which the IRS would bring to court. Citing the Fifth Amendment he said he could not testify as he would be incriminating himself. When the US granted him immunity from prosecution, he explained that he still couldn’t testify as he would be breaking the laws of Cayman. Tony Field and Castle Bank, in conducting their business, operated across state boundaries and found themselves caught between two sets of laws. A banker in Cayman explained this situation:

“this was the situation where any banker, attorney, anybody in the financial industry, once stepping into US territory, was liable to subpoena to appear before a grand jury. And of course under our legislation at the time, and indeed today, the financial professional is caught between the devil and the deep blue sea. He has to appear before the grand jury because otherwise he’s in contempt and can never return to the US, which means he is then in

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contravention of the Confidential Relationships Preservation Act in the Cayman Islands.<sup>x</sup> It's a no-win situation for the banker, and that really came out with the Castle Bank situation" (Carver - Research Interview, Cayman, 1994).

Tony Field really was in a bind: the US insisted he testify; Cayman, although not enjoying the publicity, did not want him to testify as that would illustrate the weakness of its secrecy laws; and, worst of all for Field, his bosses in Castle Bank did not want him to testify. A further twist to this story is that his lawyer was also his boss at Castle Bank, a situation which led to a massive conflict of interest. When the Cayman Government informed Field's lawyer that he would be allowed to testify in the US and wouldn't be prosecuted by Cayman, the lawyer withheld this information from Field and the Court.

The US insisted that Field testify, clearly acknowledging the attempted extra-territorial application of its laws, but stating that:

"We regret that our decision requires Mr. Field to violate the legal commands of the Cayman Islands, his country of residence. In a world where commercial transactions are international in scope, conflicts are inevitable ... This court simply cannot acquiesce in the proposition that US criminal investigations must be thwarted whenever there is conflict with the interest of other states" (US vs. Field case, US Court of Appeal, Congressional Record, 25/6/1976).

The Field case illustrated that the laws surrounding confidentiality, and the circumstances in which confidentiality could be breached were not at all clear. The regulatory landscape was in the process of transformation and no agreement had been reached on its eventual shape. The meanings attached to borders were under negotiation and it was unclear who had the power to regulate offshore financial activity. Many of the lawyers and bankers I interviewed in the Bahamas and Cayman recalled the Castle Bank case as a significant episode in the development of the OFCs, in Rosenau's terms a "trend-setting event" (Rosenau, 1997: 229). A British lawyer in Cayman suggested that "it was the first time that

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the US Government had started to flex its muscles to try and get information” (Wood - Research Interview, Cayman, 1994). A British Cayman-based lawyer explained that “the Field decision was a political decision that the function of the courts of the United States will not be frustrated by the unilateral legislation of a nation with whom the United States has no reciprocal legal arrangements” (Paget-Brown, 1977: 28), and described the case as “the most significant event of the decade for the financial community of the Cayman Islands” (Paget-Brown, 1977: 36). The case indicated that the US was determined to reshape the regulatory landscape in such a way as to redefine the regulatory boundaries upon which the success of the OFCs was based.

The episode was seen as particularly important because of the response it provoked, almost immediately, from the Cayman Islands Government. The response was the clarification, or toughening up, of its secrecy laws through the passing of the Confidential Relationships (Preservation) Law (CRPL) in 1976. The actions of the US had undermined Cayman’s place as a secrecy haven and the Government sought to reinforce this aspect of Cayman, asserting their sovereignty and re-constructing Cayman through legislation. The CRPL sought to clarify the meaning of Cayman’s border, making clear that the confidentiality requirement applied to bank employees as well as the Inspector of Banks and Trust Companies, and making disclosure a criminal, rather than just a civil, offence, a modification achieved in the Bahamas through the 1980 amendment to the Banks and Trust Companies Regulation Act. Cayman too was seeking to define or rebuild its regulatory boundaries, to shape the regulatory landscape in such a way as to ensure the survival of its offshore industry.

