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Exceptional Behaviour

I read recently that politics in the United of America have become “infested with Latin-American-Style populists”. As readers of my Latin Letter column in the Offshore Investment magazine will know, I have made several observations, including in this month’s column, about the declining number of populist governments on the subcontinent whilst the opposite is true in other parts of the world. It is yet another example of the abnormal replacing the norm, as it has done in economies. (I detest “the new normal” phrase, having thought the obsequious “reach out” was bad enough.)

Imagine, if you will, what Donald Trump’s reaction in the US would have been if the presidential election result had mirrored Peru’s results in June, when Pedro Pablo Kuczynski defeated Keiko Fujimori by a win of 50.1 per cent? Would he have echoed Fujimori’s words: “In a democratic spirit, we accept these results”? In America a contingent lawsuit, subsequently rejected, was already in the pipeline if the results in Nevada (more about that state to come) had contributed to a possible Trump election defeat. Would pre-election claims of rigging have been replaced by riots and revolt? A few years ago, had the Peruvian result sparked chaos, one would have met it with a shrug of the shoulders and a resigned, facial expression, as if to say, “well, this is Latin America after all”. How things can change.

But today in the West we have entered the epoch of the estranged: those who are disaffected and distrustful of their governments. As European history tells us, it is a formula for the rise of populism with all its unknown consequences. We

have also entered an age where governments wish to strip naked privacy; this, too, will have unintended consequences. The belief in the sanctity of one’s personal banking information has been disabused to the extent that bankers have become weapons of mass obstruction when attempting to open an account in an offshore jurisdiction. Not so in the country where, in 2013, Devin Nunes, as chairman of a Congressional working group on tax, urged reforms so that it could be turned into “the largest tax haven in US history”. That country is the US and my fellow speaker, Richard Hay, at September’s Oxford symposium, as he had in a Financial Times article, spoke of “another example of how the US has elevated exceptionalism to a constitutional principle” following the Tax Justice Network’s claim that the US is one of the world’s top three “secrecy jurisdictions” (the others being Switzerland and Hong Kong). And it doesn’t matter what efforts are made by the US president in Washington to weaken opacity because material changes require Congressional approval, frequently stymied by business lobbyists and various state representatives (remember that the incorporation of companies – the starting point for transparency – is a state matter and not a federal one). The workings of Congress were inspirational for Mark Twain: “Suppose you were an idiot, and suppose you were member of Congress, but I repeat myself”.

In the late 1930s the US Treasury secretary, Henry Morgenthau, informed his president that some wealthy American tax evaders were, as he described it, setting up dummy corporations with dummy directors in British colonies and he said



that “Legalised avoidance or evasion by the so-called leaders of the business community... throws an additional burden upon other members of the community...” So America has been very aware of the issue for well over 75 years.

No Need to Try Harder in Nevada

But a wink is as good as a nod to a blind man and so just last month I was sent an email attachment with a very picturesque scene of rural Nevada by a trust company operating there, inviting me to white-label some of my services, especially my trustee business, under the Nevada state flag. It amounts to concealment of the reality; because it is a case of the service which is produced in Panama being rebranded in Nevada. Suddenly the stain of the term “offshore” disappears at a wave of the white label wand. Now, of course, concealment can have legitimate or nefarious motives; as the International Consortium of Investigative Journalists has stressed, concerning the Panama Papers, persons who have engaged the Mossack Fonseca law firm for legitimate, legal uses are named and who have not, therefore, broken the law. In this time of transparency, “concealment” has become a very delicate word to use – whether it’s a whitewash versus white label situation. I have absolutely no doubt that both the offer made by my counterpart in Nevada and its motive, are genuine and above board. So why would this trust company in Nevada feel that a Panamanian trust company would want to operate behind this façade? A clue lies in the phrase “privacy environment” which was used in the promotion materials sent to me.

“Privacy environment” is a softer term to use today; it certainly beats “concealment”, and in that context, let’s compare Panama to Nevada. In October the Panamanian government signed the Organisation for Economic Cooperation and Development’s Convention on Mutual Administrative Assistance in Tax Matters which establishes a legal framework for the implementation of financial transparency and international cooperation initiatives. The OECD considers Panama a big fish to catch in its net; in

the local and regional press coverage of the event at that time (almost) outshone the Trump and Clinton election road show.

