

**Reconstituting Empire in the Decolonisation Era**

Taxation sovereignty and the development of the British Virgin Islands as a dependent tax haven

Minor dissertation submitted in partial fulfilment of requirements for the degree

**Master of Philosophy (MPhil) in Theories of Justice and Inequality**

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## **Abstract**

Tax havens are denounced for eroding the sovereignty of states to tax in their jurisdictions. Using a critical interrogative lens of Empire and Imperialism, the aim of this investigation was to understand what the developmental history of the British Virgin Islands reveals about the function of tax havens in global political economy through traditions of state and taxation sovereignty. Drawing chiefly on a combination of tax, sociology and law scholarship anchored in international political economy, along with reviewing the minutes of the British Virgin Islands Legislative Council from 1950-1992, the study adopted a sociolegal perspective in exploring the relationship between tax havens, tax sovereignty and the aspirations of an equitable global tax regime. Beyond sovereign entitlement in allocating jurisdictional rights of states to tax income or capital, or a more expanded conception of tax equity through revenue sharing, the intervention of this thesis established the need to highlight the underpinnings of the international tax system by understanding the structures which maintain tax haven dependency and their development in the first instance.

The basic thesis of this study is that dependency continues to the present as a function of unequal integration helping to order and maintain a hierarchical global political economy. This thesis was built on an account of post-colonial dependency through a structural lens of a reconstituting empire and neo-colonial imperialism in the development of the British Virgin Islands in two key phases. First, the political developments of the 1950 independence decade in the legislative council's relationship with sovereignty in a federated imperial structure, which then conditioned the socioeconomic development from 1960 up to 1984. Highlighting the economic apparatus of the colonial state which structurally depended on international investment through political links maintained to Britain, the second phase is demonstrated as neo-colonial imperialism and external reliance evinced through the function of the Executive Council. The thesis traced a consistent line of legislative amendments from the dawn of legislative independence providing tax incentives packages and exemptions aimed at attracting foreign capital through extensive tax holidays. This phase of neo-colonial imperialism reached its apogee in the International Business Companies Act of 1984. The parallels in the financial architecture imposed by the Foreign Commonwealth Office at the twilight of the 20<sup>th</sup> Century has striking similarities to the more recent initiatives targeted at tax havens, illustrating how the interests of metropolitan powers are maintained. Therefore, I argue and demonstrate that, the development of the British Virgin Islands as a tax haven and its integration in international political economy reveals a tradition of sovereignty in the post-colonial context which shapes neo-colonial imperialism wherein effective sovereignty remains located in the global north.

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Figure 1 Map of the Caribbean Region ©Wikipedia Commons<sup>1</sup>

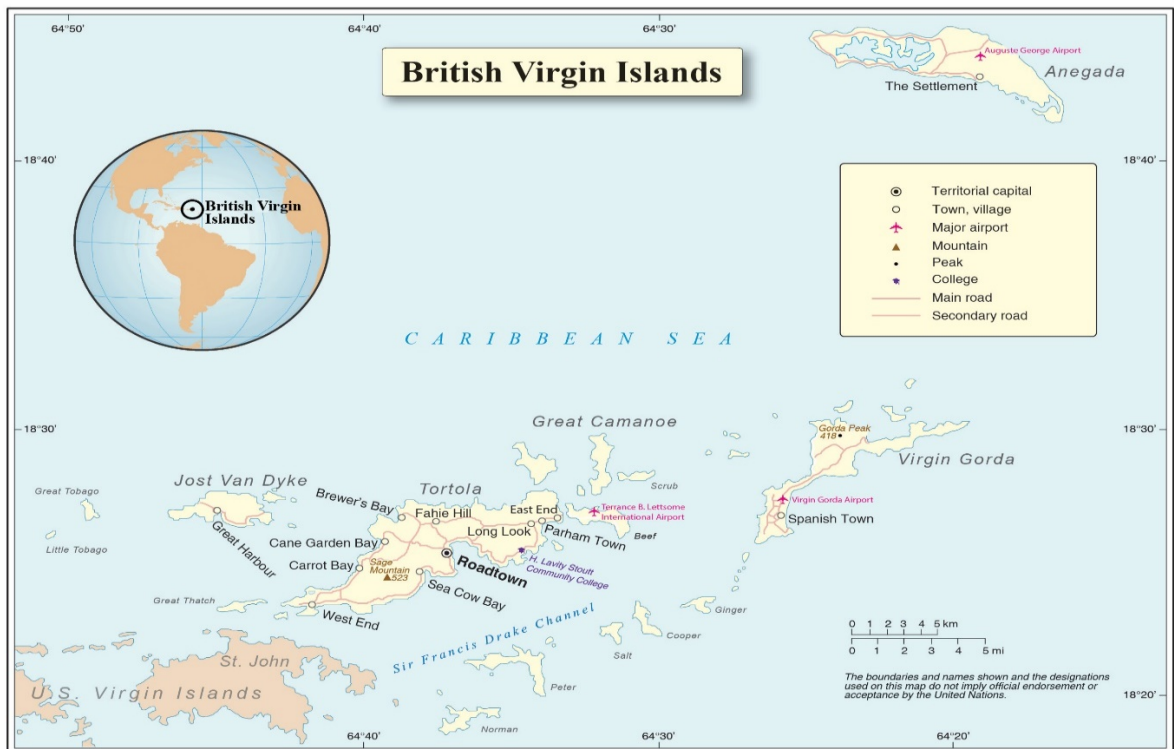


Figure 2 Cartographic Map No. 2900 Rev. 3, British Virgin Islands, United Nations, June 2016. Department of Field Support Geospatial Information Section (formerly Cartographic Section) © United Nations<sup>2</sup>.

<sup>1</sup> [File:Caribbean general map.png - Wikipedia](#)

<sup>2</sup> [British Virgin Islands | The United Nations and Decolonization](#)



Figure 3 Map of the BVI ©Wikipedia Commons<sup>3</sup>



Figure 4 British Virgin Islands Landscape ©Wikipedia Commons<sup>4</sup>

<sup>3</sup> [File:British Virgin Islands locator.svg - Wikimedia Commons](#)

<sup>4</sup> [British Virgin Islands | United Nations in Barbados and the Eastern Caribbean](#)

## Abbreviations

Abbreviation	Explanation
<b>BEPS</b>	Base Erosion and Profit Shifting
<b>BVI</b>	British Virgin Islands
<b>BWI</b>	British West Indies
<b>CDWA</b>	Colonial Development and Welfare Act
<b>DTA/DTT</b>	Double Tax Agreement, Double Tax Treaty, Double Tax Convention or Tax Treaty
<b>FCO</b>	Foreign Commonwealth Office
<b>HM, HMRA</b>	Her Majesty, Her Majesty's Revenue Authority
<b>IBC</b>	International Business Companies Act
<b>IBF</b>	International Banking Facilities
<b>IBFD</b>	International Buereau of Fiscal Domentation
<b>IMF</b>	International Monetary Fund
<b>LegCo</b>	Legislative Council
<b>MTA/MTC</b>	Model Tax Agreement or Model Tax Convention
<b>OECD Model</b>	Organisation for Economic Cooperation and Development Model Tax Convention on the Avoidance of Taxes on Income and on Capital
<b>OFC</b>	Offshore Financial Centre
<b>PTRs</b>	Preferential Taxation Regimes
<b>TIEAs</b>	Tax Information Exchange Agreements
<b>TJN</b>	Tax Justice Network
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UN Model</b>	United Nations Model Double Taxation Convention between Developed and Developing Countries (2001)

## 1 Introduction

### 1.1 Background

The British Virgin Islands (BVI) is a British Overseas Territory in the Caribbean. Ranked first on the 2021 Tax Justice Network's Corporate (TJN) Tax Haven Index,<sup>1</sup> the BVI hosts more than 800 000 offshore companies (Pires, 2013), making it the world's leading centre for company incorporation.<sup>2</sup> The International Monetary Fund (IMF) estimated that between 2010 and 2017, the BVI held between US\$600 and US\$1,5 trillion in assets. Its landmark 1984 International Business Companies Act (IBC) exempted all foreign companies registered in the BVI from local taxes. At least 50% of the BVI income and government revenue is from the incorporation and licensing fees of foreign companies<sup>3</sup> and by the 2008 financial crises 65% of its GDP was from financial services (Cohen, 2010a: 230). As one of the "pure" tax havens, the BVI has no effective corporate income tax, capital gains tax, value added tax, sales, inheritance or wealth tax (Pires, 2013: 3).

Estimates based on the size of global offshore assets (Zucman, 2014: 140; Zucman, 2015) suggest that the BVI is responsible for annual global tax losses of US\$37,5 billion.<sup>4</sup> Taxation has long been established as among the central pillars through which modern states exercise sovereignty (Ricardo, 1923; Sharman, 2006). However, the rise of tax havens coupled with capital mobility precipitated by globalisation has undermined this sovereignty as taxpayers evade tax liability using jurisdictions with favourable regulatory landscapes (Roberts, 1994). Without the ability to define taxable activities and income, how, and when they are taxed, governments lose capacity to raise and collect revenue, and by extension, to finance operations (Lesage et al., 2014: 210). Consequently, the concept of taxation sovereignty has come to encompass related themes such as "fiscal self-determination": the ability of each country to decide for itself the allocation of tax 'burden' among mobile and less mobile bases (Teather, 2002:59), and to achieve equity and redistributive aims through tax policy (Christensen and Kapoor, 2004; van Apeldoorn, 2018).

On the other hand, fiscal sovereignty as a function of a state's traditional exercise of sovereignty through taxation, has been accused with hindering the 'efficient' allocation of revenue between countries (Vlcek, 2008: 44). Therefore, sovereignty in this sense is charged as not serving the needs of the political community by preventing coordinating activities required to eliminate international tax distortions (Jeffery, 1999: 22). Arguing for an abandonment of state sovereignty for economic matters to remove all barriers to tax collection, this viewpoint ultimately calls for the establishment of a global tax regime in order to create an equitable global society (Vlcek, 2008: 45). However, this belies the existing structure of international taxation as a function of global political economy, particularly as manifest in the economies of dependent tax haven territories.

#### 1.1.1 Positioning the BVI as a non-sovereign tax haven within empire

The second half of the 20th century ushered in a decolonisation wave understood as political independence from colonial rule (Mamdani, 1992: 2230). Political independence and the setting up of nation-states was the necessary precursor to any meaningful project of self-determination and

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<sup>1</sup> The index is based on how aggressively the regulatory landscape enables tax evasion or tax avoidance resulting in multinational companies underpaying tax. <https://cthi.taxjustice.net/en/>

<sup>2</sup> IMF, "British Virgin Islands: Financial Sector Assessment Program Update—Financial System Stability Assessment", IMF Country Report No. 10/323.

<sup>3</sup> Secretary of State for Foreign and Commonwealth Affairs, *Review of Financial Regulation in the Caribbean Overseas Territories and Bermuda – The BVI*.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/265738/4855.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/265738/4855.pdf).

<sup>4</sup> Tax Justice Network (2019), "Financial Secrecy Index Narrative Report on the BVI".

sovereignty (Getachew, 2019; Nkrumah, 1964; Nyerere, 1968). However, the Caribbean experience – where more than half of the states are non-sovereign territories – disrupts this teleological narrative as most countries in the region chose not to attain political independence (Carrington, 2019: 3; Bonilla, 2015: 3). The question of sovereignty in the Caribbean in general and for the small island Anglophone Caribbean tax havens in particular is intertwined with histories of nation-building projects of self-determination in the context of limited political independence (Ahiakpor, 1990; Connell, 1994). Constitutional decolonisation was the peak of political independence for many territories in the British West Indies (BWI) (Carrington, 2019; Connell, 1994; Rodney, 1975). For the BVI, its Legislative Council and the ability to write their own laws was a prominent source of a sense of nation and statehood, specifically through wielding the Legislative Council as the instrument to assert a tradition of sovereignty through law writing (Maurer, 1995c; Maurer, 1995a).

Tax havens among Caribbean islands are caught in a competitive dynamic, each attempting to fashion a specialised niche (Hampton, 1998). The BVI singled out the promulgation of the 1984 IBC Act as the distinguishing feature of its attraction<sup>5</sup> and stressed the ties to Britain as a critical element to its uniqueness. These ties are evident in the formal colonial relationship maintained by the BVI as an Overseas Territory and Crown Dependency of Britain whilst developing as an offshore financial centre (OFC) (van Fossen, 2012; Vlcek, 2008; Hampton, 1998; Hampton and Christensen, 2002). Britain assumed control of the BVI from 1672 after the economic decline of the Dutch East India company. In 1950, the BVI secured legislative autonomy through a reinstated Legislative Council (LegCo) and chose to maintain its dependency to the crown (Maurer, 2000: 680). The United Kingdom (UK) through the queen appoints the governor of the island, and by extension, Britain bears ultimately responsibility (Carrington, 2019; International Monetary Fund, 2004). Consequently, the BVI remains on the United Nations (UN) list of non-self-governing territories which is administered by the UN Special Committee on Decolonisation.<sup>6</sup>

The BVI is significantly unable to represent itself in matters of foreign affairs or international relations as this relationship falls to Britain as the administering state (van Fossen, 2012: 26). This is critical in considering initiatives to strengthen the tax sovereignty of states – that is the “right” or jurisdiction of the state to impose tax – amid the general action plans to curb “harmful tax competition”, base erosion and profit shifting (BEPS). Ultimately, the UK has the power to veto the BVI's domestic legislation. That is noteworthy when considering the relationship between the limited sovereignty of colonial dependent tax haven territories and the aspirations of an equitable international taxation regime. This potentially sheds light not only on the competing and conflicting interests of some of the key actors against “harmful tax competition”, but points to a practice of sovereignty by an administering state in relation to tax haven territories, which is a key facet in upholding the current inequitable structure of the international taxation regime.

Britain has close political ties to thirty of the sixty tax havens, accounting for 37% of global banking liabilities and assets (Palan et al., 2013: 137)<sup>7</sup> and making it the world's largest financial centre. As the independence wave reverberated across the British empire in its formal decline, another development was occurring in the early 50s which culminated in what would be termed Britain's second empire: the rise of offshore finance (Palan, 2002; Palan, 1998; Roberts, 1995; Roberts, 1994). The thesis that when European powers left their colonies, formal control was replaced with different measures of control, often economic, is not new (Nkrumah, 1965; Rodney, 1972). However, the idea that the modern tax haven network and offshore system is not only Britain's financial replacement of empire

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<sup>5</sup> The BVI to quote Kersell (1989:100) is “a tax haven without saying it”.

<sup>6</sup> [Non-Self-Governing Territories | The United Nations and Decolonization](#)

<sup>7</sup> See [Annexure A](#), for a selected extract.

(Shaxson, 2011: 16), but a modern form of colonialism, is anchored in the argument that these states are not merely exercising their sovereign right to set they own laws, but that they are in effect controlled by the world's major powers, notably Britain and the United States (Shaxson, 2011: 31). Palan et al. (2013: 39) attribute the UK as having "literally created more of the world's tax havens than any other state" citing the deliberate policy of the Foreign and Commonwealth Office (FCO) over the 1950-1970s years to encourage its small island dependencies to develop as tax havens.

The continued influence of Britain as the BVI colonial power is significant. Whilst territories in both the French and Anglophone Caribbean inhabit some forms of autonomy and sovereignty, they also exhibit different kinds of neo-colonialism and continued forms of dependency (Kamugisha, 2019; Edmonds, 2015). One of these is the relationship between the development of British Caribbean tax havens and territories which decided not to attain political independence (Palan et al., 2013; Shaxson, 2011; Hampton, 1998; Picciotto, 1992). As the historically dominant imperial power in the Caribbean, Britain's former colonies in that region are now offshore financial centres or tax havens, whereas the French Overseas Departments are not<sup>8</sup> (Hampton, 1998: 96). Consequently, for the proposition to rework tax sovereignty to achieve its aims of ensuring a more equitable international tax regime, it becomes necessary to examine the policies of the decolonisation era and legislative independence which encouraged the development of tax havens.

### **1.1.2 Contemporary actions against base erosion and profit shifting (BEPS)**

At the turn of the century, the OECD recognised "Harmful Tax Competition" as an emerging global issue in international taxation (OECD, 1998). The report identified two problem areas facing international income taxation of geographically mobile activities: tax havens and harmful preferential tax regimes (Avi-Yonah, 2008: 783). Twentieth century tax havens had established themselves in the world of offshore finance. The damage they threatened to the fiscal sovereignty of OECD countries by eroding their tax base (Kudrle, 2008) was one member states could no longer ignore (Sharman, 2006: 1). Therefore, European governments through the G7, European Union, and especially the OECD, launched an assault on tax havens (Teather, 2002: 58). Critics accused the OECD of acting like corrupt businesses facing tough competition and finding it easier to form a cartel and "noble" anyone outside of it. Tax havens cited the hypocrisy of OECD countries lamenting "unfair" tax competition; that they were facing a new form of colonial control "by being held accountable for standards they had no role in setting" (Kudrle, 2008).

There are two broad narratives of how this battle between the OECD states and Caribbean tax havens unfolded and ended. The first is told as a struggle for global tax regulation. OECD sought to pressure tax havens to adopt a standard package of tax, financial, banking and information exchange agreements in order to tame what they considered an unfair competitive dynamic and to avert a "race to the bottom" through fiscal and regulatory concessions (Sharman, 2006: 1). The outcome of this fight according to this account is that tax havens prevailed, and the campaign to regulate international tax competition failed (Palan et al., 2013; Christensen and Kapoor, 2004; Leaman and Waris, 2013; TJN-Africa, 2011). This led to a proliferation of illicit financial flows, base erosion and profit shifting (Hearson, 2018; van Apeldoorn, 2018). Conversely, the second narrative frames the OECD as "Twenty-First Century Pirates of the Caribbean" diminishing Caribbean territories of their tax and economic policy sovereignty (James, 2002), and points to how virtually all of the tax havens acceded to the modified OECD demands for transparency and information exchange (Kudrle, 2008).

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<sup>8</sup> Whilst the mechanisms of French neo-colonialism are different to those of the British, in many postcolonial territories France still retained and enforced strict fiscal control. See Joseph, "The Gaullist legacy: patterns of French neo-colonialism".

