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Writing Law, Making a "Nation": History, Modernity, and Paradoxes of Self-Rule in the British Virgin Islands

Bill Maurer

Law has become a key signifier in British Virgin Islander nationalist discourse. British Virgin Islanders cast law as central to their identity as a people and celebrate the self-authoring of law. At the same time law writing has fostered continued colonial rule and subordination to the global market. The International Business Companies Ordinance, hailed as the BVI's first truly self-authored law, produced a marketable identity for the territory in the world of international finance, yet led to increased surveillance by metropolitan powers and contributed to the deferral of political sovereignty. This article considers the role of law in modern narratives of national uniqueness. It explores the paradox that modern law, with its accompanying rhetoric of progress, its formations of history, and its construction of "national" selves, is central to the cultural politics of difference, yet is also central to the processes of capitalist integration that both deny and demand difference.

Among natives and immigrants residing in the British Virgin Islands (BVI), talk about government is commonplace. Often the talk is about corruption, favoritism, or ineptitude. But just as often it is proud, praising the legislature and its actions and ordinances as expressing the BVI's uniqueness as a nation with its own national traditions and cultural distinctiveness. British Virgin Islanders (or "BVI Islanders," as they call themselves) distinguish themselves from their Caribbean neighbors as a "law and order" people. In this article, I explore how the legislature and the law came to be important components of a discourse of nascent—but never quite born—British Virgin Islands nationalism.

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The British Virgin Islands is a British dependent territory¹ in the northeastern Caribbean, about 35 miles east of Puerto Rico, consisting of 40-odd islands and cays. Most of the population of 18,000 lives on the islands of Tortola (where the capital city, Road Town, is located), Virgin Gorda, Anegada, and Jost Van Dyke.² The "native" inhabitants are descendants of African slaves and freepeople, English Quaker planters, and an assortment of Portuguese, Jewish, and French traders, fishermen, and merchants. Half the residents are "native," and half are immigrants from other Caribbean places: the islands of the eastern Caribbean, Guyana, and the Dominican Republic.³ The BVI has been under unchallenged British rule since 1773. The territory is now governed by a locally elected legislative council and an executive council of elected officials presided over by a Crown-appointed governor. There are two chief sources of revenue and employment: the tourist industry—small hotels, charter yachts, and, increasingly, cruise ships; and the offshore financial services sector—"tax haven" facilities operating out of a dozen or so international banks, myriad trust companies, and international business companies (IBCs) incorporated in the BVI. The official currency, by an act of the local legislature, is the U.S. dollar.

Paradoxically, the discourse that highlights legal practices, local legislation, and "law and order" as the defining characteristics of BVI cultural uniqueness and autonomy—and the key elements of BVIlander nationalist sentiment—also fosters dependence on and subordination to the legal and administrative regimes of the United Kingdom and the United States and, increasingly, to the capitalist world system. BVIlanders who articulate the discourse I seek to explain are engaged in what Meaghan Morris (1990:10) has termed a project of "positive unoriginality."

Constructing a national identity in terms of law mirrors a European master narrative of "national development," a narrative that demands cultural uniqueness—and culturally unique laws—to justify nation-building projects. In copying a narrative of national development demanding that one's nation be "originary" and originate unique, distinctive laws to express its true, essential, national self, BVI cultural uniqueness is constructed in terms of law, but that construction ends up subordinating that identity

¹ The other British dependent territories in the Caribbean are Anguilla, the Cayman Islands, Montserrat, and the Turks and Caicos Islands.

² Other inhabited islands include Beef Island, Cooper Island, Peter Island (the site of a luxury resort), and Great and Little Cumanoe. A community once on Salt Island has now dispersed.

³ Official census figures for 1991 indicate a total population of 16,108, only 8,076 of which had been born in the BVI (British Virgin Islands Development Planning Unit 1992). Because there was some undercounting in the 1991 census, especially of immigrants, and many believe the population to be closer to 20,000, I have settled on the 18,000 figure. Fears that immigrants are "taking over" impact heavily on any discussion of the BVI census.

to the world market. The writing of laws that purportedly express deep BVI cultural characteristics, for example, has ironically facilitated the movement of capital across international borders and entrenched continued foreign dominance in this late 20th-century colony.

The obvious contradiction to any BVI claim to nationalism is the fact that the territory is a *colony*. How, then, can it claim a national identity? It is not independent, and its people and government apparently do not wish it to be so. Yet the BVI as a political entity—like perhaps all such entities forged in the furnace of European colonialism and its overarching discourses of modernity—gains its meaning within a teleological narrative of development and inevitable progress toward the nation-state. While the end of the narrative—political independence and self-rule—may for the BVI forever be deferred, yet it retains its currency, shaping how people think and talk about themselves and the place in which they live. Central to BVI conversations and discourse about nationalism and identity are the law and the legislature.⁴

Partha Chatterjee (1993) argues that scholars and historians of nationalist thought must begin to separate “the claims of nationalism as a *political* movement” from other domains of nationalist thought (p. 5; original emphasis). Before colonized peoples in Africa and Asia mounted political campaigns for independence, he suggests, they created a “spiritual” domain through which they were able to cast themselves as essentially different from their European colonizers. This was a “domain of sovereignty within colonial society” created long before anticolonial nationalism began its struggle against imperial power (*ibid.*, p. 6). Chatterjee contrasts this spiritual, inner domain with a material one, the domain of social life concerned with “outside” living, “the economy,” and “statecraft, . . . science and technology,” and suggests that “the greater one’s success in imitating Western skills in the material domain, . . . the greater the need to preserve the distinctness of one’s spiritual culture” (*ibid.*). Chatterjee’s argument compels us to broaden our understanding of nationalism and nationalist discourse beyond simply equating nationalism with a desire for political independence or statehood, and hence the argument is quite germane for the BVI. There, people are coming to understand themselves as members of a national

⁴ There is no independence movement in the BVI, and most BVI Islanders take offense at the suggestion that there ought to be one, or that the BVI ought to be moving toward independence. Independence only comes up when the Foreign and Commonwealth Office (FCO) in London issues especially unpopular orders affecting the dependent territories (such as the recent abolition of the death penalty). In the late 1960s, the Positive Action Movement agitated for more autonomy from Britain because of several highly controversial FCO and local decisions that threatened (among other things) to lease nearly all the island of Anegada to a foreign company. Positive Action, however, made no sustained criticism of colonial rule but rather focused on local politicians and powerful families.

community, as a people sharing a place, a culture, and a polity, but simultaneously are leaving relatively unquestioned their colonial relationship with the United Kingdom.⁵ The BVI example supports Chatterjee's assertion that nationalism as a claim to cultural uniqueness can exist without (or can preexist) a specifically *political* nationalist movement for independence or full self-determination. In the BVI, however, it has been statecraft and legislation—those aspects of social life Chatterjee calls material and most Western—that BVIlander nationalist discourse centers on to concoct a sense of BVI inner or spiritual uniqueness.