Most of my interviewees, with the exception of those who had drafted the CRPL, felt that it was an over-reaction and a mistake, and suggested that Cayman should have demonstrated its willingness to cooperate with the US in eliminating illicit activities from its financial institutions. By enacting the CRPL Cayman aggravated the US. As one interviewee explained: “the reaction to Castle Bank by the Cayman Government and the legislation in

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some ways caused more problems than existed before ... contributed to the huge friction that developed with the US ... started the ball rolling with the personal harassment, subpoenas, and all of that” (Dean - Research Interview, Cayman, 1994). The Castle Bank case illustrates the processes through which the regulatory landscape is transformed. The OFCs benefited from their authority to regulate their territories in such a way as to attract cross-border financial activity; the US felt that this led to regulatory underprovision; the US sought to extend its regulatory reach beyond its borders; Cayman responded by altering its legislation, leading to a temporary agreement on the shape of the regulatory landscape and the meanings attached to borders. Regulatory landscapes are transformed through processes of negotiation; challenge, response, temporary agreement. However, the CRPL was a very temporary agreement. Relationships between the US and the Bahamas, and between the US and Cayman remained tense as the US and the offshore authorities fought for regulatory control over the offshore jurisdictions and the financial activity hosted by them. The battle over the future shape of the regulatory landscape was far from over.

### **The Bank of Nova Scotia case**

Throughout the 1980s the US persuaded and pressured the OFCs to relax their bank secrecy laws, laws which the US felt facilitated money laundering and tax evasion. The transnational scale of such activities linked the US with the OFCs, threatening to undermine the power of national US regulators. The Bank of Nova Scotia case was seen by many of my interviewees as a further effort to break down offshore bank secrecy. In 1982, as part of an investigation into a tax fraud and narcotics case, the US Justice and Treasury Departments wanted to get hold of confidential account information from the Bank of Nova Scotia’s Nassau (Bahamas) and Cayman branches. In order to extract this information the US agencies subpoenaed the Miami agency of the Bank of Nova Scotia for the documents and when the offshore branches refused, citing local offshore confidentiality laws, the agency was fined \$50000 a day for contempt of court, a fine which was later increased to \$100000. In effect, the Miami agency was held to ransom.

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The Bank of Nova Scotia was in a bind: it risked prosecution in the Bahamas and Cayman if it provided the information to the US authorities, and was subject to the fine for contempt of court, and adverse publicity, if it withheld the information. Following two unsuccessful appeals in the US the bank eventually - after 18 months - paid the fine, which had reached \$1.8 million, and produced the documents. A banker in Cayman described the Bank of Nova Scotia case as follows:

“I mean what it boiled down to was the US was looking for information on a reputed drug dealer and they needed access to account information. Not only here, but in Nassau as well. Basically what they did was they went to the Miami agency which didn’t do any banking business as such. It didn’t operate accounts, take deposits. They just put the guy in jail there, put him in overnight and said ‘we want information’. Miami said ‘well we have no idea, it’s not us’. They [US] said ‘I’m sorry you’re all the same bank. Give us the information’. And notwithstanding appeals and so forth it ended up that the bank was being fined \$100000 a day for contempt of court for not providing the information. The bank went to the local authorities here and asked for their permission to give this information. They refused to do so because they were concerned that this would be the end of the OFC in the Cayman Islands. There was no mechanism. There were no laws. There was no provision for the exchange of information in criminal cases” (Harris - Research Interview, Cayman, 1994).