However, both narratives are incomplete and may be misleading.

On the one hand, the side which claims a victory of the OECD fails to acknowledge that the OECD campaign against tax haven was not the first infraction on Caribbean tax and economic policy sovereignty. Moreover, as the experience of the BVI show, that this “robbing” of sovereignty has not only been occurring before the turn of the century, but also extends to other areas of traditional sovereign control particularly in the development of legislation (Maurer, 1993; Maurer, 1995c; Maurer, 1995a). On the other hand, those who believe the campaign failed do not seem to recognise some data suggesting that individual and corporate income tax revenues of the OECD countries did not decline over the 2000-2010 decade<sup>9</sup> whilst corporate tax revenues of non-OECD countries in the same period declined (Avi-Yonah, 2008: 784). This distinction is particularly important in assessing who benefits from the traditional exercise of state and taxation of sovereignty, how those benefits are distributed, and why they are distributed in that manner.

## **1.2 Research question**

The thesis explores the relationship between tax havens, tax sovereignty and tax justice. Specifically, the proposal is to examine what a review of the developmental history of the BVI reveals about the function of tax havens in global political economy through traditions of state and taxation sovereignty. The effort to establish global tax rules sheds light on the problem of implementing standards and regulations which create winners and losers (Sharman, 2006: 2). Consequently, tax sovereignty undermines claims of equity as it likely results in an outcome where the definite winner is the OECD and its member states, and the losers are “fragile” or “micro-state” tax havens whose development was partly and simultaneously engendered by factors beyond their control. By extension, the second problem concerns how the fairness of the global tax system is silenced by a framing which does not attend to the role of administering states over tax havens, often forecloses important distributional debates of sovereignty and revenue for underdeveloped nations (Calderon Gomez, 2020: 221). Therefore, the thesis aims to review tax sovereignty through a developmental history of the BVI.

The main question is:

What does a review of the development of the British Virgin Islands reveal about the function of tax havens in global political economy through traditions of state and taxation sovereignty?

Secondary to the above are the following sub-questions which will help to explore the primary research question:

- 1) What significance did the BVI attach to sovereignty in pursuing national development objectives?
- 2) Which approaches were adopted as policy strategies to development?
- 3) What were the different stages or phases in the evolution and development of the BVI as a tax haven?
  - a) When did each of these phases occur (how long, under what context)?
    - i) How were these different phases marked or influenced by the above factors and conditions?
    - ii) Which of these factors or conditions continue or remain across the different stages?

## **1.3 Rationale and significance**

The rationale of this study borrows from the recasting of decolonisation and the anti-colonial demands for self-determination as a project of worldmaking to create juridical, political and economic institutions that would secure non-domination in the international realm (Getachew, 2019a: 1). This

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<sup>9</sup> OECD, “Revenue Statistics, 1965-2007”. <https://ec.europa.eu/eurostat/>.

recasting by Adom Getachew in *Worldmaking After Empire* drew from an account which situated empire within international structures of unequal integration and hierarchy. I borrow from Getachew's political theory of decolonisation which serves as an analytical approach for revisiting and rethinking the ambitions of anti-colonial quests for self-determination. The attempt to achieve national independence not only propelled a rethinking of state-sovereignty, it also "anticipated and reconfigured our contemporary questions about international and economic justice" (Getachew, 2019a: 3). This is particularly appropriate in the context of studying the British Virgin Islands: a tax haven which sought self-determination through national development as a dependent crown territory. Consequently, I adopt the attention to the specificity of post-colonial sovereignty and the attempt to reconfigure the questions we ask about international justice (Getachew, 2019a: 9). This cognisance of the "specificity of the animating questions and contradictions of anti-colonial nationalisms" emerging out of the legacy of imperialism provides a resource to critically evaluate the contemporary predicaments of postcolonial sovereignty (Getachew, 2019b: 30). Significantly, this approach entails a critical diagnosis of the persistence of empire and a normative orientation that retains the anti-imperial aspiration for a domination-free international order (Getachew, 2019a: 10).

International tax reform literature chiefly draws from a cross-disciplinary combination of economists, lawyers, accountants, information technology experts and statisticians. It has come to constitute its own discourse, with established ways of thinking according to a system of rules and institutional norms (Foucault, 1972; Philips, 2009). Stewart (2009: 357) observed that single country studies are rare because tax reform discourse is primarily a technical, economic discourse, in which both the economic and legal aspects are depoliticised and reduced to mechanics. Single country studies "provide little guidance for expansive and universal policy reform" (Zucman, 2015: 7). This "epistemological bias" has resulted in the "contemporary mass production of tax reform" (Stewart, 2009: 357) stifling the potential for domestic political participation in the determination of tax policies and laws in the countries undergoing reform. It has also been noted that tax scholarship tends to ignore the national sovereignty of tax havens altogether; Teather (2002:62) as an example describes it as a 'thorny' geo-political issue which whilst vital for tax havens, is "not an economic issue and is better addressed elsewhere". This oversight obscures the competing and conflicting interests in international taxation. A critical example is when an administering state – as in the case of the UK – has taken steps to reassert metropolitan sovereign control in its Overseas Territories (Clegg, 2006: 131) whilst simultaneously engaged in efforts to curb "harmful tax competition" and constrain offshore financial centres (Vlcek, 2008: 34). Therefore, in considering and establishing sovereignty as playing a critical role in the BVI's development as a tax haven and how in turn it is instrumental to calls for an equitable global tax system, the thesis hopes to offer a different perspective of understanding the development of tax havens and their function in global political economy in relation to traditions of state and taxation sovereignty.

#### **1.4 Aims and objectives**

This study chiefly explores the relationship between tax havens and tax sovereignty. This relationship is used to briefly consider the connection to tax justice. For this thesis, tax justice is considered as the broad banner for an equitable international taxation regime. Outside of the traditional tax reform literature – chiefly in international political economy and sociolegal (a combination of sociology and law) scholarship, the literature which addresses the relationship between tax haven development spurred by globalisation (Christensen and Kapoor, 2004; Silbey, 1997) and the concerns of sovereignty and international justice (Hudson, 2000; James, 2002; Palan, 1998) is usually dated by nearly two decades. More recent scholarship on the other hand predominantly focusses on the importance of tax sovereignty for the functional roles of government in a global social contact (Ring, 2008; Christians, 2016; Christians, 2017; Christians, 2009) with some expressly addressing the relationship between

tax sovereignty and justice (Calderon Gomez, 2020; Emblad, 2020; van Apeldoorn, 2018). Therefore, the first aim of this thesis is to partly attempt to bridge this gap by adopting an approach which combines these two perspectives from economic tax reform literature on the one hand, and international political economy alongside sociology and law scholarship on the other hand, through a review of the developmental history of the BVI as a tax haven. General works on Caribbean history and development (Heuman, 2018; Kamugisha, 2019; Knight, 2011; Quinn, 2014), and specifically centred on the BVI (Bowen, 1976; Cohen, 2010b; Harrigan, 1971; Kersell, 1989), do not particularly emphasise the islands development as a tax haven; partly because that is contested, and some do not consider the islands to be tax havens but rather “financial services centres” (Cohen, 2010b). The distinction between an offshore financial centre or tax haven, and a ‘legitimate’ “financial services centre” is largely semantic (Sharman, 2006). The latter attempts to provide a measure of legitimacy as per the rules of free market capitalist competition by describing structures such as international business incorporation in the BVI as mere products and economic services offered to the financial industry (Cohen, 2010a: 230).

The objective of this study is to explore what a review of the development of the British Virgin Islands reveals about the function of tax havens in global political economy through traditions of state and taxation sovereignty. This is done to reflect on the aspirations of an equitable international taxation regime by looking at the factors which maintain tax haven dependency and their development. Specifically, by highlighting the function of tax havens in global political economy through traditions of state and taxation sovereignty. Traditionally, tax equity was solely concerned with the fair treatment of individuals within the same or different income brackets (Infanti, 2007: 1195), and anchored in debates on progressive, proportional or regressive tax systems. This also extends and is expressed by the benefit, partnership and ability to pay principles (Dodge, 2004). However, tax equity historically only accounted for economic difference, effectively foreclosing non-economic forms of difference when determining the appropriate allocation of the societal burden to pay tax (Philips, 2009: 61). Critical tax scholarship often highlights the differences ignored in tax equity, principally according to race, sex, and gender, and typically focussing on how these dynamics play out in the tax systems of developed economies (Knauer, 2014; Philips, 2009; Infanti, 2007). These unequal outcomes are generally given more attention than differences between states (Stewart, 2009), or those focusing on the imperialist underpinnings of the international taxation system (Rocha, 2017). Jeffery summed it up in his study of the impact of state sovereignty on global trade and international taxation at the close of the 20<sup>th</sup> century (Jeffery, 1999: 11):

In light of international economic integration, it is no longer sufficient just to look at equity considerations which arise between taxpayers. It is now essential also to look at the equitable relativities between nations: inter-nations equity. This requires that the world tax base be fairly shared between nations.

Observing that inter-nations equity is closely linked to considerations of sovereignty and jurisdiction, Jeffery (1999: 12) notes that is important in ascertaining the right to impose and collect tax as encompassed by taxation sovereignty. However, Jeffery’s analysis was centred and limited to the European Community (EC) and only secondarily between EC member states and the rest of the world. Therefore, the second aim of this study is to conduct its analysis from a perspective centring on the inter-nations’ equity and sovereignty concerns of the global south. This gives primacy to inter-nations equity in the relationship between the broadly global south and global north countries, ‘developing and developed countries’, and rich and impoverished countries in the global political economy. Beyond conceptions of global tax equity premised on a tradition of sovereign entitlement in the allocation of taxing rights between states, an expanded conception of an equitable international tax

system might not only consider revenue allocation instead (Cobham et al., 2019; Jeffery, 1999; Vlcek, 2008). It would also take steps in line with the objective of this study: to highlight the underpinnings of the international tax system by understanding the structures which maintain tax haven dependency and their development in the first instance. Combined, the third and final aim of this thesis is to offer this perspective by exploring the colonial dependency sustained in the BVI in the post-colonial period, and how it continues to the present as a function in the global political economy.

## **1.5 Structure and chapter outline**

### **1.5.1 Chapter 1: Introduction**

#### **1.5.2 Chapter 2: Literature Review – Globalisation and the Reworking of Sovereignty**

This chapter carves out a space for the current study and establishes the project's theoretical framework. Globalisation and the reworking of sovereignty are the main centrepieces through which the BVI's emergence as a tax haven is located. The review highlights the structuralist and dependency arguments which framed these territories as inherently set up for external dependence by characterising them as manufactured societies in the creation of empire. In considering the conjuncture between international taxation and small state development, the review concludes by pointing to how conceptions of an equitable international tax system might take steps to highlight the uses of sovereignty which underpin the international tax system. This helps to understand the structures which maintain tax haven dependency and their development in the first instance.

#### **1.5.3 Chapter 3: Methodology**

The chapter maps out the plan used to execute the research project. The design for this research incorporated a tripartite framework to analyse the relationship between tax havens and sovereignty in the post-colonial period. The chapter orients the type of this research as a qualitative review project using a critical and interrogative lens and concludes by explaining research tools, sources, and limitations.

#### **1.5.4 Chapter 4: A critical review of the developmental history of the BVI as a non-sovereign tax haven**

The aim of this critical review is to highlight the structures which maintain tax haven dependency to reveal the function of international taxation in the global political economy through its relationship to traditions of state and taxation sovereignty. This chapter examines post-colonial dependency through the lens of neo-colonial imperialism and a reconstituting empire by reflecting on two key phases in the developmental history of the BVI. I discuss the turn to expatriate led development through an economisation of government, in which sovereign control was accompanied with a withdrawal of economic control. I conclude that this phase of neo-colonial imperialism reached its apogee in the International Business Companies Act of 1984. The BVIs emergence as tax haven and integration in international political economy reveals a tradition of sovereignty in the post-colonial context which shapes neo-colonial imperialism wherein effective sovereignty is in the global north.

#### **1.5.5 Chapter 5: Conclusion**

The history of the development of the BVI as a tax haven gives pause for us to examine what legitimises some uses of sovereignty in the arena of taxation whilst denouncing others. It provides an invitation to critique the ways taxation sovereignty is used by metropolitan powers as an instrument secure their own economic interests, and by tax havens looking to fashion some form of autonomy and national development in an uneven global political economy. This reveals a tradition of sovereignty in the post-colonial context which shapes neo-colonial imperialism wherein effective sovereignty remains located in the global north. Therefore, the study demonstrates that global south countries have an inability to exercise effective sovereignty in the arena of international taxation.

## 2 Literature Review – Globalisation and the Reworking of Sovereignty

### 2.1 Introduction

The story of the emergence and development of tax havens in the Caribbean is enfolded in and lies at the heart of numerous discussions. These are chiefly in four conceptual areas: international finance (Friedman, 1922; Hampton and Christensen, 2002; Johns, 2013; Johns and Le Marchant, 1993; Koddenbrock et al., 2020; Musgrave, 2001; Roberts, 1994; Shaxson, 2018; Vlcek, 2008; Hampton, 1998), the restructuring of capital, (Amin, 1997; Dietsch, 2015; Marshall, 1996a; Hampton, 1998; Harvey, 2018; Luxemburg, 2007; Wood, 2005), world systems continuity in understanding the relationship between the core developed industrialised states and periphery dependent underdeveloped states (Barrow-Giles and Marshall, 2003; Marshall, 1996a; Marshall, 2016a; Marshall, 1996b), and the debates on the nature of globalisation and its relationship to traditions and practices of state sovereignty (Barrow-Giles and Marshall, 2003; Calderon Gomez, 2020; Christians, 2016; Christians, 2017; Christians, 2009; Emblad, 2020; Hudson, 2000; James, 2002; Jeffery, 1999; Maurer, 1995a; Musgrave, 2001; Palan, 2002; Rezvani, 2014; Ring, 2008; Rocha, 2017; van Apeldoorn, 2018; van Fossen, 2012). This review will primarily be centred on the globalisation and sovereignty strand. The internationalisation of finance and the restructuring of capitalism in the age of globalisation are key components in locating the development of the BVI as a tax haven.

There is one other narrative account of the development of tax havens which slightly deviates from the four core areas identified above. This outlying strand engages with how state sovereignty in the fiscal form of taxation was adopted and used by “microstates” as a critical component to the formation, conduct of tax havens, and their development as nation-states. To illustrate the distinction from the core literature identified above: the internationalisation of finance capital and globalisation narratives as an example will generally point to the rise of the Eurodollar markets and see a tax haven development strategy by Caribbean micro-states as opportunistic or incidental events. Caribbean islands took advantage of being geographically closer to the United States and sharing a time zone and currency with a highly regulated financial system in the 60s and 70s (Palan, 1998; Palan, 2002; Palan et al., 2013; Roberts, 1994; Hampton, 1998; Hampton and Christensen, 2002). This perspective is surmised by Don Marshall as tracing the origins of Caribbean OFCs as epi-phenomena to the rise of the Eurodollar market which are “fantastically accounted for in explanations that draw on a kind of geographical and historical determinism” (Marshall, 2007: 920). Similarly, tax haven development can also be located as responses by Empire to the decolonisation wave from the second half of the twentieth century regarding the capacity and viability of the transition from colonies to sovereign states (Palan, 2015; Sagar et al., 2013; Shaxson, 2018; Shaxson, 2011; Vlcek, 2008; van Fossen, 2019; van Fossen, 2012), or even yet, as a different iteration of capitalism and imperialism, and its restructuring in the contemporary era.

Whereas this outlying part of the story illustrates the growth of offshore financial centres as attempts to secure autonomy, or as part and parcel of a survival strategy in a globalising capitalist world even as dependent territories (Baldacchino, 1993). The distinction this account shares with the core cluster has to do with who is located as the central actor or agent in driving the development of tax havens. In so doing, this account illustrates how these states used their sovereignty to create and sustain a range of tax havens and OFCs with significant international repercussions (van Fossen, 2012; Maurer, 2001; Maurer, 2000; Maurer, 1995c; Maurer, 1995a; Maurer, 1993; Maurer, 1995b; Maurer, 1996; Barrow-Giles and Marshall, 2003; Marshall, 1996a; Marshall, 2016a; Marshall, 1996b; Marshall, 2016b; Marshall, 2007; Sharman, 2006).

The rest of this literature review will be in two main sections. Section 2.2 maps out the contours of the globalisation narrative which explained the emergence and development of tax havens. It surmises

the genesis and development of tax havens as spin-offs from the rise of the Eurodollar markets spurred by banking regulations of the 1960s. The review will highlight the gaps in the key narrative accounts which do not particularly centre the specific internal domestical political economy dynamics of Caribbean tax havens developing as nation states in the wake of constitutional decolonisation. And thereby underscore the implications of centring already developed core Western states for the aim of achieving an equitable international tax system. Section 2.3. discusses the implications for practices and traditions of state sovereignty. The review concludes by pointing to an approach which centres the specific sociolegal history of the BVI whilst borrowing from and enriched by the 'dominant' theoretical tradition to reveal the structural role in international taxation of tax havens as a function of global political economy.

## **2.2 Globalisation and the emergence of tax havens**

Two key debates were central in understanding the emergence of tax havens. The first of these discussions situated the development of tax havens along a continuum in the history of capitalist development and was influenced by David Harvey's 1982 and 1989 texts *The Limits to Capital* and *The Condition of Postmodernity* respectively. It revolved around fictitious capital, the increased geographical mobility of capital – also known as the globalisation debate – and the way it threatened to hollow out the state.<sup>10</sup> The rise of the Eurodollar market, flexible currencies – including a regime of flexible accumulation (Harvey, 1990), and the increased flow of money were among the central features in the debate on the restructuring of the global political economy in which tax havens were an integral part of capitalist development (Helleiner, 1995; Roberts, 1994; Corbridge et al., 1994).