I begin with a sketch of the history of British Virgin Islands nationalism. By so doing, I hope to demonstrate the connections between history and law as complementary modes of knowledge production within modern narratives about the nation-state. Critics of colonial discourses have demonstrated that history, as an academic discipline and a form of knowledge, tends to apply purportedly universal categories—development, progress, and even capital, bourgeois—to the particularities of peoples outside Europe. Such categories derive their force and persuasiveness from their place in discourses about modernity itself, about what differentiates "modern" societies from "traditional" ones. Non-European peoples attempting to articulate anticolonial positions through such concepts as nationalism find themselves doing so in terms already set by colonial discourses (Spivak 1988; Mani 1987; Chatterjee 1986) because nationalist histories have as their referent an imaginary Europe that has already reached that toward which nationalists aspire: the telos of liberal political philosophy and industrial capitalism embodied by the independent nation-state and its citizenry (Chakrabarty 1992).⁶ We shall see that the only "history" the BVI has is the history of its steady—but endlessly deferred—march toward becoming an independent nation-state. This is a tale told as a story of law.

Because they chronicle the "development" of "self-rule" through "law" over both anarchy and subordination to despots or gods (Fitzpatrick 1992), modern "histories" are *legal* legends. Their characters are rational citizens, people with clearly defined public and private lives, people with true selves who know (or can learn) their desires and rationally go about fulfilling them. Modern subjects regulate their selves primarily through language, rendering their objective selves up for self-examination and self-

⁵ And like other people who speak English, people in the BVI tend to use terms like "nation," "race," "people," "culture," and "country" relatively interchangeably and uncritically.

⁶ Following Chakrabarty (1992), I use "Europe" as a "hyper-real term" referring "to certain figures of the imagination whose geographical referents remain somewhat indeterminate" (p. 1). This usage of the term is meant to resist empirical closure. Similarly, my characterization of the "modern" relies on recurrent imaginings of what it is to be "modern" in the modern world. Central to Europe's imaginings of modernity is a construction of the premodern, the uncivilized, etc.—that which modernity defines itself against. See Fitzpatrick 1987, 1992.

analysis. Unlike their premodern predecessors, or so the story goes, moderns, when they write, indulge in *self-expression*—no longer merely mediums for divine knowledge transcribing what is “revealed.” They write, and their writings give them insight into their true selves (Foucault 1979; Chakrabarty 1992; Gagnier 1991).

The discourse surrounding the BVI’s distinctive culture in terms of “law and order” depends on a conception of culture as something that is a part of one’s true self and, as such, is *owned*. Culture, like history, here has as its referent Europe, because culture—conceived in *proprietary* terms—is inseparable from the constellation of modern imaginings of possessive individualism, the nation-state, and law (cf. Macpherson 1962; Coombe 1993; Handler 1991). Culture as something owned lends a distinctive character to the nation’s history. It is central to understandings of difference as “essential” (Williams 1993). In a world where nations are the players in international politics and capitalism, anti-colonial and postcolonial peoples struggle to found nations for themselves, and their struggles become culture-building projects. Such projects are part and parcel of the need to be modern and to demonstrate modernity by being self-governing.

When modern peoples imagine themselves as essentially culturally different from others, especially those who rule over them, they can make a forceful case for self-rule. Their heritage and culture, which make them unique, make them uniquely ungovernable by others not partaking in their distinct essence; others could not possibly understand their ways or motivations and thereby write laws for them to follow without expecting dissent. Law, as one genre of writing, and one self-consciously keyed to self-regulation and discipline, expresses modern selves within a collectivity. Hence, “the nation’s law is one of the key components of a unifying nationalism” (Fitzpatrick 1992:115): it helps us define—and then regulate—our national selves. For modern subjects, the “ability to make law is the mark and preserve of independent political society” and of the rational, modern individuals making it up (Fitzpatrick 1992:117).

But ideas about (national) difference as essential also serve capital, since in capitalist culture distinctions conceived in proprietary terms presuppose alienability and marketability. In the BVI, the self-authoring of law, heralded as historic for the nation, has encouraged the marketing of the BVI as a unique and distinctive jurisdiction in the worlds of tourism and transnational finance. The fact of authorship of the laws, often without regard for their content, has been crucial to the articulation of a BVI national identity. At the same time, the content of those laws subverts BVI claims to autonomy by further entrenching the territory within the world of global capital. I explore here the International Business Companies Ordinance of 1984, a “local” law

invoked by BVI leaders as evidence for their unique character that brought large-scale investment to the territory by setting up tax haven facilities there. The ordinance also required stressing to outsiders BVI "law and order" sensibilities in order to assure investors that the territory was a reputable and safe place to put their funds. Indeed, in the world of offshore financial services, a jurisdiction's reputation can make or break its financial service business (see Ginsberg 1991). Large-scale forces entered the arena to guarantee that reputation: agreements with the U.S.A. and the U.K. to protect investors and to prevent money laundering further eroded the autonomy that the self-authoring of law seemed to grant the BVI.⁷

In the following sections, I first look at the history of the British Virgin Islands. I then turn to explorations of everyday discourse about law and politics, the role of national celebrations and the presence of immigrants, and the value placed by BVI-landers on establishing their status as a distinctive self-ruling nation, despite BVI's clear status as a colony. After thus setting the scene, I examine the consequences of the enactment of the International Business Companies Ordinance of 1984. I conclude by pointing to how the ordinance both deeply entrenched continued colonial rule and fostered the integration of the BVI into the world economy.