The Bank of Nova Scotia, by operating across state boundaries, was subject to conflicting laws. There was a mismatch between the scale of economic activity and the scale of political regulation, a mismatch which US regulators took advantage of. Interviewees in the Bahamas and Cayman explained the significance of the Bank of Nova Scotia case in the development of the two OFCs. For many interviewees the case illustrated the lengths the US would go to break down the OFCs’ walls of secrecy and was a clear case of the extra-territorial application of US law. The OFCs’ sovereignty, a key resource for their development, was threatened. A Bahamian lawyer explained:

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“Well it created quite a flap here. You see the Americans have an idea of what we call ‘frontier justice’, which I suppose is the legacy of the old wild-west. That’s the belief that there’s more than one way to skin a cat. You can try it the orthodox above-board way. If that doesn’t work there are other more nefarious ways of accomplishing the objective. I think that the Bank of Nova Scotia case was seen in that light. It was really dirty in the sense that instead of coming through the front door and getting what they wanted through established channels, they decided that the way to achieve the objective was to forget about the Bahamas, but to apply pressure to the Bank of Nova Scotia in its own jurisdiction. I mean it’s a clever, effective way of doing it, but it also rides rough-shod over established norms” (Peterson - Research Interview, Bahamas, 1994).

Clearly illustrating the importance of the Bank of Nova Scotia case in the reshaping of the regulatory landscape and the extant norms of sovereignty, the Attorney General of the Bahamas protested that the case “violates fundamental principles of international law and threatens relations between the US and other sovereign nations” (Nassau Guardian, 14/9/1983). A British banker in the Bahamas explained that “what it says to me is that if the US write a law then the authorities in the US consider that law to be applicable worldwide, and that if an entity has any assets or business operations in their jurisdiction they consider that entity to be fair game against any claims that they might have under their local legislation” (Williamson - Research Interview, Bahamas, 1994). The Bank of Nova Scotia case was a clear case of US extra-territoriality.

Illustrating the power asymmetries involved in the reshaping of the regulatory landscape, a US regulator explained that as the US was such an important market for international banks they could exert pressure through threatening banks with exclusion from the US: “we are very fortunate in being a large business centre where banks have to have a meaningful presence. If it happened in another jurisdiction like Panama they could tell them: ‘well go to hell, we’re out of here’. That’s not likely to happen in the US so they had to find

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some resolution to this and they end up disgorging the information” (Lane - Research Interview, USA, 1994).

The behaviour of the US in the Bank of Nova Scotia case was seen as part of their efforts to break down the secrecy of the OFCs, to reshape the regulatory landscape by redefining its borders. An interviewee in London suggested that the US had pursued the Bank of Nova Scotia case for the publicity, to warn the OFCs, banks and clients, of what they could and would do to uncover information. A Canadian banker in Cayman suggested that the case was part of the US’ persuasive strategy to encourage the OFCs to agree to information exchange agreements, in effect to agree to a new regulatory landscape in which the borders of OFCs would be permeable to criminal investigations and US law would prevail. He described the case as follows:

“Well it finally brought the whole thing to a head ... it was in the days of the US Government attempting to have a treaty with tax haven countries, and I’m sure that that was just a further bit of pressure that they brought to bear on the other countries to say, ‘listen, this is what we will do, so you’d better start signing these things.’ So the negotiations possibly speeded up and resulted in the ultimate document [MLAT] between the UK, the US, and Cayman being part of that process” (Price - Research Interview, Cayman, 1994).

The Bank of Nova Scotia case also raised interesting questions about the structure and legal status of multinational banks and their relationship with formally sovereign states. The US was able to gain access to information from within a formally sovereign state in part because that sovereign state hosted part of the bank’s activities. The bank’s activities transcended the space of individual states and so US authorities were able to pierce the OFCs’ secrecy by working through the bank’s space. The trans-boundary nature of economic activity in effect allowed US regulators to increase the scale of their political regulation. The multinational Bank of Nova Scotia was an unwitting Trojan horse for the US Justice and Treasury Departments.