On the other hand, there was the widely influential approach and theoretical reference point for the critique of neoliberal globalisation developed by Michael Hardt and Antonio Negri in their book *Empire* (2000). Hardt and Negri positioned *Empire* as a political subject effectively regulating global exchanges and the sovereign power which governs the world (Hardt and Negri, 2000: 3). They expressed fear that postcolonial theorists fail to adequately recognise the contemporary object of critique by "mistaking today's real enemy" (Hardt and Negri, 2000: 137). For them, the internationalisation of production services has created a new logic and structure of rule. Anghie surmises this as an understanding of a new form of sovereignty which Hardt and Negri call empire (Anghie, 2007: 245-246). In contrast, an opposing view of empire remains grounded in traditional understandings of imperialism which asserts that "global really existing capitalism is imperialist in nature" (Amin, 2011: 328). This aimed to refute the claim that "imperialism is over" (Hardt and Negri, 2000: xiv) by asserting that empire cannot be distinguished from imperialism (Borón, 2005: 19) to refute the existence of "such an implausible entity as an empire without imperialism – a paralysing political oxymoron".

The globalisation debate also extended beyond IPE scholarship and thus accounts for another aspect of its discussion in cultural studies and anthropology. Unlike what Maurer describes as the orthodox Marxist "there's nothing new under the sun" approach to the world economy characteristic of IPE which viewed global finance as a resurgence<sup>11</sup> and not a novel occurrence, this aspect of the discussion illustrated how specific social formations encouraged particular notions of finance, sovereignty, citizenship and governance (Maurer, 1995c: 673); a "condition of postmodernity":<sup>12</sup> the conjunction

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<sup>10</sup> This literature emerged from the post-Fordist era, characterised by the shift from manufacturing industries, automotive factories, standardised and mechanised mass production to digital labour and economies of scope. See Jessop, "Towards a Schumpeterian workfare state? Preliminary remarks on post-Fordist political economy".

<sup>11</sup> Comparisons were often made to the heyday of 19<sup>th</sup> century industrial capitalism which was characterised by high numbers of foreign direct investment, flexible financing, floating exchange rates. See Kindleberger, "International Capital Movements".

<sup>12</sup> Harvey, *The Condition of Postmodernity*.

of the financial services sector with citizenship laws and political stability. This particular aspect illustrated a mutually constitutive process of how globalisation generated conceptions of “belonging”, citizenship, family, race and gender encoded in new state practices in the BVI (Maurer, 1993: 9) and in so doing, how these new conceptions in turn shaped and contributed to the development of specialised financial practices. On the flip side, having created “offshore”, these reworkings of sovereignty and self-determination as manifest in state practices were constrained and “(re)-enabled” in turn (Palan, 1998: 625).

### 2.2.1 Fictitious capital and global finance

The word ‘offshore’ makes reference to a process of fictitious capital formation in the Euromarkets of the 60s and 70. The role of credit outlined by Harvey (1990: 162) explained how capitalism uses debt to displace crises in a fast paced financial system. This strand of the development of tax havens stresses offshore finance as an essential characteristic of the world financial system. Consequently, in financial literature, offshore is used to describe the unregulated international financial markets (Palan, 1998: 626). International finance transactions from the late 60s had become dominated by offshore banking – particularly through the Euro banking markets for foreign currencies – to the extent that international banking had become free of regulation.<sup>13</sup> This was located against a regulatory landscape stimulated by US restrictions on domestic banking activity in the 1960s-1980s (Hudson, 2000: 271). The “dollar overhang” was a result of US companies internationalising thereby establishing the dollar as the de facto world currency. This pushed the US government to repatriate dollars. In 1963, the US passed the Interest Equalisation and Withholding Tax requirement, which encouraged the growth of markets in Europe selling currencies – particularly the dollar, thereby reinforcing the attraction of the Eurodollar market as a less regulated sphere Markets for currencies, loans, bonds and a host of other financial instruments “beyond the reach of regulation by the originating national economy” were created (Roberts, 1994: 93). By extension, this lack of regulation made offshore directly related to the concept of state sovereignty.

This conception of offshore arrives at a voluntary relinquishing of state sovereignty. The term in describing the regulatory concessions of tax havens ironically evokes an imagery of islands, seas, and oceans.<sup>14</sup> For Palan (1998:636) in “Trying to Have Your Cake and Eating It: How and Why the State System Has Created Offshore”, this not accidental, but is rather a reference to a set of “legal precedents and principles that inform the treatment of coastal waters”. This is an understanding of treating certain areas or sectors as if the state has limited sovereignty over them (Picciotto, 1992). Therefore, offshore creates an attractive feature where the state can guarantee property rights for the market to operate, whilst absconding its regulatory capacity (Palan, 1998: 637). Drawing on Harvey’s notion of fictitious capital,<sup>15</sup> Roberts (1994: 91) pointed to islands and “micro-states” as essentially ‘marginal places’ which have been transformed by exploiting the niches in the circuits of fictitious capital, thereby assuming a crucial position in the global nodes of international finance by setting themselves up as offshore financial markets to attract money that seeks to avoid regulatory attention and taxes.

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<sup>13</sup> This led Terrell and Mills to arrive at the position stating that a study in international finance is, therefore, for all intents and purpose a study of the offshore financial market. See “International Banking Facilities and the Eurodollar Market”, 184. Cited by Palan, “Trying to have your cake and eat it”.

<sup>14</sup> The law of the sea - a traditional meaning of offshore referring to established practice of limited sovereignty over areas adjacent to the state. See Thompson, *The Sovereignty of the Sea*.

<sup>15</sup> Drawing on Marx’s use of fictitious capital, Roberts used Harvey’s characterisation of credit as fictitious because it is based on value which is yet to be treated: it is “reliant upon the future exploitation of labour and is some kind of money based on production that does not yet exist”. Harvey, *The Limits to Capital*, 69 and *The Condition of Postmodernity*, 107.

Therefore, the development of tax havens through an analysis of states voluntarily relinquishing a sovereign right to tax certain activities as a response to the geographical mobility of capital centres on Europe and America through the creation of offshore. Indeed, nearly two decades later, Palan in a book collection *Tax Havens: How Globalisation really works* expressly identifies the United Kingdom as having literally created more of the world's tax havens than any other state (Palan et al., 2013: 39). The implication of this narrative is that the proliferation of tax haven development came because of Western states creating a regulatory realm without state interference – offshore. As a result, an excess has grown that needs to be “reined in” (Brauner, 2002). This conception of tax haven development dominantly drives the inner logic of tax reform discourse. Consequently, beginning from this position necessarily results in narrowing framings of an equitable international tax system because it centres already developed states (Rosenzweig, 2010: 931).

### **2.2.2 Restructuring of capital and world systems continuity**

The growing number of sovereign states in the second half of the twentieth century was an expression of the modern world systems trend toward making the state the general political form, extending the interstate system globally.<sup>16</sup> Before the second world war, almost all the original OFCs were European. Very few jurisdictions outside Europe and European settler colonies had substantial sovereignty (van Fossen, 2012: 18). Coinciding with when international capital became more mobile in the post WWII era, countries in the global south gained some measure of sovereignty in the same period. There was an expansion of OFCs in the postcolonial era (van Fossen, 2012: 12). Therefore, drawing on Wallerstein's analysis of the changing world economy under modern capitalism, one argument that emerges is that through the creation and extension of states and sovereignties, a framework for the defence, protection and enforcement of property rights was provided to the market economy. This process thus reflects the supremacy of “transnational capital” (van Fossen, 2012: 31) whilst positioning the right to tax or to not tax at the centre of sovereignty.

Taking this world-systems approach, global capitalism manages to restructure itself by enlisting tax haven sovereignty to serve its purposes where capital can escape the regulation of the state. Tax haven states restricting other states from exercising their sovereignty over economic transactions is understood as the reconciliation of two seemingly contradictory principles: economic liberalisation, and state sovereignty which guarantees the operation of the market economy (van Fossen, 2012: 18; Palan, 1998; Palan, 2002). This leads to a dialectic between sovereignty and tax haven development (Vlcek, 2008). However, a more conceptually useful – or interesting – approach, is one which traces tax haven development through an economic speciality practiced by states intended to achieve certain outcomes – preferential taxation regimes (PTRs). In the instance of tax havens, PTRs are intended to attract foreign capital. Therefore, they are an aggressive form of preferential taxation regimes aimed at capturing mobile capital seeking to avoid tax.

Palan et al. (2013: 31) trace tax haven development as PTRs at heart, and therefore, as chiefly a competitive strategy favoured by small jurisdictions to function in a global capitalist world economy. Tax havens as a subset of OFCs<sup>17</sup> are distinct from “international financial centres”. London, New York, and Tokyo as international banking facilities (IBFs) are separated from PTRs which provide “financial services to non-residents”. This is notwithstanding the fact that if an OFC is to last, it often needs the backing of reputable IBFs which provide less regulated tax spaces without undermining their ability to

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<sup>16</sup> Wallerstein, *Geopolitics and Geoculture*, 140 cited in van Fossen, “The Political Economy of Tax Havens and Sovereignty in Oceania”, 17.

<sup>17</sup> These are: “Spontaneous centres” such as the UK and Hong Kong, International Banking Facilities as with New York and Tokyo, and tax havens. See Johns, *Tax Havens and Offshore finance: A Study of Transnational Economic Development*.

tax other areas of economic activity. In the analysis of Pacific Island tax havens and sovereignty, van Fossen (2012: 14) argued that just as the founding of new sovereign Pacific Islands nation-states in the wake of decolonisation reproduced the sovereign state form, so too their offshore financial centres imitated models from elsewhere. Therefore, it is necessary to briefly reflect on these origins.

The precedent that created a loophole which made Britain a tax haven<sup>18</sup> was through case law<sup>19</sup> making UK the first country to introduce personal income tax on worldwide income. This in turn was useful for the British royal national treasury and cemented London's position as the largest international financial centre from which many companies were financing operations globally (Palan, 1998: 637). This model of "pragmatic resolution" traced how the British revenue authority applied the concept of residence the 19<sup>th</sup> century to determine the tax liability of British companies whose income generating activities occurred abroad (Palan, 1998: 637). The 1876 case brought by the Exchequer against Calcutta Jute Mills and Sulfur mines solidified what might be regarded as the "source" principle, affirming that: "the great principle of the law of England in relation to taxation is that taxation shall only be imposed upon persons or things actually in this country."<sup>20</sup> However, when the new century began, this principle was negated in 1901 when the judges heard a case which sought to determine whether the De Beers mining company registered in the Colony of the "Cape of Good Hope" could be determined a U.K resident for tax purposes because the company maintained an office in London. In this latter decision, the court concluded that real control of the company's strategy was executed from London. Holding that the companies were under control of persons whose governing body was England – and therefore liable to British Taxation – the court concluded that De Beers should be taxed in England despite generating income abroad. Therefore, a loophole emerged through which Britain became a tax haven.

Extending from this, van Fossen and Vlcek argue that tax havens and small states have used their post-colonial sovereignty in the arena of law to carve out spaces for capital to be domiciled in their jurisdictions whilst escaping tax liability in a source country in which it operates (Vlcek, 2008). This framework gave agency to colonial dependent territories and their use of sovereignty by examining how national law was wielded as a developmental tool whilst briefly reflecting on its significance to claims to independence, national culture, and identity. Vlcek (2008: xii) borrows a "third concept of liberty"<sup>21</sup> to explain this use of sovereignty by Caribbean tax haven jurisdictions. Substituting small states for individuals in an extension of the "two concepts of liberty" by Berlin (1979), this third concept suggests that when an individual is subject to capricious rule of another sovereign, they will willingly constrain their actions (Vlcek, 2008: 33):

This response is not because of any actual interference or threat of interference... but because they recognise that they are dependent on the goodwill of the sovereign. Thus, it is by the 'mere knowledge that we are living in dependence on the goodwill of others that our liberty to act as we desired is constrained'<sup>22</sup>

The limitation in Vlcek's framework despite its aim for agency and specificity is partly inevitable owing to the inherent deficiency of this use of liberty which borrows from Berlin's liberal and individualist critique of Marxism. In this understanding of liberty which ultimately asserts non-interference as the highest form of freedom – Berlin (1979: 123) assigns a universal status to this conception despite its

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<sup>18</sup> Picciotto, *International Business Taxation*, 8 cited by Palan, *ibid*.

<sup>19</sup> 1876; Exchequer court: Calcutta Jute Mills and Cesena Sulfur mines

<sup>20</sup> Couzin, *Corporate Residence and International Taxation*, 6, cited by Palan, "Trying to Have Your Cake and Eat It: How and Why the State System Has Created Offshore".

<sup>21</sup> Quentin Skinner, "A Third Concept of Liberty", *Proceedings of the British Academy*, 247.

<sup>22</sup> Skinner, *ibid*.

particular theoretical origin. It is noteworthy that Berlin does not trouble explaining why there can be a separation between “individual liberty” and “some other kinds of freedom – social or economic” (Berlin, 1979: 125). Later in the conception of positive freedom – what one can be free *to be* Berlin (1979: 130) does not explain what the distinction is, between the desire to govern oneself or participate in the process of such governing, and the desire to act freely without intervention in the sense of negative freedom and only asserts that the two are not the same thing. The connection between individual liberty and democracy for those living under oppressive systems of white supremacy, capitalism, slavery, or colonialism, is historically entwined (Fanon, 2017; Rodney, 1972; James, 2001; Robinson, 1983; Ndlovu-Gatsheni and Ndlovu, 2021; Rakei and Madzivhandila, 2021). Consequently, this approach whilst retaining a spirit for the ‘particular’ is not critical of the conditions<sup>23</sup> which make it possible for this use of sovereignty to emerge in the postcolonial period.

The hypocrisy of decrying small states and not metropolitan powers has led Don Marshall (1996a: 194) to stress and re-assert the significance of world systems continuity in describing late 20<sup>th</sup> century capitalism, calling for a re-assessment of the globalisation theme to ask questions about who rules, who benefits and who suffers. The City of London, which does not qualify as a tax haven, is considered the hub of global offshore finance (Palan et al., 2013) but the IMF only lists tax havens as OFCs.<sup>24</sup> Palan et al. stress that it is impossible to comprehend “the spectacular success of the City of London’s centrality as the premier financial centre without the Euromarkets and the satellite British tax havens”. Therefore, Marshall (2007: 917) argues that the new international financial architecture being imposed on Caribbean OFCs related to the nature of market liberalisation regimes and tax evasion, are attempts to “suture over, erase and or render illegitimate ideational resistance particularly by OFCs of the global South”. In this regard, Caribbean OFCs are not only a special point of entanglement in the alignment of core Western interests in establishing the mobility rights of capital. They are also discursively constructed and ‘othered’ to displace the region in a high stakes battle between international offshore and onshore centres for legitimate business (Marshall, 2007: 918-920). However, Marshall does not entirely support the notion of the supremacy of transnational capital in understanding the development of tax havens.

Consequently, within this globalisation narrative of the restructuring of capital and world-systems continuity, there is a strand which questions the picture of global economy of transnational capitalism where ‘national capitalisms’ is replaced by the loss of a magnetic north. It is potentially useful to reorient how we think about states like Britain and America once they are conceptualised as tax havens.<sup>25</sup> But this runs the risk of occluding particular conditions and histories which generated tax haven development in British territories like the BVI, thereby relegating them to master narratives of fictitious capital, global finance, restructuring of capital and world-systems continuity.

### **2.3 Reworking sovereignty and nation-state formation**

The account of globalisation reworking sovereignty as the ordering principle of the international political economy (Hudson, 2000) presents its evidence as the new geographies of power most apparent in offshore finance and the world of tax havens where sovereignty is unbundled. Tax haven states maintain the legislative right to use sovereignty to create a regulatory landscape to attract mobile capital, and in so doing, relinquish their fiscal power to tax foreign multinational companies

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<sup>23</sup> Tied to Kant’s transcendental idealism. See Kwasi Wiredu, “On an African orientation in philosophy”, 27 and “Marxism, Philosophy and Ideology”, 63-87 in *Philosophy and an African Culture*. Also see Emmanuel Chukwudi Eze, “The Colour of Reason: The Idea of “Race in Kant’s Anthropology” in Eze, *Postcolonial African Philosophy: A Critical Reader*.

<sup>24</sup> IMF Background Paper: list of OFCs. <https://www.imf.org/external/np/mae/oshore/2000/eng/back.htm>

<sup>25</sup> Drucker “The world's favourite new tax haven is the United States”.

(Hudson, 2000: 269; Palan, 1998). The most successful tax havens in the Caribbean have developed with a particularly pronounced affiliation to the British state, which has regulated offshore development in postcolonial island territories through the UK Overseas Development Administration and the Bank of England (van Fossen, 2012: 26). Full sovereignty through complete political independence has not been a crucial advantage compared with the benefit of an island tax haven underwritten by a core power (Hampton, 1998; Roberts, 1994: 110). The reassuring link to the “mother country”, provides assurance to investors, conferring an image of stability, that their money is safe, and that the islands are governed by a reliable legal and monetary system. Therefore, this section maps out the conjuncture between jurisdictional claims in international taxation over a state’s sovereignty expressed through the fiscal right to tax, and the development of small states. In so doing, the review concludes by pointing to how conceptions of an equitable international tax system might take steps to highlight the underpinnings of the international tax system by understanding the structures which maintain tax haven dependency and their development in the first instance.

### **2.3.1 International taxation and the sovereign right to tax**

The BEPS toward eliminating “harmful tax competition” and pursuing global justice in fiscal policy has been criticised for failing to pay attention to the distribution of tax sovereignty (van Apeldoorn, 2018: 478). Developed countries have historically shaped international taxation to their favour<sup>26</sup> through imperial relationships (Stewart, 2009: 354; Rocha, 2017). The international taxation system revolves around the elimination of double taxation: any income or capital generated by the same taxpayer should not be subject to taxation twice (Holmes, 2007). Double taxation arises in instances where two or more states have claims to impose tax on income or capital of the same taxpayer.<sup>27</sup> The result is a contest revolving around two conflictual concepts: *residence* vs *source*. This contestation is premised on Hobbesian arguments that the state has an absolute right to tax people in its jurisdiction or territory,<sup>28</sup> and the taxpayer is an object of regulation “to be fought over where two sovereigns happen to collide” (Christians, 2017: 4). Therefore, the one state makes a claim to tax an individual or company on their worldwide income irrespective of the source of that income because the taxpayer is a resident of that state. The other state asserts its taxing rights by virtue of the income or capital being generated within its borders.