A History for the Nation

In his history of the British Virgin Islands, Isaac Dookhan (1975) wrote the "national history" as the "legislative history," unwittingly illuminating the basis of much BVI nationalist discourse.⁸ Dookhan, a Trinidadian long-time resident of the U.S. Virgin Islands and lecturer at the University of the Virgin Islands, concluded his book by stressing that progress came to the BVI when it finally got its "own government"—its own *legislature*. In the final paragraph of his study, he wrote:

⁷ The data on which I have based my arguments here come from a year of fieldwork, June 1992-June 1993. Here, I am specifically concerned with the discourse of BVI national identity figured in terms of law and order. This discourse pervades discussions of the present and future state of the BVI, especially in BVIlander concerns over the large numbers of immigrants. Other discourses invoke the cultural or national uniqueness of the BVI, but the one that stresses law and order is dominant. This is especially true in newspaper accounts, proceedings of the legislature, and public speeches. It is a perspective that is prominent among BVIlanders but by no means the only perspective in the territory. I have explored these other perspectives more fully in Maurer 1993, 1994, and 1995. My presentation here relies extensively on archival materials and documents because the outlines of the discourse I am concerned with are clearly sketched out there and because they convey the "official" tone of the discourse. But I include anecdotal materials, too, to breathe life into the documents and to suggest that the discourse pervades everyday social interaction as well.

⁸ The discussion in the following paragraphs is based on Dookhan's account.

The history of the British Virgin Islands in the twentieth century has demonstrated the importance of legislative government in achieving progress. When the islands were more or less under external control before 1950, economic growth was negligible; thereafter, the restoration of a legislature enabling greater local participation in directing local affairs has been followed by rapid economic expansion. (P. 234).

The causality Dookhan expresses here is one that informs much contemporary BVI national discourse. How did this line of causation become common sense?

One reason could be advanced, quite simply, by looking to the way the jurisdictions of the legislative, executive, and judicial branches of government map onto the territory of the British Virgin Islands. The legislature is the only branch of government whose jurisdiction maps directly onto the physical territory of the BVI. Executive power is vested not only in the local Executive Council but also in the Crown-appointed Governor and the Foreign and Commonwealth Office (FCO) in London, and executive jurisdiction links the BVI to other dependent territories and the U.K. The judiciary of the BVI is but a part of the larger regional Eastern Caribbean States Supreme Court, a vestige of colonialism, shared by all of Britain's former and present colonies in the Caribbean. The legislature, hence, has come to be the only seemingly autonomous branch of government. It is the center of the map of the BVI as this entity is legally constructed. From its position at the center, the Legislative Council gains its potency and salience as the center of national sentiment. The correspondence of legislative jurisdiction with the "physical" space of the BVI naturalizes that space and imbues it with a power of its own. This power comes to appear autochthonous, it seemingly springs forth from the soil of the national territory itself. BVI Islanders often refer to their legislators as "sons of the soil."

There is a deeper reason, however, for the linkage forged between the legislature and progress in Dookhan's text and in BVI nationalist discourse. This has to do with the nature of the historical narrative that chronicles the emergence of the "British Virgin Islands" from the British Empire. In this section, I attempt to convey this narrative and its implicit argument, relying extensively on Dookhan's text. I attach such weight to Dookhan's book for two reasons. The first is that it provides the only comprehensive account of BVI political history.⁹ It was recommended to me by all of the elderly people I interviewed who consider themselves students of local history. It is assigned in the high school. It

⁹ Some BVI Islander readers might object, and cite Norwell Harrigan and Pearl Varlack's (1975) *The Virgin Islands Story*, the only book besides Dookhan's that chronicles "BVI history." Although it is an important work, Harrigan and Varlack's book is considerably less detailed and is, in many ways, aimed at the tourist and "outsider" audience (see especially the last sections of the book, on the "sights" of the BVI).

is noted from time to time in the newspapers. The second reason is that it aptly expresses the popular discourse connecting legislative history to national history and the idea that the history of the territory is the history of its legislature.¹⁰ Using Dookhan's book to "recount the history" and to show how the "national history" is a particular version of the *legislative* history helps us to understand why the legislature has become so important to national consciousness and also how it came to be so. It also exemplifies how "history" and "law" complement one another in modern narratives of the nation-state. The tale told by Dookhan, the sense of which I have tried to retain below, is about the slow and steady march toward BVI self-government through an autonomous legislature. It is a powerful expression of the teleology of modern, Western historical meta-narrative. We always already know how the story will end—with the triumph of democracy, self-representation, self-rule, and the modern, national selves that make representation—and rule—possible.¹¹

An administrative unit of the British Leeward Islands Colony in 1773, the BVI legislature consisted of a Lieutenant-Governor, a Council, and an Assembly. Both the Lieutenant-Governor and the 12 members of the Council, sharing executive duties, gained their positions by appointment of the Governor of the Leeward Islands from his base on the island of Antigua. The Assembly, "the legislative body par excellence," consisted of 15 members elected triennially (p. 195). But because the Governor of the Leeward Islands maintained ultimate executive authority, and had the power to convoke, prorogue, and dissolve the Assembly at will, real political control of the BVI sat firmly in Antigua. And because of this fact, "Lieutenant-Governors rarely assumed office in the Virgin Islands" (p. 195), their post being filled by the President of the Council, to the great annoyance of the elected Assembly. As a consequence, late 18th- and early 19th-century political life in the BVI was characterized by incessant squabbles between the Council, made up of colonial officers with an eye on advancement within the British Caribbean colonial apparatus,

¹⁰ And the same could be said for Harrigan and Varlack's (1975) book.