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Although the actions of the US were seen as extra-territorial by the OFCs, some interviewees grudgingly acknowledged the US's justification of its actions. A Bahamian politician-cum-lawyer said: "the judge's order as I understand it was that the fact that it was a branch over here was irrelevant. Bank of Nova Scotia's one legal entity so the bank should disclose what it had in the branch over here" (Manley - Research Interview, Bahamas, 1994). A US regulator also justified the US actions, explaining that:

"I've come to look at this as saying 'look, you did the transaction here. It wasn't like there was no nexus whatsoever, that the transaction happened in Canada and it went through the Bahamas and we just suspect this individual of doing this'. The transaction actually went through the US and in that context we have a right, I think, to ensure that our laws are abided by" (Lane - Research Interview, USA, 1994).

The OFCs and the Bank of Nova Scotia found themselves in a tricky situation, leading to complex discussions between the bank, the offshore regulatory authorities, and the governments of the UK (Cayman's mother country), Canada (the bank's home country), and the US. Although centring on the Bank of Nova Scotia case these discussions were really about the future of OFCs and the allocation of jurisdiction. As Rosenau puts it: "each interventionary act, whatever its outcome, is so much of a break with historic conventions that it serves as an explicit stimulus to subsequent events of a comparable nature" (Rosenau, 1997: 229). Specific legal cases set general precedents. The regulatory authorities, the UK and Canadian governments, all supported the bank's position and argued with the US that its actions were unreasonable and extra-territorial. The offshore authorities faced their own dilemma. They did not want continuing adverse publicity, but neither did they want to concede that their secrecy laws were vulnerable to the extra-territorial application of US law. A banker in Cayman explained:

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“Well of course the bank tried to bring pressure to bear. I’m not quite sure, but I heard that the Government were saying to the bank that if you give up the records then you’re going to be subject to all sorts of actions in the Cayman Islands, none of which of course ever materialized. It was obviously a difficult decision for Government because they don’t want to lose a major Canadian banking player, but by the same token they want to try and ensure that their laws are enforced” (Carver - Research Interview, Cayman, 1994).

## **A RESHAPED REGULATORY LANDSCAPE**

The Castle Bank and Bank of Nova Scotia cases were important episodes in the development of the Bahamas and Cayman OFCs and the reshaping of the regulatory landscape of international finance. Firstly, they illustrated the problems that inevitably arise when external authorities want access to confidential account information. The mismatch between the scale of economic activity and the scale of political regulation produced this tension; even in situations where a bank would happily divulge information, local confidentiality laws prevented this. A Canadian banker in Cayman explained that the Bank of Nova Scotia case “highlighted the fact that there were no mechanisms by which the Cayman Islands financial centre could exchange information, give information outside of the Cayman Islands in cases where crimes had been committed elsewhere. There was no mechanism for doing it at the time” (Harris - Research Interview, Cayman, 1994). Another Cayman banker suggested that the Bank of Nova Scotia case “drove a coach and four through the secrecy laws, both in Cayman and Nassau. It eliminated them and showed what could be done with a determined effort” (Howe - Research Interview, Cayman, 1994). There was little hope for the OFCs in resisting the powerful demands of the US as a British banker in Cayman observed:

“I think it exposed the Confidential Relationships Law for the weak weapon that it was. I mean it’s all very well for you to sit here and say ‘it’s a criminal offence in the Cayman Islands so I can’t tell you’, but the US courts just rode roughshod over the whole of that and said ‘OK, if you don’t want to tell us you will pay a fine.’ The fine was something

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phenomenal, nobody's balance sheet can stand that for long, and therefore, what happens? The bank says 'to hell with it. If we have to leave the Cayman Islands, its cheaper.' And it was within the power of the courts to make that order. So I think it made a lot of people re-examine what they were doing, why they were actually fighting these requests for information, you know, is it economically sensible? You're taking on Uncle Sam who has a hell of a lot of muscle. You either pull yourself away from him altogether or recognize that you're going to have to run your business in a way that's not going to expose you to this sort of activity" (Wood - Research Interview, Cayman, 1994).