Traditionally, international taxation refers to treaty provisions which provide relief from double taxation (Olivier and Honiball, 2011: 15). This view does not directly support the existence of an international taxation regime or of an international tax law which adjudicates how taxing rights ought to be distributed. Instead, states enter into bilateral double tax treaty agreements to settle the dispute and eliminate double taxation (Olivier and Honiball, 2011: 43). Conversely, the very existence of this network of bilateral double tax treaties (Holmes, 2007) provides the basis of the existence of an international tax “regime” thereby answering the question of whether international taxation is part of international law (Avi-Yonah, 2004: 4; Brauner, 2002). Tax treaties signed between states form part of treaties under international law (Sachdeva, 2013). In 1923, the Economic and Financial Commission

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<sup>26</sup> This is traced to 1923 when the Economic and Financial Commission of the League of Nations submitted its report on double taxation establishing the groundwork of the modern international taxation system. See Friedman (1922), *International finance and its reorganization*, Cowcher (1923), “League of Nations: Economic and Financial Commission” and Clavin P and Wessel J-W (2005), “Transnationalism and the League of Nations: Understanding the Work of Its Economic and Financial Organisation”.

<sup>27</sup> Known as *juridical* double taxation, different from economic double taxation – where different taxpayers are subject to tax twice on the same income. This thesis exclusively refers to juridical double taxation.

<sup>28</sup> Sovereign entitlement encompassed by Thomas Hobbes: “these are the rights which make the essence of sovereignty . . . the power of raising money” in *Leviathan or the Matter, Form and Power of a Commonwealth Ecclesiastical and Civil*. Cited by Christians, “Human Rights at the Borders of Tax Sovereignty”.

of the League of nations submitted its report on double taxation (Bruins et al., 1962). The overarching principles of this report were crystallised in the first double tax convention published by the OECD in 1963. Made up of 36 member states, the OECD is a club of powerful wealthy nations (Hearson, 2015: 4). The OECD model double tax treaty (DTT) was widely used in negotiating bilateral tax treaties by both member and non-member states alike and has considerably shaped the regulatory landscape of international tax law (Lang, 2010:28). But, the OECD model is best suited for bilateral tax treaties between two or more developed countries (Holmes, 2007: 58). OECD model based double tax agreements give greater weighting to the *residence* principle and therefore usually require the *source* country to give up its taxing rights. Consequently, the primary right to tax almost exclusively vests in the capital exporting country of the foreign investor (Holmes, 2007: 57):

This results from the fact that where developing countries trade with developed countries, (net) income is usually always flowing from the developing country to the developed country. So, generally, the developing country will be the net loser

As a result, global income inequality from tax revenue is correlated to tax sovereignty. It is tied to a state's ability or strength to assert its taxing rights over that of another state (Emblad, 2020). Because of the inherent unfairness of this arrangement between the relationship of tax sovereignty and the global distribution of tax revenues, one proposition which has been put forward is to first secure a more equitable distribution of tax sovereignty of independent polities (Ring, 2008: 58). However, this suggestion does not factor in the non-sovereign status of most tax haven territories administered by independent polities. This administrative power grants de facto sovereignty over tax havens, and automatically skews the distribution of sovereignty in the global political economy by granting metropolitan powers a greater effective share of sovereignty. Moreover, tax haven states like the BVI are largely reliant on international finance, usually involving dependency on unstable financial flows (van Fossen, 2012: 33) and fees from offshore company registration. Therefore, even if they were politically sovereign, having a status of formal sovereignty does not necessarily translate to an ability to effectively exercise that sovereignty (Emblad, 2020: 15).

### **2.3.2 Postcolonial sovereignty and the political economy of tax havens dependent on empire**

Most tax havens in the world economy are considered to be plagued with an "inherent problem" of smallness (Dharmapala and Hines Jr, 2009: 1057). This stems from how these microstates owe their original entrance into civilisation through the internal dynamics of imperialism and colonisation (Baldacchino, 1993: 31). One narrative is that colonisers in the region started with a tabula rasa because most small territories were either uninhabited or indigenous populations were completely wiped out.<sup>29</sup> Therefore, drawing on Naipaul's characterisation of manufactured people in the creations of empire, Baldacchino (1993: 31) concludes that these states were not only colonised, but created through an act of penetration from the outside, setting up future reliance and dependence on the external world.

The concept of developing microstates and *smallness* implicitly suggests a deviation from a normative ideal belied by an assumption that the large is the standard which is normal and preferable (Baldacchino, 1993: 29). Economically, the small size of a nation or territory – both geographically and in terms of population – is a structural inhibitor to the prerequisites of the development path (Ricardo, 1923). The BVI is geographically a small sized area with the islands altogether measuring roughly 150 square kilometres. Its largest island and administrative capital, Tortola, has a length and width of 20 and 5 kilometres respectively. After legislative independence it had population of just over 7 000

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<sup>29</sup> Wolf, *Europe and the People Without History*. Cited by Baldacchino, "Bursting the Bubble: the pseudo-development strategies of microstates".

people in the early 60s. The Administration thought it would be impossible to have even one economically sized industry unless the territory was endowed with natural resources – whose base would likely also be limited owing to a limited island area (O'Loughlin, 1962: 2). The alternatives for a small territory with a population of less than 30 000 were limited to one of three options: evacuation, amalgamation, and development to the point of viability (O'Loughlin, 1962: 3).

On the other hand, the dependency school invoked a structuralist and transnational dimension to the debate on microstate development. Maintaining that it was not enough to blame microstate underdevelopment on smallness, they rejected that it was an inherent problem, and fingered the instruments which controlled the small economy (Baldacchino, 1993; Girvan, 2006; Girvan and Girvan, 1973). The existence of a local indigenous class of financial and commercial elites is often seen as an invariable feature in tax haven development (Leaman and Waris, 2013; Palan et al., 2013; Marshall, 1996b). In most of the Anglophone Caribbean, British colonial rule engendered legacies which shaped postcolonial political economy. The central thrust of this politics was geared toward ensuring the reproduction of a petty bourgeoisie class (Rodney, 1975: 16). In attributing merchant capitalism as the driving force behind tourist development in the Caribbean, Marshall (1996b: 261) cites the region's "subordinate place in the international division of labour" as both cause and consequence. Somewhat similarly, in *The finance curse: How global finance is making us all poorer*, Shaxson (2018: 2) draws from the resource curse hypothesis, suggesting countries with large circulation of finance are suffering from a similar and related phenomenon. However, like the resource curse, the finance curse obscures historical and structural significance of imperialism and colonialism (Rodney, 1972; Amin, 1974) in shaping the lens through which development is conceived and undertaken.

Concretely, Shaxson's reading reflects a critical absence which fails to attend to the role empire and imperialism facilitate as a function of international hierarchy and unequal integration on two fronts. First as it pertains to the realm of international law and traditions of state sovereignty (Getachew, 2019b: 28; Anghie, 2007; Grovogui, 1996; Pedersen, 2015), and second as empire relates to the specific forms of post-colonial sovereignty in the wake of the 'dissolution' of formal Empire in the advent of the decolonisation wave of the latter part of the 20<sup>th</sup> century (Mantena, 2010; Mantena and Mantena, 2018; Partha and Karuna, 2011; Bourke and Skinner, 2016; Muthu, 2012; Sinha, 2016; Chatterjee, 1986; Chatterjee, 2010). Chatterjee (1993: 6) characterises anti-colonial nationalism as a creative force establishing "its own domain of sovereignty within colonial society", well before it begins battling with the imperial power. Building on the claim of the nation as an imagined community (Anderson, 1983) and objecting to the conclusion that nationalisms of the rest of the world have to choose their imagined communities from "certain modular forms already made available to them by Europe and the Americas",<sup>30</sup> Chatterjee (2010: 25-26) in "Whose Imagined Community?" demarcates nationalist thought into two divisions. First, a spiritual or inner domain of anticolonial nationalism which has the "essential marks of cultural identity" (Chatterjee, 2010: 27) through which the colonised cast themselves as essentially different from their European colonisers before launching campaigns for self-rule. The second domain is contrasted as the material domain of statecraft, economy, science, and technology. Therefore, under this framework, the colonial state and its material apparatus is kept out of the inner domain where the nation is brought into being as an imagined community (Chatterjee, 1993: 6):

In this, its true and essential domain, the nation is already sovereign, even when the state is in the hands of the colonial power.

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<sup>30</sup> Chatterjee objects to this aspect of Anderson's argument asking: if these modular forms have already been made available by Europe and the Americas, what do colonised peoples have left to imagine?

According to this demarcation, the task is to trace “in their mutually conditioned historicities” the specific forms that have appeared in the domain defined by the hegemonic project of nationalist modernity, and second, in the fragmented resistances to that normalising project (Chatterjee, 2010: 35). Taking this mantle up, Maurer (1995: 417) is instructive in the analysis of the BVI Legislative Council and national identity by highlighting how the BVI left their colonial relationship with the UK intact even as they came to understand themselves as members of a distinct national community. Crucially, Maurer points out that for the BVI, it has been those aspects of social life which Chatterjee delineated as “material” – statecraft and legislation – which BVI Islanders have used in order to fashion for themselves an “inner” uniqueness.

The Legislative Council was an instrument of sovereignty, development, and control over domestic political economy. In 1950, the BVI secured legislative autonomy through a reinstated local LegCo. The Council had historically included *nominated* officials or representatives (O’Neal, 2001). This historical LegCo did not have *elected* officials; this was a feature which only came to characterise the LegCo after it was re-instated in 1950. For this, Maurer (1994) remarked that it might be more accurate to say it was “instated” in 1950. Prior to its reinstatement or “instatement” in 1950, the LegCo had been abolished by Britain at the beginning of the 20<sup>th</sup> century<sup>31</sup> following a decline in economic activity after the abolishment of slavery in 1834<sup>32</sup>. From 1901 the BVI was governed as a presidency within the other neighbouring island colonies in the Caribbean. This meant that the BVI was left with only the Executive Council. The Executive Council was chiefly a four person committee whose members were appointed or nominated: the UK appointed Governor, the Colonial Secretary, the Attorney General, and the Commissioner (O’Neal, 2001: 77). The first three were headquartered in the Leeward Island colony of Antigua, and the rest were domiciled in the BVI<sup>33</sup>. In the Governor’s absence, the Colonial Commissioner presided over the Council. For Carrington (2019: 17) this cemented the reduction of political representation in the BVI leaving the islanders with little say in governance.<sup>34</sup>

Colonial underdevelopment was an igniting force generating calls for self-rule. A 1946 report by BVI Commissioner Cruikshank highlighted underdevelopment of the island due to years of neglect by both the Governor stationed in Antigua and the colonial office in London.<sup>35</sup> Carrington (2019:18) in *Non-Sovereign States in the Era of Decolonisation: Politics, Nationalism and Assimilation in French and British Caribbean Territories, 1945-1980*, underscored economic hardship without any political representation as a driving factor for calls to reinstate the Legislative Council. Even though the population of the BVI was six times smaller than Antigua, colonial expenditure in the BVI was twelve times smaller. From 1927 to 1928, Britain spent £83 149 on Antigua, but only £7 240 on the BVI.<sup>36</sup> (Carrington, 2019: 18). Thus, these conditions of underdevelopment drove an emergent elite merchant class – including Road Town merchants and businessmen, Howard Penn, David Fonseca,

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<sup>31</sup> A general feature of local Legislative Councils in the BWI is that they were abolished shortly after the collapse of British free trade in the 19<sup>th</sup> century.

<sup>32</sup> After hurricanes and drought in the nineteenth century, and abolition in 1834, most of the white planter class left the BVI for Britain. See Maurer, *Recharting the Caribbean*.

<sup>33</sup> Harrigan and Varlack, *The Virgin Islands Story*, 151 cited by O’Neal, *From the Field to Legislature: A History of Women in the Virgin Islands*, 77.

<sup>34</sup> Pickering, “Twentieth Century British Virgin Islands A Chronology”, *The Island Sun*, 1998, 2 cited by Carrington, *ibid*, 69.

<sup>35</sup> An experience as Carrington notes was consisted with dependencies elsewhere. “Commissioner’s Report, 4 December 1946”, CO 152/536/3, TNA. Also cited by Carrington: “Annual Report for the Leeward Islands, 1972-1928”, and “Colonial Reports, 1946-50”, CO 107/93, TNA cited by Carrington, *ibid*, 18.

<sup>36</sup> Cruikshank’s lamented the fact that of the three chairs in his office, none had a seat upon his arrival in 1945.

Charles Georges, and Joseph O’Neal (Carrington, 2019:165) to pressure the Commissioner to reinstate the Legislative Council (Carrington, 2019:19) to secure development through self-rule.

The emergence of self-rule was compatible with membership in Empire. And it was partly sustained by ambitions to control domestic political economy through national development. It is useful to consider another post-colonial reflection which tracked an analogous development, but at a different time – that of the origins of Indian Nationalism. The princely state was a system of self-governance in India. This model was tied to intensified connection and integration in a framework granting greater inclusion and representation in a federated imperial structure. Mantena (2016: 300-306) in “Popular Sovereignty and Anti-Colonialism” demonstrated how underdevelopment, poverty and “un-British rule<sup>37</sup>” generated a liberal critique of empire for failing to secure economic development for imperial subjects. Demands for greater elected representation – particularly on Legislative Councils (Mantena, 2016: 305) – began to be aligned with a project of self-rule. Therefore, the “material” domain of statecraft – legislation and economy – became paradoxically paramount to establishing the “inner”, true, and essential dimension of BVI nationalism, that is, and by extension, its sovereignty as per Chatterjee’s formulation.

A conference on the question of greater political representation was held in 1947. There, Howard Penn, a Road Town businessman, obtained unanimous support passing a resolution to reinstate the Legislative Council (Carrington, 2019:69). It was through this call to reinstate the Legislative Council, driven by a merchant class elite, that the dawn of legislative independence in 1950 was dominated by a discourse of ‘development’ as the re-established Council was dominated by Road Town businessman (Carrington, 2019: 159). This burgeoning group domineered over BVI politics from the 1940s-1960s (Carrington 2019:160):

These economic elites [in the BVI and across other territories] played a major part influencing the process of decolonisation and ensuring the political status of their islands suited the continuation of their economic dominance.

However, not stressed in Carrington and Maurer’s analysis, I aim show how this paradox of self-rule as a colonial territory was resolved through dependence on a reconstituting form of empire in which the BVI would become integrated. The thesis will particularly borrow Grovogui’s analysis of the failure of the reestablishment of sovereignty through post-colonial self-determination in Namibia. Grovogui (1996: 2-3) demonstrated the incompatibility of international law with the desire of the colonised to achieve sovereignty and self-determination by focussing on the structures of the discourses of both international law and politics in the text *Sovereignty, Quasi Sovereigns and Africans: Race and Self-Determination in International Law*. For Grovogui, the rules of international law have afforded the founding nations of the present global order the means to “continue to subordinate the rights of the colonised and the post-colonial state to the requirements of their own self-defined ‘national-interests’”. This was highlighted by the dependence of international law and politics on the European-dominated political economy and its legal apparatus (Grovogui, 1996: 6). Under this regime, the rules and procedures of decolonisation were determined and controlled by the former colonial powers to effect specific outcomes (Grovogui, 1996: 185). Therefore, the restructuring of empire through post-colonial relations was intended to preserve the structural links between Western economies and former colonies, promoting the hegemony of the West and dependence of the former colonies (Grovogui, 1996: 185-186).

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<sup>37</sup> Naoroji, “Poverty and Un-British Rule in India” cited by Mantena, *ibid*, 305

In considering what the BVI's developmental history reveals about the function of tax havens in relation to traditions of state and tax sovereignty – and briefly considered in the aspirations for an equitable global tax regime – Grovogui's invocation of critical theorists who warn against current reliance on Western jurisprudence as a basis for redress or reform<sup>38</sup> within the international order is instructive. I also turn to Antony Anghie's study of the relationship between imperialism and international law. The book *Imperialism, Sovereignty and the Making of International Law* emerged from Anghie's time working as a research assistant for an inquiry established by the government of Nauru to examine the history of the phosphate mining that took place on the island. The question animating the study was whether it was possible for a formerly dependent territory to bring a claim in international law for what was in essence colonial exploitation (Anghie, 2007: 2). Like the BVI which had a history of copper mining, Nauru turned to a tax haven development strategy after independence. Nauru sought to claim compensation from Australia and New Zealand for exploiting the region. In examining the relationship between colonialism and international law, echoing Grovogui, it became clear that international law had not only legitimised colonial exploitation, but that it had developed mechanisms to prevent any claims for colonial reparations (Anghie, 2007: 2).

Thus, in considering aspirations for an equitable international tax regime, it becomes not only important to critically interrogate the dependency maintained in tax havens. It gives us pause to examine how the uses of sovereignty in the fiscal arena of taxation through legal mechanisms seemingly designed to curb "harmful tax competition" occlude the hegemony of historically powerful Western states, thereby further cementing legacies of imperialism and colonialism.

## **2.4 Conclusion**

This literature review has used globalisation and sovereignty as the conceptual centrepieces to establish the theoretical framework underpinning the British Virgin Island's development as a tax haven. Using international finance and the spread of fictitious capital alongside a narrative of world systems continuity in the restructuring of capitalism, the review highlighted the gap from this perspective which does not centre or locates tax haven development as a nation-state building project through a traditional exercise of state and taxation sovereignty. This absence creates room for a theoretical understanding of tax haven development in the Caribbean which centres on their internal domestic political economy development whilst revealing their structural role in international taxation as a function of global political economy by highlighting their relationship to empire and imperialism. Therefore, the thesis offers this perspective by exploring the colonial dependency sustained in the BVI in the post-colonial period, and how it continues to the present in international taxation as a function in the global political economy.

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<sup>38</sup> Among others, Grovogui invokes Umozurike, "International Law and Colonialism in Africa", 11.

### 3 Research Design and Methodology

#### 3.1 Introduction

The previous chapter closed by pointing to an exploration of an understanding of tax havens as functions of empire true to the form of imperialism in its political and economic sense. In this chapter I present the research design borrowing from van Fossen (2012) and Vlcek (2008) and their use of a tripartite framework in their analysis of tax havens, offshore finance and sovereignty in the Pacific and Caribbean islands respectively. van Fossen incorporates three strands: the structure of each island's offshore regime as the first leg and its relationship with the island government as the second pillar of his approach. The third supporting pillar of van Fossen's research design was inserting each of the Pacific Islands with other island tax havens in the Pacific in relation with the global financial system. The thesis adopted and modified this plan by limiting the scope of analysis in relation to other tax havens in the Caribbean only to a brief commentary where relevant.