¹¹ Other histories of the BVI than the one I convey here are being told in the territory today. Two anthropologists have explored the history of slave revolts and of the first free community in the territory (O'Neal 1983; McGlynn 1980). Two others have explored new meanings for local history created by the tourist industry (Cohen & Mascia-Lees 1993). I neglect the first because I am primarily concerned with how the immediate past, and not the period of slavery, is conveyed in BVI discourse. I neglect the second because I believe that law structured people's experience of tourism. I also did not find tourist images to occupy so central a place in everyday life and discourse as the law. Finally, I am concerned quite specifically with the writing of history—whether that writing occurs in the press, in the classroom, in the legislature—and how the writing gives form to popular discourse. History in modernity, I would maintain, cannot be easily detached from its historiography (see Nelson 1994).

and the Assembly, propertied white men selected by a minuscule proportion of a tiny electorate of local merchants and planters.¹²

So many of these latter men saw financial disaster on the horizon with the eventual emancipation of the African slaves that "through . . . immigration and absenteeism the numbers of those capable and qualified to legislate were depleted" (p. 199). The Constitution Act of 1837 attempted to alleviate this state of affairs by reducing from 15 to 9 the number of elected Assemblymen. Furthermore, "to ensure regular attendance" at Assembly meetings, "a fine was imposed on representatives who refused to serve, and no member could resign without the consent of the Assembly" (p. 201). Although, in England, the Colonial Office recognized the problems of elected legislative governance in so small a piece of the Empire with so few white men of property (and even fewer with the coming of Emancipation in 1834), it was reluctant to abrogate the Assembly and establish more direct, "Crown colony" rule. The official reason for this reluctance was the "constitutional precedent" such an act would establish (p. 201). My guess is that the Colonial Office was more worried about the cost such a measure would entail: Crown colony government would mean another high-salaried administrative position for what was considered a backwater of the greater Leeward Islands colony.

Nevertheless, in 1854, in the wake of mass antitax riots that burned down parts of Road Town and demonstrated to colonial lackeys the ability of the Methodist church to galvanize the majority black population, the Colonial Office decided it could no longer "protect" the (white) population of the BVI without more direct control. The fear of "disorder"—of newly freed blacks—took precedence over cost or constitutionalism. But the local government, in the face of metropolitan demands, instead passed the Constitutional Amendment Act of 1854. This Act abolished the Council and Assembly and set up a Legislative Council of 10 members, including a President appointed by the Governor of the Leeward Islands as an *ex officio* member. Hence the Virgin Islands became a "Presidency" within the Leeward Islands Colony. Three members were to be nominated by the Crown, and six elected. While persons elected to the Legislative Council had only to be British subjects, voters had to meet property qualifications designed to ensure a majority white electorate in the face of depreciating property values associated with economic depression and increasing numbers of nonwhites with property.

The British, however, viewed the Act of 1854 as a renegade action, since it did not move toward complete Crown rule, and in March 1855 retaliated by removing from the BVI a detachment of troops stationed in Tortola. Riots again took place in 1856 and 1858, and all requests for military assistance fell on the deaf ears

¹² The electorate consisted of white men of property. In 1837, of a total electorate of 143, only 34 men cast votes.

of the Governor of the Leeward Islands. The Legislative Council eventually capitulated to metropolitan calls for more direct involvement in BVI affairs and adopted another constitutional amendment, providing this time for a Legislative Council of eight members: four nominated by the Crown (including the President) and four elected, with the President having a deliberative and a casting vote. Thus, the Crown's representatives and not those of the "people" (the white, male, propertied peoples) would always be assured a majority. It was a small step from this constitutional change to, in 1867, total and complete "Crown colony government"—that is, direct Crown control through the offices of the Governor of the Leeward Islands in Antigua, with the assistance of an appointed Legislative Council made up of three colonial officers—a President, a Colonial Secretary, and a Colonial Treasurer—and three Virgin Islanders nominated by the President with the approval of the Crown. There is, of course, a palimpsest to the text of this tale as it is told by Dookhan: direct Crown rule guaranteed that the British government would be able to maintain full control over a territory peopled by former slaves and their descendants without having to extend to them the franchise, while it would "protect" the few white planters and merchants who chose to remain.

In 1871, facing financial problems in the administration of the Caribbean colonies, the British government created the Leeward Islands Federation. Local colonial legislatures could defer their legislative powers over certain matters to the federal legislature in Antigua. The office of President of the Virgin Islands was reorganized, overburdening his portfolio with new administrative duties—including those of Magistrate, Coroner, Crown Prosecutor, Treasurer, and some others!—while drastically reducing his salary (from £800 a year to £300 by 1873). From being a direct representative of the Crown before federation, the President was demoted to being an "organ of the Governor" of the Leeward Islands. "As an external symbol of the President's decreased status his official designation was changed to that of 'Commissioner' in 1889" (p. 209).

As a cost-cutting measure for the British colonial establishment in the Caribbean, federation was rather successful. By 1902, the Legislative Council of the Virgin Islands, always more interested in furthering the careers of its members than actually doing much legislating, had deferred *all* its legislative powers to the Federation legislature, "declar[ing] the constitution of the Presidency a subject within the legislative competence of the federal legislature" (p. 208). In 1902, thus, the Legislative Council dissolved, and Virgin Islands governance became the task, locally, of the Commissioner and his Executive Council—three (after 1937, four) appointed men who "met primarily for ceremonial reasons" (p. 218). All legislation emanated from Antigua.

Throughout the Caribbean during the first half of the 20th century, local nonwhite upper classes were consolidating and beginning to find collective voice and power. In the BVI, members of an emerging merchant class, seeing the rise of labor and trade union movements in other British Caribbean territories, sought changes in the territory's governance that would grant them not only a place in politics but the potential to grow into a postcolonial ruling class. A small band of Road Town and Anegadian merchants, tradesmen, and fishermen grouped together, attending labor congresses in other Caribbean islands to "learn how to organize," as one of these men put it to me. No unions or parties resulted, but two civic organizations were formed, the British Virgin Islands Civic League and the British Virgin Islands Pro-Legislative Committee of America (the latter made up of expatriate Virgin Islanders in New York City; note the significance of the name). In 1948-49, politically minded merchants put together a series of petitions and mobilized the mass of Tortolian laborers and farmers, as well as some fishermen from Anegada and fishermen and traders from Virgin Gorda, Jost Van Dyke and Salt Island, to demonstrate in the streets of Road Town for local representation in government.

In response, and in an effort to affirm continued colonial rule, the federal legislature passed in 1950 the Virgin Islands Constitution Act, reestablishing the Legislative Council of the Virgin Islands and providing for locally elected representation. The Legislative Council would be made up of eight members: the Commissioner acting *ex officio*, one other *ex officio* member, two nominated members, and four elected members. The Executive Council, henceforth an "advisory" body, would consist of the Commissioner, the three appointed members of the Legislative Council, and two of the elected members. Legislative powers would rest solely and squarely with the Legislative Council: the acts which had abrogated these powers to the federal legislature were revoked by 1953. A further provision of the 1950 Constitution Act was universal adult suffrage. Still, the Commissioner retained his casting vote in the legislature, which, together with the votes of the appointed members, all but guaranteed executive control over legislative actions.