From the US point of view the Bank of Nova Scotia case was a great success. It encouraged the OFCs' regulatory authorities to reach a compromise with the US to ensure their continued status as financial centres (Financial Times, 11/11/1983). The OFCs, faced with the desire of the powerful US to reshape the regulatory landscape and extend its authority beyond its traditional jurisdiction, had little choice. If the OFCs resisted, they might be economically destroyed; if they compromised, they might preserve some of their power to shape their domestic regulatory environment and remain a relatively attractive jurisdiction for international finance. A British banker in Cayman described the impact of the case:

"I think the case was important in terms of it focusing the minds of both the private financial community here, and the Government, about how serious the US Government and the agencies were in pursuing information in offshore jurisdictions, and the extent to which they were prepared to go to enforce their writ overseas. I think it brought people up with a short, sharp, halt. The banks realized what the Americans could do and they turned to the Government and said, 'do you realize what the US Government can do? You'd better bail us out.' So yes, it was very significant" (Dean - Research Interview, Cayman, 1994).

After the Bank of Nova Scotia complied with the US subpoena, thus breaking the Bahamas' and Cayman's confidentiality laws, no prosecutions were brought for the disclosure of information in the Bahamas or Cayman; the OFCs acknowledged the hegemony

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of US law in the regulatory landscape. In effect, US extra-territoriality was recognized and accepted as the wrong (legal) precedent was set. Interestingly, the case made banks without a US presence - a potential hostage in similar situations - more attractive offshore entities for customers wishing to avoid US regulatory authorities. In terms of relations between regulatory authorities in the USA and the offshore centres the Castle Bank and Bank of Nova Scotia cases were important as they led to the development of Mutual Legal Assistance Treaties (MLATs), a formalization of information exchange procedures in criminal matters. Illustrating the determination of the US, and the tactics that could be employed, the case pressured the offshore financial centres to reach some form of agreement with the US, agreement which eventually developed into the MLATs of the late-1980s. As Rosenau puts it: "The law introduces a degree of intermittency into the evolutionary nature of political balances" (Rosenau, 1997: 217). The MLAT was a temporary agreement as to the shape of the new regulatory landscape, an agreement reached through the process of negotiation: challenge, response, temporary settlement.

The Bank of Nova Scotia case also spurred on the development of the Basle Committee's framework for the regulation of international banking. The Basle Committee, consisting of the Governors of the Central Banks of the G10 countries, plus representatives from Switzerland and various OFCs - had been the focus of efforts to encourage international cooperation in banking supervision and regulation since the 1970s, proposing guidelines for the responsibilities of different regulatory authorities to prevent transnational banks slipping through the inter-national regulatory net. It was increasingly appreciated that international finance could be regulated satisfactorily only through the development of a global system of regulation, rather than, either separate national regulations, or, piecemeal extra-territorial extensions by powerful states. The Basle Committee, through its silence in the Bank of Nova Scotia case, legitimated the extra-territorial application of US regulation, a practice which was to be codified in the Basle Committee's "dual key" system of regulation. In the "dual key" system home and host regulatory authorities must both be satisfied with the standards of regulation and supervision provided by a bank's home and potential host regulators before a

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bank is allowed to expand overseas (see Porter, 1993 and Kapstein, 1994). The Basle Committee contributed to the construction of “an international legal space” ( Blomley, 1989: 526).