Building from this set-up, the second section of this chapter clarifies the thesis's methodology, theoretical positioning, and approach. The section will proceed to set up the primary tools of analysis for discussion and interpretation. I chiefly rely on a set of four texts which touch on the relationship between imperialism, international law, and sovereignty as it relates to 20<sup>th</sup> century decolonisation (Grovogui, 1996; Mantena, 2016; Anghie, 2007; Getachew, 2019c).

The final section of this chapter explains research tools adopted. Borrowing from Baldacchino's use of an extensive yet selective literature review in his study of what he terms the pseudo development strategies of microstates (Baldacchino, 1993: 28), the study used a systematic review search function collating information across disciplines for interrogation. The goal of this study is critical in borrowing the tools one would use for a systematic review with a different aim in mind. The justification for this decision was informed by the interdisciplinary nature of this project. Drawing from literature on tax havens and the frameworks for their development which is found in international taxation and traditional political economy scholarship, I combined this with the specific sociolegal history of the BVI and the paradoxes of its development as both a nation-state and a tax haven in the Caribbean. Therefore, because the review draws on studies across a range of disciplines, the systematic review function served as an appropriate vehicle. See [Annexure B](#) outlining the inclusion and exclusion criteria the study adopted, as well as a detailed explanation of the search strategy, and screening. The chapter concludes by commenting on data sources and limitations.

#### 3.2 Research design

Van Fossen and Vlcek's analysis of tax havens and sovereignty which used the Pacific and Caribbean jurisdictions as a case study zoned in on the domestic political economy conditions (Marshall, 1996b) instead of focussing on events at the "global" level. The project's secondary questions informed the design to illustrate the dependency maintained in the post-colonial period and how it continues to the present as a function of global political economy. The secondary research questions are:

- 1) What significance did the BVI attach to sovereignty in pursuing national development objectives?
- 2) Which approaches were adopted as policy strategies to development?
- 3) What were the different stages or phases in the evolution and development of the BVI as a tax haven?
  - a) When did each of these phases occur (how long, under what context)?
    - i) How were these different phases marked or influenced by the above factors and conditions?
    - ii) Which of these factors or conditions continue or remain across the different stages?

Below I explain how these questions were explored examining the structure of the BVI offshore regime, its relationship with the island government and traditions of state sovereignty, and its relation to the global financial system through the arena of international taxation and tax sovereignty.

### **3.2.1 Resolution of contradictions**

The first part of this research design maps tax haven development as a pragmatic resolution of the contradictions between positivist law and internationalisation of capital. In approaching the domestic developmental strategies of the BVI, the study took its cue from Don Marshall who examines the interplay of an offshore strategy within a developmentalist project in “Tax Havens in the Commonwealth Caribbean: A Merchant Capital-Global Finance Connection” by highlighting the domestic factors that enabled countries in the Caribbean region to turn to a tax haven strategy (Marshall, 1996b: 255). This addressed the question of which approaches were adopted as policy strategies to development by analysing the structure of the BVI offshore regime and its relationship with the island government. Significantly, the contradiction for resolution which was traced is a more fundamental one as it pertains to the positioning of sovereignty in a colonially dependent territory.

### **3.2.2 Phases and conditions**

Through exploring this relationship, the thesis described the different stages or phases in the evolution and development of the BVI as a tax haven and pays attention to when each of these phases occurred, how long, and under what context. I specifically pay attention to significance that the BVI attach to sovereignty in pursuing national development objectives from the dawn of legislative independence up to the period of the 1984 International Business Companies Act. Therefore, the thesis examines and highlights the factors or conditions which continue or remained across the different stages of the island’s development.

### **3.2.3 Socioeconomic structure and transformation**

In contrast but related to the point that the socio-economic structure of that society is a key factor in the development of a tax haven, the third departing point is more structural, reflecting the BVI as a “peripheral product” of the same forces that shaped the Caribbean. I examine the economic structure inherited by the BVI at the dawn of legislative independence and the initiatives taken to secure autonomy. The thesis highlights the structural factors which paved the way for a tax haven development by pointing to a series of permissive tax holidays granted to attract capital investment. Therefore, I fulfil the third aspect of the research design which positions the BVI tax haven structure and its government, in relation with the global financial system.

## **3.3 Methodology**

This study is a qualitative critical review project. In this section the chapter outlines the research methodology. I begin with thesis’s theoretical lens and positioning, which is geared toward the dependency argument specifically with reference to Caribbean dependency (Girvan and Girvan, 1973; Rodney, 1975).

### **3.3.1 Theoretical approach: positioning empire and imperialism**

The theoretical approach this thesis adopts is wedded to the traditions of imperialism as a function of capitalism, expressed as an exertion of colonial, economic, political or military might in the logic of the global accumulation of capital (Lenin, 1917; Nkrumah, 1967; Rodney, 2019; Rodney, 1975; Rodney, 1972; Amin, 1997; Amin, 1974; Luxemburg, 2007; Wood, 2005). For the purpose of this thesis in its use of the word “empire”, I borrow Borón’s definition of empire as the current imperialist system in its current phase (Borón, 2005: 1). Hardt and Negri’s discussion of the “passage of sovereignty” remains useful in exploring the terrain of global political economy in relation to traditions of sovereignty and nation-state development (Hardt and Negri, 2000: 96). However, the thesis also

shares the perspective that globalisation as manifest in the economies of dependent tax haven territories reflects a deepening of imperialist domination. Yet, because of the world-systems approach which is heavy in Borón's understanding of the countries with heightened external dependency as 'periphery capitalisms' – and which became more incapable of controlling their domestic economies even minimally (Borón, 2005: 4) – this perspective is slightly sublimated in consideration of centring the developmental history of the BVI and how sovereignty was instrumentalised in a nation-state building project to secure self-determination.

### **3.3.2 Critique as method: analysis and discussion**

With the above understanding of empire in mind, I now turn to the tools of analysis the study adopted. Extending from a political theory of decolonisation (Getachew, 2019), the study used a critical analysis demonstrating that principles recognised in international law reflect relations of power and the historic dominance of specific European states (Grovgui, 1996: 1; Anghie, 2007). This was conjoined to a model of self-rule compatible with membership in the Empire (Mantena, 2016: 307).

### **3.4 Research tools, sources, data collection and limitations**

Borrowing from Baldacchino's use of an extensive yet selective literature review in his study of what he terms the pseudo development strategies of microstates (Baldacchino, 1993: 28), the study used a systematic review search function collating information across disciplines for interrogation.

Using qualitative secondary sources and quantitative data from studies screened and selected from a systematic search process outlined in Annexure B – from published journal articles, book collections and chapters – I combined this with a select reading of legal texts, treaties, policy action plans and economic surveys. Chief among these were the Appendices, Governor's Addresses, and Reports on the Debates and Finance Committee Meetings from the *British Virgin Islands Legislative Council minutes, 1950-1993* and the *BVI Information and Election Results 1950-2011*. These extracts from the minutes where bills were debated were crosschecked against the *Index to the British Virgin Islands Legislative Council Documents, 1950-1992*. I also briefly referred to treaty agreements using the International Bureau of Fiscal Documentation (IBFD) Tax Research Platform. These included the *Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Virgin Islands for The Avoidance Of Double Taxation and Exchange of Information With Respect To Taxes On Income*. The study also reviewed working papers on the BVI prepared by the UN Special Committee on Decolonisation.

The British Virgins National Archives does not have an online repository. Their archival material can only be accessed at the physical library. I compensated for this by closely studying secondary sources.

## 4 Critical Review of the Developmental history of the British Virgin Islands

Here in the BVI, we've got two things from which we make money: tourism and trust management (offshore company management). Those are the two things from which we make money here no matter how we look at it, and neither of these we can control. We have no control over our destiny in that respect: both are fickle.

- Cyril Romney, Chief Minister and Premier of the BVI<sup>39</sup>

### 4.1 Introduction

This chapter is broadly ordered according to two phases or stages which illustrate the conditions under which the British Virgin Islands developed as a dependent tax haven. The first phase of “reconstitution of empire” focusses on the political developments of the 1950 independence decade which accompanied BVI’s version of decolonisation, and the second phase of “neo-colonial imperialism” looks at the socio-economic developments and the commercialisation of sovereignty from 1960 up to 1984. I situate the BVI tension of pursuing an autonomous national development project as a colonially dependent territory, and illustrate how this contradiction was resolved through the conditions which generated reliance and external dependence on a reconstituted form of empire (Getachew, 2019c; Grovogui, 1996). This precipitated the socioeconomic transformation of the island accompanied by permissive tax incentives designed to attract development capital. These became characteristic of a regulatory landscape with low or no taxes on foreign capital. I then turn to examine the legislative developments forming the architecture of the BVI as a tax haven from the start of the 70s decade through the role of expatriate commercial and financial elites in drafting the 1984 International Business Companies (IBC) Act. I locate the authoring of the IBC Act amid the internationalisation of capital and the efforts to take advantage of a loophole in a series of double taxation treaties between Europe, the United States of America.

This review concludes by remarking on the developments after the IBC Act of 1984 which for this study marks the end of the “decolonisation era”. Here I reflect on the dependency evident through the successful integration of the BVI in international political economy as an offshore financial centre, providing a critical node in the circuits of international finance for geographically mobile capital aiming to escape tax and fiscal regulation in source countries. I argue that these two features combined maintained a condition of post-colonial dependency through neo-colonial control in the BVI, which continues to the present as a function of global political economy in international taxation. This function, I conclude, serves to facilitate a hierarchically structured international taxation regime (Getachew, 2019c: 40; Anghie, 2007: 240) underpinned by traditions of state and taxation sovereignty, whereby historically powerful and hegemonic Western states have a greater means of exercising this sovereign entitlement in asserting the right to regulate taxation over those of their global south counterparts.

### 4.2 Reconstituting empire and contesting control over domestic political economy

One of the central questions raised after the second world war and its accompanying decolonisation wave was one of the preparedness of colonial states to achieve independence (Getachew, 2019c; Vlcek, 2008). Specifically, the *capacity* and *viability* of the colonial state to transition to a sovereign

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<sup>39</sup> Report of the Debates in the Legislative Council of the Virgin Islands, Thursday 16, and Friday 17 February 1989.

state was and remains a defining feature in this understanding of decolonisation.<sup>40</sup> Getachew traces the origins of this capacity and viability discourse to Woodrow Wilson and Jan Smuts reassociation<sup>41</sup> of the right to self-determination<sup>42</sup> when they founded the league of nations and the mandates system.<sup>43</sup> In so doing, independence and the right to self-determination were made safe for empire (Pedersen, 2015; Getachew, 2019c). This was achieved by the league recognising people's latent capacity for self-rule, and ultimately deferring its realisation because of their backwardness. Woodrow Wilson transformed the right to self-determination from one in which all people were entitled to, to an achievement of historical development and a "specific inheritance of the Anglo-Saxon race."<sup>44</sup> In claiming both its universal aspiration and "historical development" of a specific English inheritance, Getachew (2019: 46) concludes that Wilson included colonial subjects in the future realisation of self-government and justified empire as a project of self-government whilst "simultaneously suggesting that such a realisation was impossible". This implied that empire would be a perpetual feature of the international order.

On the other hand, Smuts' reassociation of self-determination was based on a "politics that understood and reflected differences between whites/Europeans and Africans".<sup>45</sup> Smuts propagated the idea of separate development by contending that "the British Empire does not stand for standardisation, but the fullest development of all its people along its own specific lines via parallel institutions" (Getachew, 2019: 48). Through this understanding of British imperial rule as trusteeship for eventual preparation for self-government (Mantena, 2016), the Overseas Territories of the UK, as with older princely states, Crown and Dependent Territories, are analogous to the mandates system wherein the league sought to secure development for colonised peoples according to their specific capacities and cultures (Getachew, 2019: 49). This was achieved through a model of devolution in the British Empire (Mantena, 2016: 314) in the forms of federal unions of self-governing colonies. Indeed, for Anghie (2007: 191-192) the British West Indies (BWI) have universalised the mandate system: "fundamental aspects of the BWI derive in important respects from the mandate system and undermine third world sovereignty in very significant ways".

Therefore, demands for representation were accommodated in a federated imperial structure in the BVI shaping a reconstitution of empire. Independence or decolonisation as it manifested in the BVI can thus be seen as part of an expansive view of empire (Getachew, 2019). I use the phrase "reconstitution of empire" in two senses. First, I centre the BVI and the local actors in that context as

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<sup>40</sup> The 2020 "Question of the British Virgin Islands" implementing the Declaration on the Granting of Independence to Colonial Countries and Peoples which still maintained the capacity and viability discourse. [A/RES/75/110 - E - A/RES/75/110 -Desktop \(undocs.org\)](https://undocs.org/A/RES/75/110-E-A/RES/75/110-Desktop)

<sup>41</sup> Reassociation here meaning "laying claim to the revolutionary principle of self-determination and repurposing it in ways that support unequal integration and hierarchy within the league".

<sup>42</sup> Lenin, "The Right of Nations to Self-Determination".

<sup>43</sup> The mandates system was established after World War 1 as a mechanism to govern the territories of the defeated Ottoman and German empires in "trusteeship" till the natives were fit to rule themselves. Pedersen, *The Guardians: The League of Nations and The Crisis of Empire*.

<sup>44</sup> English inheritance provided by the 'blood of freedom': "only in the United States, in a few other governments begotten of the English race, and in Switzerland, where old Teutonic habit has had the same persistency as in England, have examples yet been furnished of successful democracy of the modern type. Woodrow Wilson, "A Calendar of Great Americans", 118 cited by Getachew, *ibid*, 46.

<sup>45</sup> This was a difference not only of colour, but also in minds and political capacity. Unlike Wilson deferring the realisation of self-determination to a never indeterminable date, Smuts argued that self-government was fully compatible with and "equally realised in separate institutions demarcated by hierarchy" because segregation did not violate the principles of self-determination. See Smuts, "South and Central Africa", 80 cited by Getachew, *ibid*, 47-49.

the agents shaping this reconstitution. I explore how the BVI imagined their relationship with the British empire and negotiated the terms of their independence (Chatterjee, 2010; Chatterjee, 1993; Mantena, 2016) following the success of the movement to reinstate the Legislative Council. In the second sense, I retain the structural meaning of the phrase which suggests that former colonial powers controlled the terms of decolonisation to maintain structural links between the metropole and the economies of dependent territories (Anghie, 2007; Grovogui, 1996). This sense is used for a minor exposition exploring the early aspects of political developments which shaped BVI decolonisation, and toward the end of this part which prefigures the socio-economic developments of the 60s. This second meaning is explored more prominently in the second part of this chapter concerning “neo-colonial imperialism” and the socio-economic developments from the 1960s.

Nonetheless, this clarification is not meant to be an exhaustive understanding of reconstituting empire nor is it meant to suggest that the two meanings are incompatible or mutually exclusive. Rather, that they reinforce each other. The review develops this perspective by exploring the colonial dependency sustained in the BVI in the post-colonial period, and how it continues to the present in international taxation as a function in the global political economy.

#### 4.2.1 Political developments after legislative independence

The success of the legislative movement in 1950 meant that the Local Legislative Council was reinstated. Half the members of the LegCo could be elected representatives of the people. In practice, elected representatives were in the minority (BVI Deputy Governor's Office, 2014: 43). A constitution act of 1950 – the Leeward Island Act No. 1 (O'Neal, 2001: 65) ratified composition of the LegCo to eight members: two *ex officio* members, two nominated members and four elected members. Also, theoretically, the remaining half of the Council was directly appointed by the Governor of the island, who was appointed by the Queen.

Term	<i>Composition of Legislative Council/House of Assembly</i>
1950-1954	<p><b>Commissioner (President)(Chairman)</b>            No Legal Official (The Attorney General sat in Antigua)            Two (2) Financial Officials            One (1) Nominated Official Member            Two (2) Nominated Unofficial Members  <b>Four (4) at large Elected Members of the Singular Constituency</b>            Clerk</p> <p><b>(By Constitution Act of July,1950 passed by Leeward Islands Federal Legislature)</b></p>

Table 3: Extract from “Composition of Legislative Council/House of Assembly in the BVI”, p. 43. Source: BVI Election and Information Results, 1950-2011.

However, after the election in 1950, executive power in the islands remained with the Executive Council. Britain was responsible for financing at least 40% of government expenditure (O'Loughlin, 1962) and colonial authorities held the most significant portfolios concerning effective administration. In 1951, the Finance Committee of the Legislative Council passed a resolution unanimously protesting "the state in which the finances of the Presidency were left by the Administration and the action of the Government in forcing the Presidency on to being Grant Aided". According to the elected officials,

they were being forced to meet a deficit caused by mismanagement at the time of extending representative government to the people:<sup>46</sup>

Little help can be expected, it being impossible to ask the electors to raise new revenue or to give their best efforts in the atmosphere of distrust due to the Administration's apparent indifference to the state of bankruptcy into which it has reduced the country and to the cynical way which it has passed on the weight, and eventually the onus, of this bankruptcy to the people of the Virgin Islands.