In 1954, the Presidency of the Virgin Islands was divided into five electoral districts; each was to return one member of the Legislative Council with the exception of the Road Town district, which was to return two. This increased the number of elected members of the Legislative Council from four to six, and gave elected representatives a numerical majority over the appointed members.

A major occurrence now remembered with its own national holiday, "Territory Day" (1 July), was the dissolution of the Leeward Islands Federation in 1956. As Dookhan writes, "defedera-

tion enhanced the political status and legislative power of the British Virgin Islands by making them *a colony in their own right* and by transferring to the local legislature subjects previously reserved for specific treatment by the federal legislature" (p. 222; emphasis added). The Commissioner was renamed "Administrator" and now that the post of Governor of the Leeward Islands had been abolished, the Administrator "became the direct royal representative in the colony" (p. 223). Refederation efforts were underway in the other West Indian colonies but in 1958 the BVI Legislative Council opted to stay out of the new Federation of the West Indies, "principally because the legislature was jealous of its newly acquired powers and it did not want to transfer these again to an *external* body" (p. 222; emphasis added). In characterizing the Federal West Indian legislature as external, Dookhan affirmed the legal creation of the BVI as a distinct space, a distinction forged through "self-representation" and its having its own legislature. What this ignores, of course, is the other external body watching over the BVI: the United Kingdom.

For British Virgin Islanders today, perhaps the single most significant event since 1956 came with the formal introduction of the "ministerial system" of government in 1967. Following a report on constitutional change and "advance" (Proudfoot 1965), the U.K. permitted total reorganization of the legislature and executive along Westminster lines. The Legislative Council would consist of 10 members, 7 elected and 3 appointed (including the Administrator); the Executive Council would consist of 3 of the elected Legislative Council members (dubbed "Ministers") and 2 appointed members (including the Administrator). The electoral districts were redrawn to carve out seven constituencies. The minister who in the opinion of the Administrator "was best able to command the support of a majority of the elected members in the Legislative Council" would be the Chief Minister (p. 226). Political parties would vie to form the "government"¹³—the party gaining a majority of seats in the Legislative Council would choose from among their winning men (for men they all were)¹⁴ a Minister for Natural Resources and Health and a Minister for Works and Communication. The minority party would form a "loyal opposition." The Administrator was retitled "Governor" in 1970.¹⁵

¹³ Political parties have existed in name only in the BVI, leading several local commentators to refer to the process of party formation and dissolution that occurs immediately before any election as "jumbie politics" (jumbies being a kind of spook). I discuss political parties in Maurer 1994:ch. 4. See Rhymer 1992; Harrigan 1990; and Romney 1992.

¹⁴ The BVI just elected 2 women!

¹⁵ There have been changes in the ministerial system since 1967, but I only touch on them here. Another constitutional advisor reported on the territory in 1972–73 (Deverell & da Costa 1974), recommending several changes. Based on these recommendations, the Legislative Council in 1976 reorganized the ministerial portfolios, included Finance within the purview of the Chief Minister (removing it from the Executive Coun-

In the 1800s, the legislature was the ground fought over between local whites and the colonial apparatus in London and Antigua. As the primary site of struggle between colony and metropole, the legislature came to stand for the "local" as the one place where whites in the British Virgin Islands could assert control over their affairs without interference from either colonial lackeys or London. The majority African-descended population is absent from the "history" of this struggle, except as a riotous rabble mobilized by the Methodists and threatening local whites.

What is striking in Dookhan's text, however—so striking that, for me, his description of the transition from the legislatures of the 19th century to those of the 20th demanded several rereadings—is the elision of the all-white Legislative Councils of the 19th century into the post-1950 racially representative Councils. His story is about the "reconstitution of the Legislative Council" and *not* about the constitution of a new "representative" council. The post-1950 Legislative Councils, for Dookhan, are part of a clear line of Legislative Councils, a line only broken between 1902 and 1950. Dookhan's story charts a clear course toward self-representation, beginning with the early Assembly. He does not posit a disjuncture between this Assembly and the Legislative Council of today.

Dookhan's perspective differs on this point from that of many BVI Islanders. For many, 1950 marks the date when the British Virgin Islands won their "own" government. For many, the territory's history begins in 1950. Indeed, the council established in 1950 is officially the "first" Legislative Council of the British Virgin Islands because of the recordkeeping practices of clerks of the Legislative Council. In 1957, the clerk of the Legislative Council titled her report of the minutes of a meeting, "Twenty-Second Sitting, Fourth Session, *Second Legislative Council* of the British Virgin Islands" (Minutes 3/13/57). From that point forward, it became standard practice for clerks, the press, and the populace to refer to each consecutive Legislative Council by number, using the council of 1950 as the starting point. In contrast, Executive Councils—which, remember, were maintained from 1902 to 1950 despite their limited role—are not given numbers, distinct identities from one another, or pride of place in histories in books and in public discourses. Dookhan's book, in chronicling the "evolution" of the BVI up until the point of "lo-

cil), increased by 2 the number of members of the Legislative Council and redistricting accordingly, and increased by 1 the number of ministerial portfolios (thereby increasing the elected component of the Executive Council by 1). By 1977, the Executive Council was composed of 4 elected members and 2 appointees, the Governor, and the Attorney General. In the summer of 1994, as I was revising this essay, the Foreign and Commonwealth Office unilaterally decided to increase the number of elected legislators from 9 to 13 and provided for the election of the additional 4 members "at large" (i.e., by the total electorate) rather than by district. This met with opposition from the Chief Minister and traditional power brokers. I have discussed this developing situation in Maurer 1994.

cal" legislative representation, resonates with BVI discourse. The reinstatement of the legislature, the endpoint of Dookhan's history, has in present-day BVIlander national discourse become *the* defining moment in the creation of a distinctively BVIlander history. The Legislative Council assumes the position of *the* defining feature of this national history. History turns on its inception.

Everyday Discourse about Law and Politics: Political Vocabularies, National Celebrations, and Immigrants

What kinds of everyday conversations led me to the argument developed here? I do not wish to suggest that the law-history-nation triumvirate I have outlined above reflects the only discourse invoked by present-day BVIlanders when they talk about their identities and their pasts. There is of course dissent and disagreement. But I do believe that it is possible to sketch out a basic grammar underlying the arguments and conflicts that emerge among BVIlanders contesting their nation's pasts. Participants in local arguments may disagree about many things, but they express their disagreements in a tacitly accepted common language with a common vocabulary that sheds light on the discourse linking law to nationhood and the importance granted to the legislature in the sense of the BVI as a distinct national entity.