## **CONCLUSIONS: GEO-REGULATORY CHANGE**

The Castle Bank and Bank of Nova Scotia cases were important episodes in the development of the Bahamas and Cayman OFCs. In seeking to regulate banks which operated across national borders, the US challenged the sovereign right of the Bahamas and Cayman to maintain their low-tax high-secrecy environments, producing conflicts over legal authority, a battle over the regulatory construction of place. Based upon the OFCs’ territorial allocation of jurisdiction, tax and secrecy laws have been the main building blocks in the construction of the Bahamas and Cayman as attractive places or regulatory environments for offshore finance. The US, in seeking to pierce these laws simultaneously and necessarily sought to reshape the wider regulatory landscape. As Maingot argues, “in a world in which sovereignty, even for colonies, was the dominant doctrine, one could hardly criticize the Cayman’s insistence that all matters relating to its main industry - offshore banking - had to be handled in accordance with the rules of sovereignty and international law” (Maingot, 1995: 10). The Castle Bank and Bank of Nova Scotia cases were part of a wider process of geo-regulatory change in which sovereignty was challenged; “with global flows of capital and the internationalisation of production, we live in a world in which the complexity of spatial relations is more obvious than the simple legalistic maps of state sovereignty” (Walker, 1993: 46).

The Castle Bank and Bank of Nova Scotia cases illustrate the “second moment of geo-regulatory change”, the attempt to extend state authority offshore, beyond its traditional territorial borders. Ethnographic research into these two geo-legal episodes has sought to uncover why, how, and in what ways, the regulatory landscape of international and offshore finance was transformed. Laws provide a moment of stability in the turbulent world of

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international relations; challenges to the existing legal framework initiate new periods of turbulence. For this reason geo-legal case studies are essential. As borders are to a large extent what social actors understand them to be, ethnography - to uncover the meanings attached to borders - is essential too.

It is at the border where geo-regulatory change is most apparent. Borders are the dividing lines between cultures, communities and value-systems. As competing communities seek to extend their value-systems or rules they will eventually clash. For some commentators (Rosenau, 1997) “frontiers” better captures the essence of these zones of conflict, but regardless of the label we attach to them, the important point is that they are socially constructed and hence are socially transformed. Borders can expand and contract and can be more or less porous in relation to different sorts of flows, but during periods of stability borders are temporarily defined by laws, and, when the regulatory landscape is undergoing transformation borders -although under negotiation - are clearly defined for the purposes of legal argument. The geo-legal skirmishes between the USA and the OFCs were about the nature of the borders between their spaces; how fixed they should be; how porous they should be; what sorts of flows they should permit; and, who should have the power to redefine them. To call the border a frontier prejudices the issue, giving pre-eminence to the US view of borders.

As my analysis of the Castle Bank and Bank of Nova Scotia cases has shown, border skirmishes are the primary process through which the regulatory landscape is transformed.<sup>xi</sup> They are the primary mechanism of change because in modernity, power has tended to be horizontally organized into territorial parcels (Ruggie, 1993). Challenges to this historically specific spatial organization of power are most apparent at the margin; power may be everywhere, but it is most clearly contested at the margin. In the transition from a modern to a postmodern regulatory landscape the margin is a spatial border (Anderson, 1996; Hudson, 1996; Ruggie, 1993). As Rosenau puts it: “the political space opened up by the erosion of the boundaries between domestic and foreign affairs emerged as the frontier where most of the

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action on the global stage unfolds” (Rosenau, 1997, p.xiv). Border skirmishes are central to processes of geo-regulatory change. This paper has worked with the theory of regulatory landscapes to develop an understanding of processes of geo-regulatory change and the part played by border skirmishes within these processes. We are now in a position to outline a more general model of processes of geo-regulatory change, a model which could be further tested and developed, in particular to incorporate different varieties of border skirmish and reallocations of power and authority<sup>xii</sup> (see Neuman, 1996; Miller, 1996; Trachtman, 1997).

We begin with an existing regulatory landscape within which borders, as institutionalized legal norms, organize power and social relations in territorial parcels. In the “first moment of geo-regulatory change” the borders become increasingly porous, facilitated by technological change and the increased mobility of assets, a porosity which is exploited by actors who see an opportunity for gain by channelling their assets across the borders. As a result, the scale of economic accumulation exceeds the scale of political regulation. However, this mismatch of scales can lead to regulatory underprovision and competitive deregulation, particularly if - as in the case of OFCs - the economic activity has flowed to an area of relatively lax regulation. Thus, in the “second moment of geo-regulatory change”, political regulators who perceive an underprovision of regulation which threatens their interests seek to extend their regulatory reach across the increasingly porous borders. Not surprisingly, this challenge to the shape of the regulatory landscape is opposed by actors who benefit from the existing situation, in this case OFCs and the transnational banks. It is at this point that border skirmishes break out as the temporary period of legally-codified stability is challenged.