Angel Gurría, the OECD’s Secretary-General, was exuberant and declared that Panama had now moved much closer to meeting “the global tax transparency standards”. This is not the same, however, as Panama adopting a no-strings-attached policy of automatic exchange of non-resident financial account information with a person’s tax authorities. No. In Panama’s case, as in some others, it will enter into country-by-country (bilateral) agreements and Panama’s ambassador in France, who co-signed the Convention together with Mr. Gurría, observed that it allows for both assistance in some matters only, and flexibility in others, adding that this “will be determined by Panama”. One must accept, however, in all this that the OECD’s initiative goes some way towards appeasing the angst of those who feel marginalised by a society that is more unequal than ever; as John Kenneth Galbraith observed, “The salary of the chief executive of a large corporation is not a market award for achievement. It is frequently in the nature of a warm personal gesture by the individual to himself”.

The OECD Convention document signed by Panama is at the heart of the Common Reporting Standard, developed by the OECD. The standard, however, despite Mr. Gurría’s remark about global standards for tax transparency, is not global, simply because the US has declined to be committed to it. So no wonder trust companies in America see opportunities abroad, and which brings me back to Nevada. Neither trust companies nor corporate service providers anywhere in the US are as thoroughly regulated as they are offshore in responsible jurisdictions, and so a Nevada trust company naturally sees itself as very real competition, particularly for offshore centres either nestled in the Caribbean or operating in Panama that are really just not that far away. And, of course, the US is on the Financial Action Task Force’s white list; there’s the plus.



The Ignited States of America

The US presidential election showed us, at a basic level, just how information stored electronically can be compromised by following the Hillary Clinton email scandal which blew up in her face in October. Professor Jason Sharman at the Centre for Governance and Public Policy at Griffith University in Brisbane, Australia, could not be more passionate about tax transparency, but even he has his doubts, and I quote: “What right to financial privacy do citizens of democracies have? Should we protect citizens from undemocratic nations? What is legitimately private? For example, the state knows how much I earn, but strangers do not. Where you have states that are not bound by the rule of law, that are corrupt and commit human-rights abuses, do you want to help oppressive governments get more information about their own citizens in a way that might help those governments further oppress them? I’m not sure that’s really been thought through enough”. That understatement has few rivals in 2016 and is a rare example of he and I being in agreement over offshore matters.

No wonder Panama, as it has persistently done, told the OECD that it will not provide tax information to just any country that knocks on the door. There must first be an agreement in place with the enquiring country. Panama has joined more than a hundred other co-signatories to the OECD Convention and that will require an equal number of separate agreements because, like Professor Sharman, Panama knows that not all countries are democratic (even if they are, democracy is having a tough time in a few of them – democracy’s vanguard, to me, is now the Ignited States of America).

H. L. Mencken (1880-1956), an American commentator and journalist, was a grand exposé of trumpery (any similarity to living persons is purely coincidental – it has been in usage for centuries) in all its forms, insisting that Americans did not speak English, they spoke American. In 1919 he published “The American Language” which was a monumental study in the field of philology. How America distinguishes itself from the rest of

the world – not just by language – raises Mr. Gurría’s comment about “global tax transparency standards”, with a nod to my colleague Richard Hay, because it is neither standard nor global if the West’s leading power is excluded. This is important to those in the West who live outside America’s orbit because, for better or for worse, still today, all roads, which once led to Rome, lead to Washington, whether or not the barbarians are gathering at its gates.

One commentator has described Donald Trump’s win as giving him a mandate to blow up Washington, especially with the Senate and Congress enjoying Republican majorities. This upheaval of the establishment is not dissimilar to the civil rights protests of the 1960s, echoed at the time by Bob Dylan’s protest songs. He has earned his Nobel prize and those particular words he wrote in 1964 surely have resonance again today: “There’s a battle outside ragin’ / It’ll soon shake your windows / And rattle your walls / For the times they are a –changin’”. It was the time of the sceptic and the distressed, as it is today, and similar maladies haunt his melodies to those words.