The word "government" often comes up in discussions among BVIlanders, much more so than among residents of the United States. "Government" often refers to the Legislative Council, not the other structures of statecraft. Only occasionally, as when a member of the opposition speaks out against "government" decisions, does the term signify the Ministers—the government members of the Legislative Council.

The abbreviation for Legislative Council—"LEGCO" or "LegCo"—has entered into common parlance as a synonym for "government." LegCo is pronounced "Ledge-co" (soft *g* sound). There is no corresponding common agreement on a written abbreviation for "Executive Council." The press sometimes uses "EXCO" or "ExecCo." In speech, however, people abbreviate Executive Council by pronouncing the syllables "Edge-Co" with the same soft *g* sound used in "Ledge-Co." No contraction of the words "Executive Council" in BVIlander dialects of English would yield an acronym pronounced this way. While in the field, I put quite a few BVIlanders to the test on this. No one could come up with a reason for pronouncing an abbreviation for Executive Council "Edge-co," except for the simple and perhaps obvious one that "Edge-Co" is pronounced "Edge-co" because LegCo is pronounced "Ledge-Co." To be a bit reductive, it seems "Edge-Co" obtains its spoken linguistic identity from LegCo and is derivative of it.

Another element in the vocabulary of government and politics are words used to refer to the Chief Minister and the Deputy Chief Minister. The Chief Minister is often dubbed "Chiefie" or "the Chief," and his role is often equated with that of the President of the United States. Like the President, people told me, the Chief Minister truly is "the chief," "hail to the chief!" The Deputy Chief Minister is sometimes styled "the Deputy Chief" or the "second-in-command." Such nicknames elevate these two elected legislators' positions and tend to downplay or even deny the underlying political realities of the British Virgin Islands: that the territory is a colony of the United Kingdom and is subject to the authority of the Crown.

The fact that the BVI is a dependent territory and not a politically independent nation-state does not stop BVI Islanders from staging "national" celebrations. In November 1992, the BVI celebrated the 25th anniversary of the ministerial system of government. This was the first major celebration *self-consciously* and *officially* styled by its organizers and participants a "national" celebration.¹⁶ The ministerial system, as mentioned earlier, is a form of government and colonial administration. Its major lasting and practical effect was to guarantee a majority of elected members on the Executive Council. On this level alone, it is interesting that the anniversary of ministerial government would be cause for "national" celebrations. But what is more interesting for my concerns is that the focus of events commemorating the inception of the ministerial system was the *legislature*. Former legislators were honored in various public forums. The public library provided short biographies of each legislator and used my interview materials and archival research for this purpose. A lasting product of these activities was a commemorative volume compiled by various intellectuals, writers, political observers and civil servants. Entitled *Challenge and Change: The Awakening of a People, British Virgin Islands*, the volume was devoted to the "progress" the BVI has experienced under the ministerial system. Articles reviewed progress in education, social services, medicine, library services, mental health, agriculture, tourism, banking, infrastructure, and so forth. Almost all the instances of "progress" were discussed in terms of the *legislation* effecting or enabling them. To take just one example: the article on "developments in health during the past 25 years" (Smith & Frett-Georges 1992:114) makes much of a commentator from the 1970s who had argued for "advancement in our mental health legislation." The authors conclude their essay by noting that such legislative advancement

¹⁶ Some elites and anthropologists (Cohen & Mascia-Lees 1993) consider the annual August Festival (1–4 August) a "national" celebration. But Festival is about the emancipation of the slaves in all the British Caribbean colonies, and Festival celebrations hence place emphasis on the BVI's "Caribbean" connections (although as Cohen and Mascia-Lees point out, in recent years some elites have been using Festival to stress the BVI's "uniqueness").

did in fact occur *because of* the ministerial system and that "the Ministerial System has brought us a long way" (ibid., p. 115). The two main overview articles in the volume detail the development of the system of elected representation in the legislature (Romney 1992; Rhymer 1992). Other articles chronicle the rise of the territory's economic mainstays—tourism and the offshore finance sector—in terms of the legislative acts that made them possible. In our co-authored contribution to the book, Michael O'Neal and I noted that the first ministerial government instituted new legislation that both reflected the socioeconomic changes caused by tourism and in turn generated other changes (O'Neal & Maurer 1992), but we, too, told a story that equated "legal developments" and "national developments" without questioning how and why the law became a key signifier for the nation. Instead, the law was, in our own and others' contributions to the volume, both descriptive of and explanatory for "the nation." Why was it so simple for us all to conflate the nation and the law?

Perhaps I can suggest an answer by anecdote. One day during my fieldwork, I stopped at the shop of one of the BVI's Arab population. Lebanese and Palestinians are among the many small groups of settlers in the BVI. Most of the resident Arab population arrived around the time of the 1967 Arab-Israeli war. Today, they form a visible merchant class but are not significant property owners (usually owning only their inventory of clothing, small electronics, and shoes, and renting the shop in which they sell their goods). I had interviewed this shopkeeper previously, and knew him well. Over a soft drink and thick coffee, I asked him why he thought BVI Islanders had accepted Arab settlers in their midst with more ease than they had accepted immigrant West Indians. He didn't respond immediately to my question. Instead, he provided an answer to a question I hadn't thought of asking: Why did *he* consider the BVI a nice place to live? Before coming to Tortola, he told me, he had visited the United States, Puerto Rico, Canada, and St. Thomas in the U.S. Virgin Islands. But he liked the BVI the best. "I have liked being in the West, [but] there is too much freedom. We [Muslims] are not used to that; that is not our way. I like the BVI because it is not like that. There is not as much freedom here. America is a good country, American money is the money for the world, but there is too much freedom in America." What, I wanted to know, did he mean by freedom? His reply: "You know, with women going about, all dressed up with make-up and bikini, and all the crimes, crime you see on TV every day!"