Border skirmishes are negotiations about which/whose rules should rule in relation to which activities (vertical or sectoral allocations of authority) in which space (horizontal allocations of authority); they are battles over the appropriate scope and scale of political regulation. As Leitner makes clear: “a central aspect of the practice of the political construction of scale is the manipulation of relations of power and authority between

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overlapping or mutually inclusive political territories, by actors operating and situating themselves at different geographic scales” (Leitner, 1997: 125). The reallocation of power and authority, is fundamentally political, with outcomes largely determined by the relative powers of the negotiators. It was, after all, the USA which won the regulatory battles with the OFCs; weaker players are forced to make difficult choices. As the Governor of the Central Bank of The Bahamas recognized: “the trade-off between territorial sovereignty and economic survival will loom large in the minds of political leaders in these offshore jurisdictions” (Smith, J., 1990).

In the contemporary reallocation of power and authority it is sovereignty as the dominant ordering principle of modernity which is under challenge, leading some commentators to suggest that we are entering a period of new-medievalism in which sovereignty is unbundled, and spheres of power and authority overlap (Anderson, 1996; Hirst and Thompson, 1996; Kobrin, 1996; Ruggie, 1993). There is certainly something odd going on with sovereignty in the Bahamas and Cayman OFCs: they appear to use sovereignty as a resource and defend this resource vigorously, and yet, simultaneously sell and surrender their sovereignty, allowing multinational banks to make use of their regulatory environments, and granting US regulatory authorities some power over their space. This apparent unbundling makes sense if we remember that sovereignty is a territorial organization of power over space; power can, and increasingly is, organized in different ways.

As Burch reminds us: “sovereignty is the physical manifestation of sovereign property rights to territorial property” (Burch, 1994: 48), and it is because of its basis in property that sovereignty can be unbundled.<sup>xiii</sup> Palan suggests that, “the transnationalization of economic activities has created in effect a situation whereby the right to devise the laws as expressed in the concept of sovereignty is increasingly ‘shared’ among many polities” (Palan, 1996: 6). This sharing of power over space is inevitable in a world where the scale of political regulation - based on the inter-state system - has not caught up with the scale of economic accumulation. It is through the unbundling of sovereignty in OFCs that these mismatched

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scales, the political and economic spaces of capitalism, are articulated. Palan argues that “offshoreness”, or, more generally, the unbundling of sovereignty, is central to the reshaping of the regulatory landscape; “with this ingenious device, both the state system and an increasingly integrated market can live comfortably with each other - for a while” (Palan, 1996: 2).

And so, once the border skirmishes have died down and the reallocation of power and authority has taken place, the regulatory landscape enters another period of temporary stability, stability which is codified in legal institutions and norms. The nature of the geo-regulatory landscape and the meanings attached to borders and sovereignty have been transformed; “sovereignty and sovereign equality are emptied of their traditional meaning and begin to play an entirely novel but no less critical role” (Palan, 1994: 202). A new regulatory landscape of temporarily scaled spaces and borders has been constructed. As Rosenau puts it once again: “for a while the law does stabilize relationships and institutions as its precepts evoke compliance and introduce regularity into public affairs. But eventually the political side of the balance resumes its evolution, at which point habits of compliance begin to attenuate, ambiguity begins to spread, and the legal arrangements undergo recodification” (Rosenau, 1997: 217).