Moreover, elected representatives of the people could not undo the Commissioner's decisions in whose hands executive power was vested (O'Neal, 2001:66). Therefore, it is worth bearing in mind that the existence of the LegCo did not undo the presence of the Executive Council. Rather, it accompanied what Fergus (1996: 51) analyses as a politically dependent constitutional form of governance<sup>47</sup> likening with what Mantena (2016: 306) characterises as a reformed imperial parliament. In this sense, sovereignty and the BVI's emergence as a "quasi-state" was not accompanied with effective control in the internal affairs of their country (Vlcek, 2008: 31) because their sovereign independence ultimately meant an acquiescence to the demands of the UK. For development, it meant a dependence on the Colonial Welfare and Development Act from which the BVI sought development finance. By 1953, the Governor was already cutting government expenditure and reducing social services to approve a Development Plan of the Presidency and the UK Secretary of State allocating GBP24 000<sup>48</sup>. There was a sense that no one would expect the UK to be perpetually "grant aiding the Presidency on the present scale" with one Council member remarking that they were ashamed of our dependence.<sup>49</sup>

In addition to the Executive Council, access to domestic political power – controlled by figures driving the call for legislative autonomy – was exclusionary.<sup>50</sup> Requirements to stand for election included income, property, and a deposit. There was an initial recommendation limiting the right to vote to males over the age of 25. The use of literary and income requirements was a means to consolidate the economic position of an emergence merchant class whilst acquiring greater political power (Carrington, 2019: 170). This group sought to achieve this by maintaining links to Britain. Echoing Carrington's observation of a merchant elite bent on controlling the decolonisation process, Eugenia O'Neal (2001:65) in a study of women's history in the BVI, *From the Field to the Legislature: A History of Women in the Virgin Islands*, demonstrated that this class leading the call for legislative autonomy "wished to use the political turmoil of the forties and early fifties to secure the freedoms and equalities of the polis for educated and propertied men like themselves". Reminiscent of Smut's appropriation

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<sup>46</sup> "Minutes of the Finance Committee of the Legislative Council of the British Virgin Islands, St George's Hall, 13 September 1951", 6.

<sup>47</sup> This entailed a ministerial parliamentary system and paved the way for elections, and would, decades later – through the 2007 constitution – introduce a cabinet. The BVI government describes it as a framework of a parliamentary "representative democratic dependency". [Politics | Government of the Virgin Islands](#)

<sup>48</sup> Appendix II Address of His Acting Governor's Address in "Minutes of a Meeting of the Legislative Council of the Virgin Islands held at St Georges Hall, 21 April 1951", 1.

<sup>49</sup> Howard Penn, Appendix II: Report of the Debates in the Legislative Council of the BVI on 9 November 1954 in "Minutes of the Sitting held at St George's Hall", 2.

<sup>50</sup> A fact O'Neal highlights in her history of women in the BVI. She describes the 1950s moment as a meeting of "leading men from every large village in Tortola" in which they recommended that only British males over the age of twenty-one should be permitted to vote. However, the constitution which was passed extended the franchise to everyone. Both women and men were allowed to stand for election, but with stringent "reactionary" requirements for property ownership and income. This latter requirement effectively excluded women from standing for office owing to the work they, did chiefly earning income from higgling or sewing.

of the right to self-determination, the incumbent Legislative Council claimed that despite the internal hierarchies they wished to maintain – including between the metropole and dependencies – the British empire realised the principles of freedom and equality (Getachew, 2019: 49).

This reliance on Britain meant conserving existing power structures. There was an explicit defence of a hierarchically organised international order (Getachew, 2019: 32). In the BVI this was emblematic of what Carrington (2019: 165) characterised as “a generation of political leaders who advocated a certain degree of change without directly challenging the colony status of the BVI”. Consider among the founders of the Civic Group who went on to join the LegCo – businessmen Howard Penn, Joseph O’Neal, IG. Fonseca and Carlton de Castro (Carrington, 2019: 165; O’Neal:66). This political formation was “nothing more than a vehicle for election, an alliance of prominent men determined to hold political office”. The aim of political institutions was not to secure equal rights and full membership<sup>51</sup> but to achieve an appropriate equilibrium “attentive to differing capacities and levels of development” (Getachew, 2019: 49). Fonseca, de Castro, and Penn, were among the winners of the election (O’Neal: 2004: 136). Therefore, political power was shared between the colonial authority and the elite Road Town men. This harmonised the interests of both groups. Once in office, elected representatives advanced a rhetoric of independent spirit without actual independence<sup>52</sup> (Carrington, 2019: 166). They emphasised promoting the economic development of the islands as paramount whilst vague on the BVI’s political status. In this we can begin to see an economisation of government (Anghie, 2007: 179).

#### **4.2.2 Economisation of government**

The dawn of legislative independence was baptised with chronic underdevelopment which generated external reliance. To try and secure autonomy and minimise dependence on the Colonial Welfare and Development Act, the BVI LegCo considered domestic legislative amendments with the effect of increasing revenue. Between 1950 and 1960, the BVI LegCo passed close to a dozen tax bills and ordinances increasing business licences whilst decreasing customs, abolishing, and exempting in some instances duties on printing presses and yacht inspections. These customs exemptions were accompanied by a series of land and housing tax ordinances following the acquisition or disposal of crown lands which entailed a series of tax amendments to the *1892 Land and House Tax*. A bill was passed in 1955 to enact the amendments. In the same year, the LegCo passed a resolution in September invited a Canadian company to assess a copper mine on Virgin Gorda to determine the commercial viability of the site.<sup>53</sup> The Council passed a Minerals Vesting Act in 1958 prohibiting the prospecting of minerals unless with the permission of the Governor in Council, thereby consolidating “national properties” (Maurer, 2000: 681). The Minerals Vesting Act was a watershed moment because it highlighted the tensions of national development under the shadow of the BVI’s colonial dependency to Britain. It also began to prefigure how the emergent merchant class sought to advance its interests.

Nearly all the bills concerning industrial development which were considered by the Council in the 50s decade passed on the first reading. However, with the Minerals Vesting Act, the LegCo was evenly

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<sup>51</sup> Drawing on Smuts’ argument, Getachew argues that this is achieved by transposing equity for equality: “equity moderated the absolute and universal claim of equality”, thereby allowing the British Empire to develop colonised peoples according to their capacity.

<sup>52</sup> Howard Penn, *Memoirs of H. R. Penn: A Personal Account of the History and Politics of the British Virgin Islands in the Twentieth Century*, 20-21 cited by Carrington,

<sup>53</sup> The mine was established in 1838 by the Virgin Islands Mining Company of Liverpool. See Dookhan, *A history of the BVI, 1672 to 1970*, 112. Cited by Maurer, “A fish story: rethinking globalisation on Virgin Gorda, British Virgin Islands”.

split between members appointed by the Governor, and members elected by the people. These two camps were colloquially referred to as the “tea room boys” and the “barefoot boys” respectively (Maurer, 2000: 682). The tearoom boys were perceived to be beholden to the colonial administrative apparatus. Whereas the barefoot boys had a more “populist” tone as defenders of the people against the colonial Governor (Maurer, 2000). The LegCo had to appropriate land around the mine in order to construct a road to the copper site (Maurer, 2000: 681). In instances of conflict resulting from state appropriation of land and people’s claims to it, it was the practice of the barefoot boys to work behind the scenes by trying to ensure that the landowners got a good deal (Maurer, 2000: 682). However, in the matter at hand, they openly opposed the bill.

Drawing from interviews with those who opposed the bill, Maurer (2000: 682) recounts how “they viewed land acquisitions as colonial impositions on their nation” because ultimately, and technically, it was the Governor in Council – the Queen’s representative – who had the power to appropriate land and grant mining licenses. In this understanding of land appropriation as a colonial imposition, we see a fragmented resistance to the hegemonic problem of nationalist modernity (Chatterjee, 2010: 35). On the other hand, a former tearoom thought the dissenting vote did not make sense because ultimately, it was “for colonialism”. The vote over the bill was a good illustration between the aspirations of national development versus what the barefoot boys purportedly regarded as a sense of democracy and constitution of the people through the LegCo as the representative will of the people. Maurer (2000: 682-683) concludes:

The forces of democracy blocked the goals of national development by reading national interests as colonial interests – an easy mistake, since they were one and the same.

However, a historical analysis which traces the principal political actors in the BVI through a characterisation of an elite merchant class of businessmen is not underscored in Maurer’s analysis of the development discourse of independence. In this respect I now turn to an analysis of neo-colonial control or what Getachew (2019: 62) describes as neo-colonial imperialism, which traces the acquisition of sovereignty in the form of political power with the simultaneous withdrawal and transfer of economic power to external forces (Anghie, 2007: 180). This is particularly true when read through the *Life Notes* of Joseph O’Neal, one of the LegCo members. The analysis of post-colonial sovereignty is instructive as it demonstrates a “postcolonial form of domination where formal independence and economic exploitation could be reconciled.<sup>54</sup>” The last part of this section prefigures this critique of neo-colonial control briefly as its full development manifested in the decades after 1950.

Though a nominated member, Joseph O’Neal (2004: 102-103) remarked on his decision to vote against the Minerals Vesting Act:

I believed that they could not vest all minerals in the crown because the people had a right to whatever they found. We held this land for hundreds of years and if we found something in it should belong to the person who found it. We had toiled on the land for so long, it seemed only just that whatever was in it belong to us.

These remarks strike a ring of, though ‘populist’, a “defender of the people”. Closer scrutiny would however also reveal some of his entanglements to and with the developments of capital on the island. Shortly after the 1950 election, O’Neal (2004: 96) was appointed representative of Shell Oil in 1952. He began importing fuel – 53 gallons in that year – through a carrier owned by fellow businessman and elected winner Carlton de Castro. Coincidentally, the fuel (99 drums of them) was stored between

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<sup>54</sup> Pedersen, *The Guardians*, 283 cited by Getachew, 62.

a building which had come to be occupied by the law firm Harney Westwood and Riegels – two of the five authors of the International Business Companies Act – and the other building was his own pharmacy. Eventually he found a suitable storage on his lumber, cement, and steel yard on Prospect Reef Resort parking lot (O’Neal, 2004: 96). Later, O’Neal purchased a site in Virgin Gorda – the same land<sup>55</sup> in question concerning the Minerals Vesting Act. After voting against the bill, the Commissioner Lieutenant Howard called O’Neal in, telling him that next time he should express his views before the bills are presented to Council. Present with the Commissioner was the Attorney General, who clarified that while the rights would be vested with the Crown, whoever found it or “whoever’s property it was on” would be entitled to royalties on anything taken out or mined. With this “clarification” at hand, O’Neal (2004:103) reconsidered his position and thought that the ordinance was fair after all, saying: “when it was put to council again, I voted for it and it passed”.

In addition to the law firm Harneys and Riegels establishing its presence in the 1950s, LegCo members encouraged expatriate led development to secure the infrastructure of a modernising state. Chief among these was the development of the island’s first air strip. A British World War Royal Air Force was invited by to open the islands for transportation (O’Neal, 2004: 99). By 1959, Laurence Rockefeller purchased land on Little Dix Bay on Virgin Gorda to construct a hotel. In a paper on the study of development and social change in the British Virgin Island, Bowen (1976: 74) noted that it is very seldom that one can pinpoint the moment when the development of a country begins, but “one almost surely can in the case of the BVI” (Cohen, 2010c; Harrigan, 1971; Bowen, 1976; Lewis-Ambrose, 2013). Bowen did not flag the mine, but instead pointed to outside intervention of Laurence Rockefeller’s negotiation to build a resort on the Virgin Gorda in 1959. This could be identified as among the more visible forms of neo-colonial imperialism developing in the BVI. But it was not only tourism which was placed on the map of BVI by the close of the 50s decade. In the same period, the architecture of an offshore financial centre was being developed.

Whilst widely regarded as the most significant factor in the British Virgin Island’s economic advancement, Rockefeller’s construction of the hotel from the 1960s was likely possible through a 1953 Hotels Aid Ordinance that provided tax incentives to tourist oriented enterprises (Cohen, 2010c: 43; Lewis-Ambrose, 2013: 6; O’NEAL, 1983), presumably also the cause of the negotiations before construction started (Bowen, 1976: 75). Two income tax ordinances and amendments with the aim of reducing company taxes to attract foreign capital were pronounced in a March 1958 sitting of the Council and another in May of 1959. In the questions and answers given at the Fourth Sitting of the Third Legislative Council on Tuesday, 25 March 1958,<sup>56</sup> Howard Penn, a member of the LegCo, asked if the Government would consider including in the terms of reference of the Committee it would set up, to investigate the matter of income tax relief, specifically asking the question of:

The possible lowering of Company Tax and Income Tax in the high brackets as a means towards securing a greater yield from this tax by attracting capitalists.

The question was answered in the affirmative. In this section I have tried to illustrate the existence of an emergent elite merchant class which had a vested interest in maintaining links to Britain by

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<sup>55</sup> O’Neal’s catalogue of property ownership is somewhat too extensive to be captured here, especially weighed against his acquisitions in the 1960s-70s. Among these: a 1962 establishment of a motor dealership, a separate construction for a hardware store, and opening of a furniture and appliance store in 1966 after purchasing a historic 200-year-old “Fireproof” building which had belonged to two presidents of the island in the 19<sup>th</sup> century. And perhaps most significantly, a land reclamation project for the development of an industrial park in 1969. He later negotiated an agreement with the BVI Ports Authority, wherein he leased out a quarter of that land to the Government as the land was situated in what became Port Purcell. See O’Neal, *Life Notes*, p. 109-126.

<sup>56</sup> Appendix 1, Record of the Proceedings of the Legislative Council of the British Virgin Islands, 50.

preserving existing political structures, and even excluding others who wished to join them, in the aim of securing their economic power. Using the relationship between sovereignty, government and economic power in the mandates system, formal sovereignty in the BVI was created principally for the purpose of furthering a particular system of political economy that integrated the dependent territory into the metropolitan power (Anghie, 2007: 179-194). This in turn made self-rule compatible with a reconfigured form of empire in which self-governance was joined to the hip with effective colonial control. The years between 1950-60 were crucial in understanding the approaches shaping development and the procedures of self-government in tandem with ties to the Crown. Consequently, the 50s development also illustrated the nature of the dependant relationships, politically tied to effective British control through the Governor and Executive Council, leading to economically depending on expatriate led development. In the next section I turn to demonstrate this reach of neo-colonial imperialism through permissive tax incentives offered to investors – partly already suggested by the 1953 Hotel's Ordinance, and the Income Tax Amendments of 1958 and 1959 geared toward attracting foreign capital. This capital attraction strategy of proving tax holidays to companies to finance development became characteristic of a regulatory landscape of the British Virgin Island as a tax haven by not taxing foreign companies.

#### **4.3 Neo-colonial Imperialism and socioeconomic Development: Commercialising Tax Sovereignty**

The economic design of the colonial state apparatus was not for an industrial state. The Colonial Office and Administration of the BVI commissioned a study in 1961 assessing the fiscal structure, capital requirements and economic potential of the island (O'Loughlin, 1962: 1). This assessment of the island's fiscal structure, economic potential, and capital requirements deemed the BVI economy as non-viable (O'Loughlin, 1962: 3). As of 1960, the BVI was predominantly an economy and community of small-scale farmers and fishers. The primary forms of economic activity were agriculture, which consisted of crops, raising livestock, fishing, and trading by sloops, schooners and other sailing vessels (Bowen, 1976: 67). Agriculture constituted 42% of the BVI's national income of in 1960.<sup>57</sup> Mining and manufacturing on the other hand was only 7% of the national income – this was despite an increase in mining and manufacturing income of 233% in a four-year window from \$3 000 in 1957 to \$10 000. On the other hand, as at February 1960 Administrator informed the LegCo that the UK Secretary of State had approved a grant in aid of only \$448 000. This was \$80 000 less than the modest expectations for the budget and meant a reduction in government expenditure. Consequently, in a sitting in April of the same year, the Council adopted a resolution sent to Her Majesty's Government stressing that “it will take an exceedingly long time, if ever, before the Colony will be developed very significantly with the small sums of money which are made available”.

In adopting this resolution, Council cited an issue of the *New Commonwealth* which published an article “Seychelles Could Pay Its Way Within Ten Years” and used this as a backdrop to request special capital funds to make the island self-supporting in ten years. In the same resolution sent to Her Majesty's Government, the Council noted that it was willing to provide tax incentives within a short time to make the Colony self-sufficient.<sup>58</sup> Combined with the structural inhibitions of the island's fiscal requirements, this turn to tax incentives contributed to shaping development strategies which pivoted on attracting foreign capital to finance socioeconomic development.

##### **4.3.1 The colonial state economic apparatus**

In describing the science of colonial administration, Anghie (2007: 182) outlined a novel control of political economy which created “new sciences of social and economic development that precluded

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<sup>57</sup> Table 1, Gross Domestic Product by Industrial Origin at Factor cost, page 14 in O'Loughlin, “A survey of economic potential, fiscal structure and capital requirements of the BVI”.

<sup>58</sup> As recorded in the Record of Proceedings, Seventeenth Sitting of the BVI LegCo, 3.

the articulation or promotion of alternative systems of society or political economy. The previous section explored the economisation of government in the BVI through a mushrooming merchant capital class which influenced the terms of decolonisation. Effective and executive power remained with the Executive Council through the Governor and the Queen's appointees. Borrowing from Foucault (2000) and his characterisation of governmentality, this science of socioeconomic development according to Anghie (2007: 179-180) is one where the specific form of government is based not on the institutions of sovereignty, but the economy:<sup>59</sup>

Having transformed the native and her territory into an economic entity, it proceeded to establish an intricate and far-reaching network of economic activities extending from the native village to the territory as a whole, to the metropolis and, finally, to the international economy.

Owing to the specific history of slavery on the islands and in the Caribbean, the socio-economic structure of the BVI was shaped by its relationship to plantation-based modes of production and social organisation.<sup>60</sup> The 1834 abolishment of slavery led to a decline in economic activity which precipitated the demise of the then existing local LegCo in 1901 (Harrigan, 1971). In that first decade of the 20<sup>th</sup> century, white plantation owners left the island leading to a redistribution of land: by 1901, the permanent white population in the BVI was recorded as just two people (Carrington, 2019: 158) compared to 1 300 a century ago.<sup>61</sup> The consequence of this exodus and redistribution was "a relatively equal proportion of smallholders" (Carrington, 2019: 51). Therefore, BVI society lacked the stark class and racial inequality seen in other Caribbean islands (Carrington, 2019:197). Carrington notes that this led to some commentators<sup>62</sup> suggesting that the BVI developed as a classless society. Sociologically, some adopted a view of BVI society at the start of the decade as "close to being a "one-class" society or "a society without classes, as it was possible to be" (Bowen, 1976: 69). Inequality was present and Bowen notes that there was a distinction of status between persons – superior and inferior. Drawing on Peter Lasslett's history of pre-industrial England,<sup>63</sup> Bowen's analysis was informed by an understanding of class as not simply a common status, but of conflict between groups and people defending and enhancing common interests and power beyond status (Bowen, 1976: 70).<sup>64</sup>

Therefore, Bowen (1976:70) concludes that there were several status groups in the BVI at the start of the decade but, only one body of persons capable of "concerted action over the whole area of society – only one class in fact". In 1960 there were no local doctors, lawyers, architects, or similar members of a professorial class. Even most of the island's teachers were non-Tortolans. Therefore, the dominance of an elite government merchant class meant a challenge to advancing the islands' industrial development because this class was "quite content with the role of the Western bourgeois

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<sup>59</sup> Citing Foucault: "the very essence of government – that is the art of exercising power in the form of economy – is to have as its main object that which we are today accustomed to call "the economy". *Governmentality*, 87-92 cited by Anghie, *Imperialism, Sovereignty and the Making of International Law*, 179.

