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Casablanca and Chameleons

More than 150 years ago Henry David Thoreau, in his book entitled Walden published in 1854, implored us to "simplify, simplify, simplify". Thoreau was a famous American essayist, poet and (importantly) practical philosopher. He set out to seek a simpler type of life, believing strongly that one should act on one's individual conscience rather than necessarily following laws and government policy. He was an original thinker and much of what he wrote about is still valid, especially today.

In his book Where I Lived, and What I Live For he shared his reflections and insights after spending 18 months living in the woods in a home he built himself. To quote from his book: "Simplicity, simplicity, simplicity! I say, let your affairs be as two or three, and not a hundred or a thousand... and keep your accounts on your thumb nail..."

The uncluttered and remote life he advocated surely has some relevance today, considering the strain placed on many shoulders because of the present pandemic, not to mention a political and business world that has succumbed to so much gobbledegook.

In his essay, Politics and the English Language published in 1946, George Orwell bemoaned the state of affairs and said that political language "is designed to make lies sound truthful and murder respectable, and to give an appearance of solidity to pure wind". Thinking about the Organisation for Economic Co-operation and Development, not to mention the European Union Commission, 75 years later I find Orwell's arguments are just as apposite.

Certainly, when I drafted the trust ordinance for the Turks and Caicos islands back in 1989, using an Amstrad computer (which today qualifies as a

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museum piece) my intention was to craft as plain and simple a law as possible - and ensuring that it would pass my Casablanca test. This piece of legislation endured, without material changes, for more than 20 years and was replaced in 2016 to reflect advances in the trust industry.

“Casablanca” is a film made in 1942 starring Humphrey Bogart and Ingrid Bergman which became an unintended classic. The film's theme tune, “As Time Goes By”, tells, through its lyrics, that “the fundamental things apply, as time goes by”. And so it is with trusts, which I describe as the chameleon of succession planning, after the name of the lizards that I found in my garden growing up as a boy in Africa. They can change colour in order to blend in with their immediate surroundings; trusts have the same adaptability and yet the fundamental things do still apply. Like the three certainties test that creates a valid trust under English law, being evidence of intention to create one, subject matter to be held under the trust and a defined object (someone or something to receive benefit). How wonderful it would be to know that there were 3 certainties, facts set in concrete, in today's business world that is shrouded by Covid-19 confusion, often not helped by the media.

Gypsies, Tramps and Thieves

We know how elements of the press can be mischievous, to say the least, and international financial services have been, and continue to be, an easy target. Top of the list has been the ubiquitous offshore company. Ambrose Bierce defined a corporation as “An ingenious device for obtaining individual profit without individual responsibility”. This is one of the many definitions to be found in *The Devil's Dictionary* written by this American Civil War soldier, wit and writer who put his own mischievous slant on common words.

In fairness, the industry in its time has attracted some individuals who are best categorised by the title of a song recorded in 1971 by Cher, an American singer often referred to as the "Goddess of Pop": Gypsies, Tramps and Thieves. Even so, sensationalism has been turned into a fine art by a breed of journalists that George Orwell identified in his 1946 essay: "Modern writing at its worst does not consist in picking out words for the sake of their meaning and inventing images in order to make the meaning clearer. It consists in gumming together long strips of words which have already been set in order by someone else, and making the results presentable by sheer humbug". No wonder Thoreau fled to the woods and Orwell ended his days on a remote Scottish island.

Separating truth from trash is not easy if you are a reader with little or no knowledge of the subject matter; along with other gullible souls you can collectively, and foolishly, reach a consensus. Herein lies the danger of Groupthink, a term made popular in a 1972 book with the same title written by Irving Janis, a psychologist, and who was apparently inspired in part by the Bay of Pigs fiasco in 1961, when a group of influential members of President John F. Kennedy's administration decided to support an intended coup in Cuba. In retrospect one wonders how a group of, apparently, intelligent people could decide to do such a foolish thing, underscoring views held by the late John Kenneth Galbraith, the Canadian-born economist, diplomat and intellectual, whom I quoted in the last issue, expressing his wonderment at such folly. This supports the argument made by Janis about the danger of only listening to like-minded people that will only reinforce your own viewpoint.

What's needed is a diversity of ideas, knowledge, and perspective - especially so in the ranks of the



bureaucrats charged with supervision of financial services. Until this changes, the wrath generated and expressed by practitioners in the field will not change. It came as no surprise to me when I read in an article written by Mark Battersby (5th August, 2021), the editor of International Investment at Incisive Media, about his allegations that the Tax Justice Network (an organisation that well and truly fits the mould) has no one working for it or even advising it, who has ever worked in tax, or accounting, or financial services.