I thought the comments of this shopkeeper were interesting on their own merits, and was thinking of them in terms of an Arab immigrant experience to the West. So I was quite surprised when I heard the reaction of BVI Islanders to this man's story. Af-

ter talking with the shopkeeper, I hurried off to the office of a BVIlander friend and fellow social scientist to share the conversation I had just had. When I told my friend that the shopkeeper's characterization of life in the BVI surprised me, this native social scientist leaned back in his chair, smiled, and said confidently, "What did he say? 'Law and order'?" Other BVIlanders I spoke with also interpreted the shopkeeper's sentiments in terms of "law and order" and told me he sounded perfectly reasonable. And this coincidence of sentiment provides the answer to the question I had originally put to the man.

The words "law and order" figure most prominently in BVIlander discourse about British Virgin Islander-ness. Islanders routinely used the expression to refer to themselves and their society. Statements like the following are commonplace: "We are a law and order people," "I am a law and order man," "Without law and order, where would we be?" "We are not like people in St. Thomas, we have law and order," "The immigrant population is a threat to law and order," "I've always been for law and order." The BVI Tourist Board, for its part, markets the territory as "peaceful," not in the sense of Edenic serenity and tranquility but rather in the sense of law and order. The marketing of the BVI as a tourist retreat regularly contrasts the BVI's law and order with "crime-ridden" St. Thomas or Antigua. One tourist advertisement sports a picture of a member of the Royal Virgin Islands Police Force in full regalia. And the offshore financial services sector relies on the image of the BVI as a "stable, law and order society": "Our people are very strong on law and order," said the Deputy Chief Minister in an interview with the international finance magazine, *Euromoney* (1989:51).

But what does law and order mean in the discourse of BVI uniqueness? For one thing, it means quite explicitly, "we will never separate from Britain." As one informant put it, "We have the best of both worlds—the American dollar, and British law and order"; and another, "Why would we want independence? We have the security of Scotland Yard behind us!" People also contrast the BVI's law-and-orderliness with the perceived disorder and criminality of other Caribbean peoples, especially those living and working in the BVI. Such contrasts are as commonplace as the "law and order" catchphrase. BVIlander discourse about law and order as a source of their uniqueness is thus intertwined with discourse about immigrants to the BVI. When I asked BVIlanders in the most general terms how they feel about different groups of immigrants, I got stories about those groups' lack of law and order. Let me give just three examples.

Immigrants from St. Lucia and Dominica, I was told, are not at all "lawlike." In particular, they try to subvert the legal process. It is well known, I was told, that St. Lucians and Dominicans are all practitioners of *obeah*—a form of witchcraft which, one in-

formant reminded me, "you know, is illegal in the BVI!" Indeed it is, under a 1917 Obeah Act. Furthermore, this person informed me with a hushed voice, "See what happens when one of them is in court—you look down the street and see one of them *sukuyas* [an obeah-woman] running up and down. Lord! And she puttin' on and carryin' on all kind of nonsense and obeah, and the men them in court never does get put in jail!"

Immigrants from the Dominican Republic, many BVI Islanders believe, are prostitutes. I once challenged some community college students on this belief. I told them that I knew many Dominican women, and not one of them was a prostitute. One student replied, "Oh yeah? How you is so sure?" And another said, "Well, O.K., that may be so. [But] they is either prostitutes, or hairdressers!" while a third interjected, "And you know them hairdressers is prostitutes just the same!" as the class broke into laughter. People from the Dominican Republic who claim BVI ancestry, meanwhile, are held to be the "children of whores" and, I was told, "aren't legitimate members of BVI society."¹⁷

In recent years, large numbers of immigrants of South Asian descent, mainly Hindu, have come to the BVI from Guyana.¹⁸ British Virgin Islander discourse about "Indians" emphasizes their disorderliness and their disrespect for law and order. "The men beat their wives," and they have "arranged marriages" (assertions I discovered to be unfounded in my involvement with the Guyanese community on Tortola). The practice of Hinduism, meanwhile, "looks like obeah," and "*that is illegal!*" Furthermore, "they always trespassing on your property" and "they is the worst tenants—15, 20 of them sleeping in a two-bedroom apartment and not paying the rent." Finally, "they always scheming, trying to cheat you."

These kinds of stories about immigrants, I maintain, solidify a sense of BVI Islander law and order by defining what it is not, and thereby defining what it is to be a British Virgin Islander (see Fitzpatrick 1992). But law and order is not defined only negatively. From the relative lack of crime in the BVI, it appears that there is some evidence to support the contention that the BVI is

¹⁷ Many people from the Dominican Republic in the BVI can claim BVI ancestry, for they are descendants of BVI men who left the territory in the early part of this century to work on Dominican sugar plantations. BVI Islanders tend to look down on such people, and many are unwilling to accept these Dominicans into BVI society. BVI Islanders justify their reluctance to grant these immigrants citizenship by arguing that the immigrants or their parents are "illegitimate" children of BVI men and, as such, have not inherited their fathers' or grandfathers' citizenship status (for citizenship is passed from a BVI father to his child only if the child is "legitimate" or born in wedlock). I have written about this situation in detail in Maurer 1994, 1995.

¹⁸ Like Trinidad, Suriname and, to a lesser extent, Jamaica and Grenada, 19th- and early 20th-century Guyana witnessed influxes of South Asians indentured to work on British sugar and rice plantations. At present, more than 50% of Guyana's population is "Indian" or "East Indian," as these people are called in the Caribbean. Most of these are Hindus. For a review of the literature on Caribbean East Indians, see Vertovec 1992. On Guyana in particular, see Williams 1991.

a law and order society. To many BVI Islanders, it is the mostly foreign-born police force that is responsible for what little crime occurs. "Them a bunch of down-island hooligans," one BVI Islander described the police, more than half of whom are from other Caribbean islands.¹⁹ It should be noted, however, that what crime there is involves BVI Islanders more often than immigrants or (at least directly) the police. The Governor's recent appointment of a "native" British Virgin Islander with a well-known and well-respected family name to the post of Commissioner of Police has served to bolster BVI Islander confidence in the Royal Virgin Islands Police Force and, perhaps, to further solidify the identification of BVI Islander-ness with law and order, while resolving the apparent contradiction between distrusting police and being lawlike.

"Our Own Laws! Not 'Exotic Plants'!"