<sup>60</sup> Eric Williams's history of the relationship between *Capitalism and Slavery* in the Caribbean is instructive here.

<sup>61</sup> Harrigan, A Profile of Social Development in the BVI, cited by Carrington, 158.

<sup>62</sup> Angel Smith, Director of Virgin Islands Studies at H. Lavity Stout Community College, in interview with Carrington, Tortola, 6 June 2017. From Carrington (2019:159).

<sup>63</sup> Lasslett, *The world we have lost*, 22, cited by Bowen, "Development, Immigration and Politics in Pre-Industrial Society: A Study of Social Change in the BVI in the 1960s".

<sup>64</sup> Lasslett drew a distinction between a status group – the number of people enjoying or enduring the same social status – from a class, which is the number of people banded together in the exercise of collective power, political and economic. Furthermore, a class must be able to act in solidarity in championship of their aims on a nationwide level. See Bowen, *ibid*.

business agent” (Fanon, 2017: 152-3). Consequently, as with most of the Anglophone Caribbean, British colonial rule engendered legacies which shaped postcolonial political economy.

The continuances between pre and post-independence West Indian society were so similar that Rodney (1975: 15) remarked on how some observers discounted the need for the neologism “neo-colonialism” in describing the British West Indies. The central thrust of this politics was geared toward the reproduction of a petty bourgeoisie class (Rodney, 1975: 16). In attributing merchant capitalism as the driving force behind development in the Caribbean, Marshall (1996b: 261) cites British colonial rule and the region’s “subordinate place in the international division of labour” as both cause and consequence. He also points to a weak indigenous business class and the structural dependence of the new ruling classes on foreign markets and easy lines of international credit (Barrow-Giles and Marshall, 2003; Girvan and Girvan, 1973). The result of this dependence for Palan point to a commercialisation of sovereignty (Palan, 2002). The efforts of the BVI government to spearhead development at their own initiative would seem to support this claim.

The revenue that government had been able to raise in 1961 was just over \$242 000, equating to 12,8% of the country’s gross domestic product of \$1,8 million. Yet, the cost of government expenditure was \$850 000, almost three times more than what the government was able to raise in revenue. More than that, nearly 40% of the BVI national income was received from grants in aid. Therefore, to achieve a financially viable administration, GDP projections were expected to double, government revenue growing to 20%, whilst government expenditure could only increase by up to \$200 000 in the following fourteen year period from the 1960 expenditure of \$850 000 (O’Loughlin, 1962: 5). O’Loughlin subtracted self-balancing items such as water and electricity from the 1961 projected government expenditure. As a result, the recurring government expenditure was 650 000 dollars. Therefore, the permitted 200 000 dollars increase was effectively designed to maintain the current government expenditure rate over the subsequent 14-year period. Against this backdrop, it became apparent that the administration had little intention of initiating development (Bowen, 1976: 74). If the government could not do much – which according to Bowen was arguable – the question of who would finance development remained unanswered.

#### **4.3.2 Structural dependence on international investment and global finance**

The turn to outside investors was underlined by agreement that the development of the island would depend on tourism (Bowen, 1976: 73). There were “too few resources and markets were too far” to attempt anything else (Kersell, 1989: 106). Moreover, tourist development in the neighbouring islands of Barbados, Antigua, Tobago and the United States Virgin Islands meant that the BVI was proximally in the same current of the flow of capital for the development of tourism in the Caribbean (O’Loughlin, 1962: 33). The impetus of attracting North American capital was further propelled by the fact that the BVI had adopted the US dollar as its legal tender in the 1950s following Rockefeller’s successful negotiation to begin construction of a resort on Virgin Gorda. The hotel was completed and opened in 1964. With a 99 year lease, the hotel was accompanied with a low tax company policy aimed at attracting sailing yachts, marinas and other small tourist facilities designed to appeal to affluent North Americans and Europeans (Kersell, 1989: 106).

The success of the resort development on Little Dix Bay encouraged similar developments and was further spurred on by the recommendations from the O’Loughlin assessment report presented in 1962. Part three of O’Loughlin’s Committee Report on income tax relief contained recommendations on improving the incentives to be offered to potential investors for the attraction of capital. The recommendation specifically included a “Hotels aid” tax structure which comprised of a ten year tax holiday from income and capital taxes to companies investing in industries specified by government as strategically important for national economic development (O’Loughlin, 1962: 33). In addition, 20%

of capital expenditure incurred on construction could be fully written off in any five of the first eight years when the business commenced commercial operations, and they would be relieved from duties on building materials. Moreover, in order to protect existing businesses from competition as a result of the new incentives package offered to new market entrants, a three year tax relief holiday was to be provided to all guest houses and hotels, and ship and boat yards (O'Loughlin, 1962: 34). This culminated with an Income Tax Amendment Bill passed in 1960 – the year the island's first banks opened<sup>65</sup> – clause 3 of which provided for the Administrator in Council to grant any bank carrying on business in the Colony exemption from tax for a period up to ten years.<sup>66</sup>

In the 60s decade the LegCo passed near to a dozen Customs Duties Amendments, mostly abolishing duties and extending exemptions. A defining denouement was the Income Tax Amendment Bill of 1963. At the encouragement of the Fiscal Committee which had been established, the object of the bill was to reduce company tax from 40% to 12% with the specific aim of encouraging company formation in the British Virgin Islands. Among the most illustrative tax incentives to attract development which became characteristic of a regulatory landscape environment in the BVI with no income or capital tax on foreign companies is the government's signing of the 1964 Wickham's Cay and Anegada Development agreements. At the start of the decade the BVI formed its Chamber of Commerce – with Joseph O'Neal as its president. The agreements were the outcome of negotiations with English entrepreneur Ken Batehill representing Batehill Ltd (Bowen, 1976: 75) The Wickham's Cay and Anegada Development agreement was a land reclamation job whose cost was just shy of US\$1 million (O'Neal, 2004:110). Unlike the strategically located Road Town, Anegada – a quarter size of the BVI – was isolated, located 18 miles from Tortola. The administration reasoned that “it could never be justified for a government – any government – to provide the full range of facilities for a small, isolated community” (Bowen, 1976: 76). There was no possible hope in the foreseeable future of affording the cost to provide basic services. Therefore, the only recourse was to grant a “sufficient concession” to make it worthwhile for someone capable of doing it, to do so.<sup>67</sup>

The sufficient concession was the Anegada agreement to be tied to the Wickham's cay lease. Both agreements conceding a 199-year lease, and 88% of the land area in Anegada. During that time, there would be complete exemption from all taxes on income (Bowen, 1976: 76), including profits to firms and corporations resident or conducting business on the island.<sup>68</sup> Batehill was regarded as a deplorable character, with BVI Islanders describing him as a modern-day Cecil Rhodes (Carrington, 2019: 233). A ‘self-made’ millionaire (O'Neal, 2004: 119), Batehill was known for numerous “commercial adventures”. These included dealings in South Africa and then Rhodesia.<sup>69</sup> Despite this controversy,<sup>70</sup> in exchange for the concession, Batehill was required to construct a public road network, a local airstrip, 80 room hotel, electricity plant, water and sewage works, a deep water harbour and jetty and furthermore, to meet the first cost of a police station, customs office, hospital and post office (Bowen, 1976: 77).

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<sup>65</sup> Among these were Barclays, and later Chase Manhattan. See O'Neal, *Life Notes*, 109-119.

<sup>66</sup> Appendix II: Calendar of Bills, Ordinance no. 19 of 1959 in “Record of the Proceedings, 25 August 1960”, 99.

<sup>67</sup> Radio broadcast by Administrator Martin Staveley, 7 February 1967, cited by Bowen, “Development, Immigration and Politics in a Pre-Industrial Society: A Study of Social Change in the BVI in the 1960s”, 75-76.

<sup>68</sup> The Financial Times, 12 August 1969, 23. Cited by Bowen, *ibid*.

<sup>69</sup> In defiance of international sanctions, Batehill took his football teams – Chelsea and Leeds – on a Rhodesian tour

<sup>70</sup> George Thomas, then Minister of State for the Commonwealth, rebuked this decision. Carrington citing “*House of Commons Hansard*, 23 June 1967, vol 748, c360w”, 233.

The Wickman's Cay and Anegada agreements attracted developers to the island. As the 60s decade ended, the island's socioeconomic structure had changed. Land speculators were hard at work trying to get land in the BVI which had been in some families for as long as 150 years (Bowen, 1976: 77). At the start of the decade, goods headed for Tortola were shipped to neighbouring St. Thomas or Puerto Rico. There was now a direct shipping service to Road Town from London, New York, and Miami. Including three airstrips with fledgling airports, an efficient telephone service with international dialling, and electricity and water coverage extended across Tortola, the BVI moved from having no banks in 1960 to having four major international banks by 1969 (Bowen, 1976: 77).

However, it is worth mentioning that as this decade ended, the Wickham's Cay agreement was dissolved at the start of the next decade in 1970. The 1968-1969 *Positive Action Campaign*<sup>71</sup> emoted a public outcry denouncing foreign control against a "giving away of the people's heritage" (BVI Deputy Governor's Office, 2014: 213). The Administrator who had approved the lease, Martin Staveley, was no longer in office. Newly appointed Governor Cudmore was not able to rescind the lease because compensation would be necessary, monies for which would come from the UK (BVI Deputy Governor's Office, 2014: 213). It took ten demonstrations before Britain appointed a commission an inquiry. At the end of the commission, the UK granted a loan to the BVI of US\$5,8 million<sup>72</sup> to enable the LegCo to buy back the land.

An elite merchant class in the 1950s shaped the terms of decolonisation. Suggesting that the BVI was "conditioned by colonialism and history to accept rule by the few", and without a mass-based nationalist or labour movement that might have tempered the leaders' elitist and exclusionary inclinations, the people kept silent (O'Neal, 2001: 66). In contrast, Carrington (2019:239) argued that actions taken against the Anegada agreement illustrated that "there was not a lack of nationalism or protest in in the BVI". However, like, Maurer, she concedes that the LegCo remained the primary locus of self-determination and attendant notions of sovereignty, concurring that the political developments of the 1950s led to unprecedented economic growth in the 1960s and 1970s (O'Neal, 2001: 111). It was control over law-making which was seen as an expression of autonomy (Carrington, 2019: 239; Maurer, 2000; Maurer, 1995a). In this sense, one can borrow from Hardt and Negri's analysis on the relationship of the nation state and the passage of sovereignty in *Empire* (2000: 93).

For them, the nation – like Chatterjee's delineation of nationalism into two domains – configures a defensive position of separation for the hegemonic external power and at the same time "represents the autonomous power of the unified power" (Hardt and Negri, 2000: 108). They also build on Anderson's claim of the nation as the imagined community. In the BVI this, imagination is constituted through the LegCo in reshaping the BVIs relationship with UK. Drawing on Luxembourg's argument of the nation as incompatible with any attempt at democratic organisation, Hardt and Negri (2000: 96-97) cast national sovereignty as a means of usurping the terrain of democratic organisation to advance a modernising project. However, in contrast to Chatterjee who objected to the claim of the nation as an imagined community strictly off a European model, Hardt and Negri ran the gamut of Anderson's thesis so that their contention was in a sense more fundamental by supposing Anderson to mean that

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<sup>71</sup> Led by Noel Lloyd, a native of the BVI who worked as an engineer in the US. He returned in 1964 with the intention of establishing a nationalist political party but his aims were thwarted by a political culture averse to substantial politics. See Noel Lloyd, 'Political Party', *The Island Sun*, no. 182, 5 February 1966, 2-8 cited by Carrington, 234. *Positive Action* here being a clear nod to the nationalist sentiment that inspired Pan-African led resistances e.g., Nkrumah, "What I mean by Positive Action", 93 in *Revolutionary Path*. One can also recall the example in South Arica leading to the Sharpeville massacre. The anti-pass demonstration of the Pan-Africanist Congress was deliberately termed the "Positive Action Campaign".

<sup>72</sup> "Summary of the Report of Commission of Enquiry", FCO 44/454, TNA cited by Carrington, *ibid*.

the nation becomes the *only* way to imagine community (Hardt and Negri, 2000: 108). Therefore, the refutation they offer in this understanding of national sovereignty offers a sharp critique to read the Legislative Council as an instrument of sovereignty and its susceptibility to commercialisation to advance 'development'.

The understanding of empire as something altogether different from imperialism (Hardt and Negri, 2000: xi) is blunted because in the aftermath of globalisation economic relations have not become autonomous from political control as illustrated by Borón (2005: 19). However, the analysis in mapping out the "passage of sovereignty" (Hardt and Negri, 2000: 70) which arrives at the conclusion of empire as a political subject regulating global exchange is a useful articulation. In the context of the BVI this serves to illustrate the diminishing power of state sovereignty against the commercial forces precipitated by globalisation. The diminishing of state sovereignty following the internationalisation of finance and capital is a feature of globalisation most sharply felt in post-colonial countries of the global south contrasting their European or American counterparts (Amin, 1997; Amin, 2011; Marshall, 2007; Anghie, 2007). In this sense, Hardt and Negri's position holds weight. This passage of sovereignty and its waning is a partial and temporary resolution to the crisis of European modernity (Hardt and Negri, 2000: 96-97). This resolution, through securing "certain material conditions" necessary to transform modern sovereignty into national sovereignty, is established by a "new equilibrium between the process of capitalist accumulation and the structures of power" (Hardt and Negri, 2000: 96). This articulation is useful because it is grounded in analysis of a class – the political victory of a bourgeoisie in a "revolutionary" moment – enabling it to dominate the processes of accumulation (Hardt and Negri, 2000: 96). This class in the BVI was the domestic burgeoning merchant elite who shaped the terms of independence and how they imagined their relationship with empire through the reinstated Legislative Council. They secured the conditions of socioeconomic development to occur under the guise of external dependency, maintaining their economic interests, whilst relying on expatriate led development. This therefore necessitates a thesis of neo-colonial imperialism for a more comprehensive understanding.

The existence of a local or indigenous class of financial and commercial elites is often seen as an invariable feature in tax haven development (Leaman and Waris, 2013; Palan et al., 2013; Marshall, 1996b). However, the professional class in the BVI was largely comprised of expatriate experts who had come onto the island to work on development projects.<sup>73</sup> Middle to top management jobs were mostly taken up by immigrants predominantly from Britain.<sup>74</sup> It was this class that would draft the BVIs International Business Companies Act of 1984. This cohort was responsible for the immediate developments behind the emergence of the BVI as an offshore centre and tax haven.

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<sup>73</sup> By the end of the 60s decade, there were 22 construction and engineering companies in the BVI, and they brought with them their experts and consultants. Whereas the start of the 1960s had no professional class on the islands, there was now a new professional class of accountants, lawyers, architects and "technicians of every description" made up almost entirely of immigrants. Labour records from the BVI indicated that of the 863 work permits issued in 1968 from a total of 31 countries, the largest number – 137 – was from St Kitts and the second highest, 97, were from the United Kingdom. The European population grew from 47 in 1960 to 700 by 1968.

<sup>74</sup> The Legislative Council created the categories "belonger" and "non-belonger" in 1969 to starve off what was considered as an English take over. A believer was defined as any person born in the BVI, or whose mother was born in the BVI, or a "legitimate" child of a man born in the BVI. These categories entered the law books through the 1969 *Immigration and Passport Ordinance, Non-Belongers (Restrictions as to employment or occupation) Ordinance*, and the *Aliens Land Holding Regulation Act*. Non-belongers were required to apply for licenses to purchase land and needed work permits. Widespread application began from 1975 with the passage of the Labour Code Ordinance.

#### 4.3.2.1 Exploiting the structure of international taxation

The Financial Secrecy Index (FSI) Narrative Report on the BVI compiled by the Tax Just Network traces the birth of the BVI's modern offshore sector to 1976. It partly draws from a newsletter by Colin Riegels – a former managing partner at Harneys – recalling on the 30<sup>th</sup> anniversary of the BVI's IBC the role that his father and founding partner played in authoring the International Business and Companies Act. Riegels in “British Virgin Islands: A Tough Act to Follow” and “British Virgin Islands: The IBC Act – The Building of a Nation” recounts how the journey began when a Wall Street lawyer named Paul Butler from the firm Shearman and Sterling, telephoned the only law office at the time in Tortola – Harney Westwood & Riegels’ – named after two British lawyers who staffed the office. However, that is one part of the story; as this thesis has demonstrated, the presence of Harney Westwood & Riegels was already established by the turn of the 50s decade. Official minutes of the Legislative Council were already considering the development of the island as an offshore financial centre. Therefore, this occurred against a backdrop of a series of legislative tax exemptions aimed at attracting foreign capital.

Two years after this incidence the Legislative Council in the twelfth of its third sitting in May 1978 recorded that they were getting “quite a few American companies in offshore banking which were a source of revenue”. The idea proposed by Butler was to take advantage of a loophole in a series of double taxation treaties between the United States of America and various micro-states in the Caribbean which provided a 30% exemption on withholding interest income from foreign loans, consequently granting relief from American taxation (Riegels, 2014b; Riegels, 2014a; FSI and TJN, 2020: 2). Significantly, the DTA between the US and UK had been terminated in 1971. Therefore, this new treaty would allow US corporations to route Eurodollar loans through the former Dutch colonies by making interest payments to a Netherlands Antilles subsidiary company (Boise and Morriss, 2009: 377). This loophole provided through treaty shopping<sup>75</sup> was frequently exploited through tax treaties between the United States and island territories of the Netherlands Antilles in the Caribbean. Apparently, when the Wall Street lawyer Paul Butler telephoned Harney Westwood and Riegels, he had been having trouble concluding transactions with lawyers in the Netherlands Antilles because of the language barrier (Riegels, 2014a).