Border skirmishes play an important role in the reshaping of the regulatory landscape. In the continuous process of social reproduction, dynamic spatialities of power are central. The OFCs, through the practice of unbundling sovereignty articulate the scaled economic and political spaces of capitalism, reallocating power and authority. The reshaping of the regulatory landscape is the key to understanding the development of OFCs and processes of financial globalization. As Harvey suggests, “representations of space and time arise out of the world of social practices but then become a form of regulation of those practices” (Harvey, 1996: 212). To understand processes of globalization we must explore their geographies.

## ACKNOWLEDGEMENTS

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## NOTES

<sup>i</sup> There is a voluminous literature in, amongst other (sub)disciplines, Economic Geography and Economics which considers the role of metaphor in social science and its relationship with theory (see, for starters, Barnes, 1996; Boylan and O’Gorman, 1995; Hodgson, 1993; McCloskey, 1994; Maki, 1989). I do not have the space to enter this debate here, but will use “theory” as a shorthand to refer to the “regulatory landscapes” conceptual framework.

<sup>ii</sup> I am not suggesting that the complexities of a world in which there are many different types of economic accumulation and political regulation can be described in terms of a single regulatory landscape. Rather I am offering a conceptual framework which can and should be used to think about different types of economic accumulation and political regulation. What I am suggesting here is that regulatory landscapes for, say, coffee and money, can and do, differ and co-exist.

<sup>iii</sup> I have used “bounded” and “trans-boundary” as ideal types in this paper as a strategy of methodological bracketing. Although in this paper my focus is on state boundaries, logically, the boundaries could relate to territories at smaller or larger scales.

<sup>iv</sup> I mean territoriality in the strong sense - the use of spatial boundaries for the organization of social power (Sack, 1986) - rather than the weak sense - the fact that the international political economy is (almost) necessarily acted out on the ground.

<sup>v</sup> The term “deregulation” is somewhat misleading as it implies - contra the approach of political economy - that markets are “naturally free”. However, as Fagan and Le Heron make clear, “deregulation is just as much an intervention in the

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capital accumulation process as was the Keynesian regulatory regime which it is designed to replace” (Fagan and Le Heron, 1994, p.281). Unfortunately the term “deregulation” has passed into common usage to mean a shift of regulation from public/state to private/market institutions.

<sup>vi</sup> I conducted 60 interviews and a postal questionnaire, in addition to doing much archival research. The interviewees have been given pseudonyms to respect their confidentiality.

<sup>vii</sup> I use the shorthand of places as actors in this paper. This risks the charge of spatial fetishism but in this case can be defended because of the identification of individuals with the “Bahamas” and “Cayman” and the emergence of locally generated powers through bodies such as the Bahamas Association of International Banks and Trust Companies, and the Cayman Islands Bankers Association (Cox and Mair, 1991; Hudson, 1996).

<sup>viii</sup> This simplifies things somewhat. US banks, US companies who receive inward investment via the OFCs, and US citizens who make use of them, are clearly not opposed to their existence. However, the US Government and its agencies have certainly sought to restrict the development of OFCs (Hudson, 1996).

<sup>ix</sup> The Bahamas gained its independence from Britain on the 10th July 1973, a change in political status that frightened many international investors and contributed to the development of Cayman as an alternative offshore financial centre. Cayman was, and still is, a British Dependent Territory (Hudson, 1996).

<sup>x</sup> The Confidential Relationships (Preservation) Act was a result of the Castle Bank affair, and thus did not exist at the time. However, Field was in a similar bind as he was directed by the Banks and Trusts Companies Regulation Act not to reveal confidential information.

<sup>xi</sup> I would like to thank one of RIPE’s anonymous referees for helping me to clarify my central argument.

<sup>xii</sup> For useful discussions of other types of “anomalous zones” see Miller, 1996 and Neuman, 1996. For a wider transactions costs approach to the horizontal and vertical reallocation of authority, see Trachtman, 1997.

<sup>xiii</sup> It is sovereignty's basis in property and property rights (Burch, 1994) that enables sovereignty to be unbundled. Space prevents me from developing this argument here (see Hudson, 1996 and 1997).

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