Frankly, blowing up Washington (metaphorically speaking, before I’m placed on a terrorism list somewhere) doesn’t mean one jot to me. I’m not an American, and neither do I live there. What does, however, bother me are all those roads that lead to Washington, and the global reach of America’s influence; what is not needed is the blowing up of the world order – certainly not in the West – which would destabilise the existing fragile political and economic framework, despite its imperfections.

A Hard Rain’s A-Gonna Fall

Cicero said that if we do not learn from history we remain children. History, both modern and ancient, has taught us the importance of understanding the different cultures which make up mankind; but learning and applying are always, of course, very different things. Still, there is an obligation to fuse both together if you wish to be a country that boasts being the leader of the free



world; I repeat: it's not an opinion, its an obligation. One does not need to study anthropology in depth, but one should perhaps accept President (soon to be former) Obama's viewpoint: "I believe in American exceptionalism. Just as I suspect that the Brits believe in British exceptionalism, and the Greeks believe in Greek exceptionalism". I made this very point in the September Offshore Pilot Quarterly about the national pride which Latin Americans have. It is no coincidence that he is a US president who has experienced living in a foreign country.

I would suggest to every future US president – and particularly the members of the foreign policy team – that readings from the late American anthropologist, Ruth Benedict, should be mandatory ("Patterns of Culture" would be a good place to start). She had a profound influence on cultural anthropology, insisting that "The purpose of anthropology is to make the world safe for human differences". T.E. Lawrence, last century's Lawrence of Arabia, and who, incidentally, also appreciated (vital today) the different cultures in the Middle East, once said: "All men dream: but not equally. Those who dream by night in the dusty recesses of their minds, wake in the day to find that it was vanity: but the dreamers of the day are dangerous men, for they may act their dreams with open eyes, to make them possible." So, yes, those dreaming of making America great again need to be sure not to repeat past mistakes and create international animosity that will make America only grate again.

When admiring scenic views of Nevada, one should consider carefully the comparative safety on offer from trust companies in a country with not just more guns, but lawsuits (even against an incoming president), for which trustees serve as magnets. When absorbing the arguments against international investments under the stewardship of offshore financial services centres versus the perceived safety onshore, the largest being the US – but Europe should not be left out - just reflect on what you see and (for those of my generation) also what you read in books and journals, to aid deep and measured analysis. The caretakers of assets in foreign parts, usually those labelled "offshore", still today have the ability to offer preservation and protection in uncertain times. A tune in 1967, inspired by Bob Dylan, includes the lines: "Starting from today I'm going to be a cynic / It's not just a phase and it's not just a gimic". When I wrote it, I did not realise that I was displaying the first signs of becoming a curmudgeon, a person who is, as defined in the dictionary, someone who dislikes hypocrisy and pretence and has the temerity to say so, but in an engaging and humorous manner. The master was H. L. Mencken, and although I can't even stand in his shadow, with Menckonian certainty I can declare, nearly 50 years later, that I remain a cynic; it wasn't a phase then, in the turbulent 1960s, any more than it is today in the tumultuous 21st century. As Bob Dylan put it, I fear that "A Hard Rain's A-Gonna Fall".

Offshore Pilot Quarterly (independent writing for independent thinkers) has been published since 1997 by Trust Services, S. A. which is the British face of trust business in Panama where it is licensed under the fiduciary laws. It is written by Derek Sambrook, our Managing Director, who has been Treasurer of the British Chamber of Commerce Panama, a member of the former Latin America and Caribbean Banking Commission as well as an offshore banking, trust company and insurance regulator. He has over 45 years private and public sector experience in the financial services industry about which he has written extensively and our website provides a broad range of related essays including his Latin Letter column which appears in every issue of Offshore Investment, a British professional journal published since 1986.

Engaging an offshore representative is an important decision and we advise all persons to seek appropriate legal and tax advice from professionals licensed to render such advice in the appropriate jurisdiction before making offshore commitments.

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