I pause to borrow from Grovogui's approach to international law as an “ordering language<sup>76</sup>”. This provides an entryway to the final discussion of this chapter which positions the structure of international taxation within the BVIs final integration in global political economy. For Grovogui (1994: 15), the hegemonic dimensions of international law cannot be understood without stressing their modes of operation: perceptions, philosophic interpretations, and values:

This affirmation enabled the West to create juridical instruments with which to maintain exploitative relations with other continents within presumed universal orders... In this context, sovereignty and self-determination have reflected the dominant European culture and functioned as a mediating ideology which reconciles the means for attaining hegemony

Many American firms were purportedly unhappy with the language of operations and sought to find similar advantages provided by the cluster of Netherlands Antilles DTTs with the US in English speaking Caribbean microstates. Although Grovogui chiefly discusses European perceptions of the self and

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<sup>75</sup> This refers to when persons not residents of either country between which a double taxation treaty is in force take advantage of the relief mechanisms from by transferring profits from the source in which that income was earned, to jurisdictions which have a double tax treaty with a country one seeks to avoid tax liability.

<sup>76</sup> I adopt this use to reflect on what Grovogui contests as the “naturalness and universality of the law of nations” which is seen in the US lawyers' insistence on English as the basis of conducting their operations.

contending that their “metaphysical representations have been crucial to the structure of International law” (Grovoqui, 1996: 4), the American insistence on revoking the “language barrier” reflects a facet of this metaphysical self-perception which affirms Western hegemony in the international order (Grovoqui, 1994: 16). Paul Butler proposed using the BVI going forward in order to overcome the language barrier (FSI and TJN, 2020: 2). However, the United States caught onto this and by 1981, its Senate Foreign Relations Committee was considering a renegotiated treaty with the BVI in order to prevent treaty abuse by third parties (Osborn, 1981: 383). Because this was the first successful renegotiation of a double tax treaty between the United States and a tax haven used by American corporations, Osborn thought that this might present a prelude to the end of treaty shopping. Nonetheless, the effect of the renegotiated treaty was to spur a new offshore product designed to not specifically encourage corporate tax leakage in the United States and not antagonise the world’s most powerful country (FSI and TJN, 2020: 2). As the then Chief Minister and Minister of Finance Leivity Stout remarked in a BVI Legislative Council Budget Address in 1981,<sup>77</sup> “we [here] have a phrase for this: when the United States coughs, the BVI catches a cold”. There is an evident continued relevance and power of state sovereignty in regulating global exchanges and the mobility rights of capital (Borón, 2005; Amin, 1997; Barrow-Giles and Marshall, 2003; Marshall, 1996a).

Therefore, on the one hand, the renegotiated treaty served America well. On the other, it spurred the creation of a ‘tax-neutral’ company using legislation to provide a “flexible modern corporate vehicle for multiple commercial purposes in any country in the world” (Riegels, 2014b). The primary target market for this product was wealthy individuals around the world, particularly “vulnerable and corrupt developing countries that would not have the power to defend themselves” (FSI and TJN, 2020: 2). The International Business Companies Act of 1984 fashioned the British Virgin Islands as a pure tax haven exempting all foreign companies registered in the BVI from corporate income tax, capital gains tax, value added tax, sales, inheritance, or wealth tax. The proposition to build this novel corporate vehicle received support from the Financial Secretary of the BVI at the time, Ken Bain. A committee of five people was appointed with the task of developing the legislation for this new product. The members of the committee were Harney Westwood, Michael Riegels, Paul Butler Richard Peters and Lewis Hunter (Riegels, 2014b). Richard Peters was a tax barrister from London recently employed at Harney and Riegels’ firm in Tortola, and Lewis Hunte was appointed by the Governor to serve on the Executive Council of the LegCo as the Attorney General for the BVI. Lewis Hunte was a native of Barbados, he had emigrated to the BVI during its “modernisation process” as a draftsman in the islands’ legislative process.<sup>78</sup>

Consequently, of the five members of the committee which drafted the IBC Act, none of them were domestic natives of the BVI. The Act was drafted in 18 months and passed in the legislature in one day without any public discussion.<sup>79</sup> The premier of the island declared “I have read this bill and cannot see a misplaced comma. I do not see the need for any debate” (FSI and TJN, 2020: 4). The TJN concludes that the BVI emerged as a captured state.<sup>80</sup> It is nearly impossible to miss the irony of the BVI’s Legislative Council as the seat of autonomy – the defining feature of its sovereignty or ability to develop as a nation – amidst the fact of who actually authored the legislation which distinguished the

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<sup>77</sup> Appendix A: The British Virgin Islands Legislative Council Budget Address by the Honourable the Chief Minister and Minister of Finance, 15 December 1981

<sup>78</sup>A feature observed in the development of the Cook Islands where three of the leading OFC lawyers served as the country’s solicitor general. See van Fossen AB (2012) *Tax Havens and Sovereignty in the Pacific Islands*. University of Queensland Press.

<sup>79</sup> Hedge Fund Review Supplement, British Virgin Islands, 19, cited by the Tax Justice Network.

<sup>80</sup> Refers to the absence of democratic participation in a context of political and economic capture of state institutions.

British Virgin Islands among the nations of the world. However, this was only the more readily apparent manifestation of dependency. This review highlighted a different understanding of this development undergirded by neo-colonial control and post-colonial dependency on a reconstituting form of empire. This external reliance was evinced first through the function of the Executive Council, and second through a consistent line of legislative amendments from the dawn of legislative independence providing tax incentives packages and exemptions aimed at attracting foreign capital through extensive tax holidays. Therefore, by the close of 1980 the BVI's dependence had come full circle.

#### **4.4 Conclusion: BVI neo-colonial control and integration in global political economy**

By 1990, Britain disturbed with the unregulated growth of the BVI OFC commissioned the Foreign and Commonwealth Office to conduct a study determining which loopholes needed to be filled and safeguards to lesson chances of money laundering and illegal activity (Maurer, 1995:425). Rodney Gallagher was appointed to chair the committee which produced the Gallagher Report on "The Survey of Offshore Sectors in the Caribbean Dependent Territories" in 1992. The report contained actual drafts of proposed legislation the consultants thought appropriate for each territory "right down to the dotted line on which the Legislative Council was to sign". Comprising amendments to five pieces of legislation – the Companies (Management) Act, the Bank and Trust Companies Act, the IBC Act, Insurance Law, BVI Ports Authority and Immigration and Passport Act, the recommendations of the report provided sweeping and far-reaching provisions for "development of financial services sector to regulate companies providing registered agents and registration services for IBCs" (Legislative Council, 1993; Maurer and Nibbs, 1993). The Draft Acts prepared by the committee were adopted by the LegCo and written into law to replace the then existing legislation.

In addition, the report recommended the establishment of a dependent territories Financial Advisory Panel which the LegCo supported (Maurer, 1995:426). Later in 1992, the FCO announced the creation of a Board of Management for Dependent Territories which was later renamed the Ministerial Group of Dependent Territories. Represented by the Governor of each territory, the board tied the granting of aid to its ability to revise legislation. In so doing, it aimed to provide assurance to international investors. British advisors would keep control of the markets through the ability to amend or revise legislation.<sup>81</sup> As the BVI Chief Minister noted at the time, such a board was an "affront to the people of the BVI and other dependent territories". In effect, this cemented effective neo-colonial control over the BVI as an offshore financial centre. Therefore, sovereignty remains a feature shaping international taxation. The parallels in the financial architecture imposed in the BVI at the twilight of the 20<sup>th</sup> century to the more recent initiatives in the OECD BEPS Action plans provide a striking similarity in how the interests of metropolitan powers are protected. But unlike Western states such as the USA or UK who can shape the terms of international law through political and economic power underpinned by histories of empire and imperialism (Rocha, 2017; Christians, 2016; Christians, 2009; van Apeldoorn, 2018), global south countries have an inability to exercise effective sovereignty in the arena of international taxation (Calderon Gomez, 2020; Emblad, 2020).

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<sup>81</sup> Report of the Debates, 10 September 1990, British Virgin Islands Legislative Council Minutes, 232.

## 5 Conclusion

The relationship between Britain and its overseas territories has been strained in the last two decades. Britain became increasingly intrusive in areas of governance constitutionally devolved to the BVI's democratically elected government (Clegg, 2006; UN, 2021). On 6 November 2018, the BVI submitted written evidence testifying to an erosion of its sovereignty to the Foreign Affairs Committee of the House of Commons of the UK Parliament under the inquiry "The future of the UK Overseas Territories". In this testament, the BVI referred to UK's decision to impose public registers of beneficial ownership on its overseas territories by threat of Order in Council as negatively impacting on their relationship and the BVI right to self-determination (UN, 2021: 4). The *Sanctions and Anti-Money Laundering Act* required the UK Secretary to provide "all reasonable assistance to the Governments of overseas territories". A publicly accessible register of the beneficial ownership of companies registered in its jurisdiction was mandated no later than 31 December 2020. As a recent development, this has yet to garner much public discussion. Overseas territories including the BVI are resisting what they regard as an incursion of sovereignty and have successfully managed to have the deadline extended to 2023 (UN, 2021).

This resistance presents some complication to the value and respect of sovereignty as a principle of autonomy through fiscal self-determination or a strategy for conceptions of an equitable international tax regime in which transparency is an integral component (Zucman, 2015; TJN-Africa, 2011; Brock and Pogge, 2014; Hearson, 2018; Leaman and Waris, 2013; van Apeldoorn, 2018). It is a reminder of the significance of sovereignty; how as an instrument of power it is subject to an inequitably skewed use and distribution through historically entrenched relations of domination and subjugation in the global political context. It gives pause to examine what legitimises some uses of sovereignty whilst denouncing others. In particular, to critique the ways it is as the service of metropolitan powers through histories of empire – providing a political basis to protect economic interests – and by tax havens seeking autonomy and national development as dependent territories in a capitalist global political economy.

Less than a decade after the IBC Act of 1984, the Foreign and Commonwealth Office through the Gallagher commission drafted amendments to overhaul the related legislation of offshore company formation in dependent territories. Britain has retained the ability to regulate tax haven activity, consistently preventing the erosion of its fiscal base. In 2010 the BVI and UK entered an *Exchange of Letters Between the Government of the United Kingdom and the Government of the Virgin Islands Concerning Agreements for the Exchange of Information Relating to Taxes and the Avoidance of Double Taxation with Respect to Taxes on Income*. A decade before the recent order to introduce a registry of beneficial ownership, Article 5 of that treaty provided that the UK could get from the BVI "information regarding the ownership of companies, partnerships and other persons... including ownership information on all such persons in an ownership chain; and in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and in the case of foundations, information on founders, members of the foundation council and beneficiaries, and equivalent information in the case of entities that are neither trusts nor foundations" (Revenue & Customs, 2010). Moreover, Article 4 of the DTA grants exclusive taxing rights to the United Kingdom where an individual is a resident of both the BVI and the Britain (HM Revenue & Customs, 2010: 3). Therefore, the ability of the UK to enforce its sovereign right to tax through its political ties to tax havens is not new. It has consistently maintained the legislative apparatus allowing Britain to effectively control Caribbean sovereignty in matters concerning international taxation (James, 2002; Kudrle, 2008; Avi-Yonah, 2008; Cobham et al., 2019; Azam, 2017; Christians, 2016).

Through the bilateral political links maintained with dependent tax haven territories, the UK can exercise sovereignty more effectively in contrast to global south countries who do not have this political-economic power to 'negotiate' the kinds of tax treaty benefits the UK has with the BVI. This is also true with several OECD member states. Before the 2008 global financial crisis, the BVI only had two double tax treaty agreements in force.<sup>82</sup> These were with the USA and Switzerland. Within two years after the financial crisis, the number of treaties in force exponentially increased to 25.<sup>83</sup> The only non-OECD and non-European state included in this treaty expansion was China.<sup>84</sup> Therefore, more broadly, this use of taxation sovereignty alludes to the ways in which imperial states maintain their hegemony and dominant status in the international order. To inaugurate a post-imperial world with a truly equitable international tax regime, it is critical to pay close attention to the uses of sovereignty in the post-colonial period by both dependent states and metropolitan powers.

This thesis has sought to highlight the structures which maintain tax haven dependency to reveal the function of international taxation in the global political economy through its relationship to traditions of state and taxation sovereignty. Reviewing the minutes of the Legislative Council meeting and the bills which were debated, I examined the approaches which were adopted as policy strategies to development by analysing the structure of the BVI offshore regime and its relationship with the island government. This was done with an account of post-colonial dependency through a structural lens of neo-colonial imperialism and a reconstituting empire. Significantly, the contradiction for resolution which this dissertation traced was a more fundamental one as it pertains to the positioning of sovereignty in a colonially dependent territory. This dissertation critically reviewed the developmental history of the BVI, demonstrating two key phases in this history: the political developments of the independence decade on the one hand in the Legislative Council's relationship with sovereignty in a federated imperial structure (Mantena, 2016; Chatterjee, 2010; Chatterjee, 1993), which conditioned the socioeconomic development of the BVI from 1960 up to 1984 on the other. In so doing, I described the different phases in the development of the BVI as a tax haven and paid attention to when each of these phases occurred and under what context. Highlighting the economic apparatus of the colonial state which structurally depended on international investment through political links maintained to Britain by the Legislative Council (Maurer, 1995c; Maurer, 1995a; Maurer, 1994; Carrington, 2019; O'Neal, 2001; O'Neal, 2004; O'NEAL, 1983; Cohen, 2010c; Cohen, 2010b; Fergus, 1996; Harrigan, 1971; Kersell, 1989), this thesis demonstrated a turn to foreign capital attraction strategies to finance development. The relationship between the BVI and its structure of governance was positioned in relation with the global financial system. I discussed this through an economisation of government in which sovereign control was accompanied with a withdrawal of economic control (Anghie, 2007). This was done by pointing to a critique of the increased dependency of the Caribbean on an evolving elite merchant class for development – thus illustrating a unique brand of neo-colonial control (Girvan and Girvan, 1973; Rodney, 1975; Marshall, 1996b; Kamugisha, 2019; Anghie, 2007) on expatriate led development. The BVI IBC Act was the zenith of these developments. It cemented another layer to the BVI's economic dependency on international finance through fragile financial flows of the global economy (van Fossen, 2012; Hampton, 1998; Marshall, 2007; Vlcek, 2008) along with greater encroachment on its sovereignty through increased regulation over its financial services sector (Clegg, 2006; HM Revenue & Customs, 2010; Revenue & Customs, 2010; UN, 2021).

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<sup>82</sup> The BVI previously had DTTs with Japan, Denmark, Norway, and Sweden. These were either terminated or not in force before 2008.

<sup>83</sup> Treaties and Models, IBFD. [Search - Tax Research Platform - IBFD \(uct.ac.za\)](https://www.ibfd.org/en/research-and-analysis/search-tax-research-platform-ibfd-uct.ac.za)

<sup>84</sup> The Netherlands Antilles, Japan and Korea (as of 2014) are the only other geographically non-European states with a treaty in force with the BVI.

In considering the aspirations of an equitable international regime, it is critical to remember the function of tax havens in a structure of international taxation which maintains the hegemony of Western states who can shape the terms of international law (Rocha, 2017; Christians, 2016; Christians, 2009; van Apeldoorn, 2018). Often, what is denounced or accepted as legitimate use of tax sovereignty by metropolises or tax havens in a capitalist world system occludes histories of dependency and the imperialist underpinnings of the structure of international taxation as a function of global political economy. The development of the BVI as a tax haven is instructive in guiding questions about who benefits and loses from reforms to the international taxation system. It demonstrates that global south countries have an inability to exercise effective sovereignty in the arena of international taxation. Therefore, in examining the uses of tax sovereignty, it bears recalling that this power is embedded in historical relations and reconstituting forms of empire and imperialism.

## Annexure A: Tax Havens of the world



© [Tax Haven Countries - Offshore Tax Havens of The World - Best Tax Havens List](#)

## Annexure B: Inclusion and Exclusion Criteria

The inclusion and exclusion of studies to be appraised was based on the primary objective of the study, to explore what a review of the developmental history of the BVI reveals about the function of tax havens in global political economy through traditions of state and taxation sovereignty.

Below are the inclusion criteria the study adopted:

- Geographical location: studies on tax haven development in the Caribbean, particularly owing to similar history and demographic
- Thematic focus: studies covering themes related to the following in themes and topics
  - Sovereignty
  - Tax Sovereignty
  - Tax Justice
  - International law
  - International justice
  - International taxation
  - Decolonisation
  - Nation-state development
- Date: For the BVI, only studies relating to the period from the island's legislative independence, therefore from 1950.
- Publications:
  - Original studies
  - Technical reports and surveys

## Search strings and strategy

The project adopted both a free text search strategy as well as the use of Boolean logic operators. These were used on search databases as well as for specific journal "hand-searches". The search strings were broken down using the research questions and divided into four broad sets which were then combined into multiple permutations. Using the PICO (Population, Intervention, Comparison,

Outcome) framework, the primary research question was broken down into the four broad sets as follows:

- P – British Virgin Islands Tax Haven
- I – Development History
- C – Tax Sovereignty
- O – Tax Justice OR Tax Equity

The above search terms using PICO were expanded as set out below into the following set strings (s)

<b>Set 1</b>	<b>Set 2</b>	<b>Set 3</b>	<b>Set 4</b>
S1: British Virgin Islands	S8: Development History	S13: Tax Sovereignty	S16: Tax Justice
S2: Tax Havens	Development	S14: Non-sovereign	S17: BEPS
S3: Caribbean tax havens	S9: History	S15: Political sovereignty	S18: Tax reform
S4: Anglophone tax havens	S10: Economic development	S16: Limited sovereignty	S19: S16 OR S17 OR S18
S5: Dependent tax haven	S11: National development	S13 OR S14 OR S15 OR S16	
S6: British Overseas Territories	S12: S8 OR S9 OR S10 OR S11		
S7: S1 OR S2 OR S3 OR S4 OR S5 OR S6			

Final Search S20: S7 AND S12 AND S13 And S19

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