Regulators, who are at the sharp end of supervision – particularly in the Caribbean – must be adequately equipped for the job. This was nicely spelled out by the late Charles A. Cain in the collection of his commentaries published in 2011 entitled *What Is It All About?* I met him at Oxford University where we both chaired and spoke at seminars some years ago. To my mind he was, at the time, the Isle of Man's wise man of offshore financial services, besides being a true gentleman and a fine scholar, who hammered home in his compilation of commentaries that it was of vital importance for a regulator to have "knowledge of the pressures of the marketplace", if he was to have any chance of understanding the view from the other side of the fence. Aristotle declared that "for the things we have to learn before we can do them, we learn by doing them" (Nicomachean Ethics, 350BCE). The quote is centuries old, but some things never change "as time goes by".

As a regulator in the Turks and Caicos Islands (1989-1992) I had passed Charles Cain's test: I knew both sides of the fence. I set out a list of priorities concerning legislation: first an insurance and trust law were needed and then regulations and licensing guidelines for both insurers and banks (there were none) operating under the existing Banking Ordinance. I had already started drafting the trust and insurance

law from my home on the Isle of Wight in England before my arrival on Grand Turk, where the capital (Cockburn Town) of the islands and the Governor's residence were located. The Registrar of Companies, a British lawyer, was also my deputy and the registry itself was an important source of government revenue. But just like all other registries located in the Caribbean Overseas Territories, its reputation suffered from a mixture of scandals and distorted perceptions. Ten years before, in 1979, I had arrived in the Cayman Islands - coincidentally during the annual Pirates Week celebrations put on to promote tourism. It was fair to say, reflecting on those long ago and far away days, that forty years ago every week of the year then was pirates week.

Satan and the Force of Human Nature

Even today, with stronger regulatory controls in place, offshore companies, wherever situate, bear the mark of Satan in the eyes of the majority of the public. Offshore business, however, has a very long history. The company concept had drawn its critics ever since the joint-stock company, the forerunner of the modern company, was used for trade by English merchants in the 17th century. Ironically, not for domestic but offshore business in Asia and Africa, far beyond England's shores, and which became a wellspring of thievery, financial abuse and every other shameless act of chicanery.

It was Edward, First Baron Thurlow, the Lord Chancellor of England, during the 1788 impeachment proceedings brought against Warren Hastings for his role in the East India Company, who said that "Corporations have nether bodies to be punished, nor souls to be condemned, they therefore do as they like". 120 years later in a letter dated 14th December, 1908, Leo Tolstoy described how, in his view, the East India Company had "enslaved a nation



comprising two hundred millions". In it he asked: "What does it mean that thirty thousand men, not athletes but rather weak and ordinary people, have subdued [in India] two hundred million vigorous, clever, capable, and freedom-loving people?"

The venal exploits of the East India Company, which was in fact controlled by just a handful of men in London, rather than its 30,000 employees, are documented in great detail and so the impeachment proceedings alleging mismanagement and personal corruption by Hastings when he was the Governor-General of India's Bengal Province became a cause célèbre. He had, in fact, played a major part in stabilising the fortunes of the company and the charges were not proven. History reveals that the prime motive for the investigation had at its centre a perfidious mix of politics, jealousy, rivalry and prejudice. 'Twas ever thus. No wonder William Shakespeare found an endless supply of material for his plays, which bulge with business lessons -

especially Macbeth, the Tempest and Hamlet. Those lessons are as fresh and relevant today as they were when the bard died in 1616.

Adam Smith wrote his *The Wealth of Nations* in 1776, the year taxation sparked the subsequent American War of Independence: it is a war, I fear, that governments in the Caribbean will never win. One thing for sure, whether in the Caribbean or elsewhere, the force of human nature will prevail, and as Smith wrote in 1776: "People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices". How clearly we can see this 250 years later in the shadow of huge international companies. Just remember, being identified with a bastion of capitalism, like the East India Company was, rather than a tropical island, does not automatically provide a badge of respectability. The line can be very fine between perception and deception.



Offshore Pilot Quarterly (independent writing for independent thinkers) has been published since 1997 by Trust Services, S. A. which is the British face of international business in Panama. It is written by Derek Sambrook, our Managing Director, a member of the Society of Trust and Estate Practitioners and a Fellow of the Institute of Bankers in South Africa who was both a member of the former Latin America and Caribbean Banking Commission and an offshore banking, trust company and insurance regulator. He has over 50 years combined 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.

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