Because of the salience of law and order to the BVI Islander discourse of national uniqueness, because law both solidifies a sense of "national" identity and expresses the "national self," a recurrent concern of the legislatures since 1950 has been "borrowed laws": pieces of legislation drafted in the other colonies and states of the Caribbean and Commonwealth, brought into the Legislative Council by the Attorney General's office to be adapted and adopted for BVI use. Although the practice was common in British colonial history and has continued through the Commonwealth, this circulation of legislation has been unpopular in the BVI, and the adoption of "foreign laws" has been a continual sticking-point between the Attorney General's office and the Legislative Council. At times, debate has even turned toward recalling the Attorney General and/or demanding that the Governor appoint a "local" Attorney General. The Governor did, in fact, bow to Legislative Council pressures, appointing a British Virgin Islander to the post of Attorney General during my fieldwork. Here I present some examples from archival materials of the kinds of debates "foreign laws" have inspired in the legislature.

In response to a situation in which the territory had an "Attorney General who had been so concerned with other countries, that he had written into BVI law, what was done in Antigua," as one legislator put it from the floor (Minutes 12/7/78), the Legislative Council passed a resolution calling on the Governor to appoint "a qualified West Indian barrister or retired judge" to fill the post (Minutes 4/13/78).

¹⁹ "Down-islander" is a term used to refer to people "from down the islands," that is, from the islands of the eastern Caribbean to the south of the BVI (e.g. Antigua, St. Kitts, Nevis, Dominica, St. Lucia, Grenada).

In a similar vein, during the introduction of a minor piece of legislation (Summary Jurisdiction Act (Amendment) Ordinance 1977) amending certain legal fees and giving the magistrate jurisdiction over suits brought for damages up to \$2,000, the Attorney General mentioned that "it followed the pattern in Antigua." A member of the Legislative Council replied, "What was good for Antigua was not relevant for us. . . . [T]he 1st July 1956 was the day when the BVI broke away from the Associated States [the former Leeward Islands Federation] and that . . . day should always be a holiday!" (Minutes 4/21/77).

In another incident, a piece of legislation designed to amend building and construction codes and fees (Land Development (Control) (Amendment) Ordinance 1978) was held up in the legislature because, as one member stated, "[T]he time had come to look at what was good for the BVI, because what was good for Antigua and the Bahamas was not good for the BVI. . . . [T]hey should stop bringing 'exotic plants' but should look within what was relevant to the needs of the Territory" (Minutes 1/26/78). "Exotic plants" was the term used by former Trinidadian leader Eric Williams to describe outside "experts" and foreign legal draftsmen.²⁰

Another bill, to provide for apprenticeship training of high school students (Apprenticeship Bill 1978), also brought out concerns over borrowed laws. One legislator remarked that the bill "seemed to be from St. Kitts" and added "[we] needed legislation relevant to [our] own needs." Another member responded that "foreign" legislation such as this pointed toward "matters of greater precedence"—that "this legislation had been brought here to keep the indigenous people in the saddle" and that "we were going into slavery." "It is time," he added, "that the elected members run the country," and he called for the creation of a fourth Ministerial post (Minutes 2/23/78). Such a post was created, in fact, in time for the 1979 elections.

I do not mean to seem unsympathetic to the concerns of legislators over "nonlocal" laws, nor do I wish to trivialize characterizations of nonlocal laws as vestiges of colonial domination. There are three points, however, which warrant attention. First, none of

²⁰ Eric Williams (1911–81) was Chief Minister of Trinidad and Tobago 1956–59, Premier 1959–62, and Prime Minister 1962–81. In addition to having been Trinidad and Tobago's founding statesman, he was also the author of numerous books, including *Capitalism and Slavery* (1944) and *From Columbus to Castro* (1970), both highly influential works in Caribbeanist scholarship and Caribbean nationalist thought. His *History of the People of Trinidad and Tobago* (1962), available in print on the eve of Trinidad and Tobago's independence, makes clear the connections between "history," historiography, and nationalist projects I trace in this essay. He states, "the aim of writing the book . . . was to provide the people of Trinidad and Tobago on their Independence Day with a National History, as they have already been provided with a National Anthem, a National Coat of Arms, National Birds, a National Flower and a National Flag. . . . Designed to appear on Independence Day, August 31, 1962, it is the Declaration of Independence of the united people of Trinidad and Tobago" (Williams 1962:ix–x).

the laws disparaged as "foreign" *ever* failed to pass in the Legislative Council. In fact, usually they passed *unanimously*. Second, concerns over foreign laws, or over the U.K. "forcing" laws upon the BVI or attempting to "control" the BVI through such laws, have *never* crystallized into sustained criticism of colonial rule. They have led to no constitutional crises. They have produced no boycotts of Legislative or Executive Council meetings. They have fomented no calls for independence among legislators or in the community. Third, in the BVI legal drafters are usually *outsiders* from other Caribbean or Commonwealth countries anyway. They draft most of the laws for the Legislative Council, while the Legislative Council only claims official authorship.

What is important in cries against "exotic plants," I maintain, is not the laws themselves, their contents, their intended or unintended effects. What is important, solely, is a particular understanding of their origins: where were they written, and by whom? Is a piece of legislation "our own law," or someone else's? Was it written by "our boys," or someone else's? The fact of the law alone, its presence, and not its provisions, its letters, are what matter to BVI Islanders and British Virgin Islander-ness. We need "our own" laws as emanations of, demonstrations for our "uniqueness." In "authoring" their "own" laws, British Virgin Islanders demonstrate their ability to be "authors," to write from a coherent and unified and unique subject position, to authorize a "nation"—to be the subjects of (legislative, national) history—even if someone else does the actual writing for them.

The International Business Companies Ordinance of 1984

In 1984, British Virgin Islanders became authors. The Legislative Council enacted what was perhaps the most significant piece of legislation in BVI history, and it was a piece of legislation they could claim as their own. The International Business Companies Ordinance of 1984, in addition to being touted as the first truly local law of the BVI, heralded a new era in offshore financial services worldwide.

The International Business Companies Ordinance (IBCO) set up the provisions for the incorporation of a new kind of investment entity: the "International Business Company," or IBC. Under the IBCO, an investor can set up an IBC in the British Virgin Islands for an incorporation fee of \$300 and an annual licensing fee of \$300, if the IBC has share capital of \$50,000 or less, or an incorporation fee of \$1,000 and an annual licensing fee of the same if the IBC has share capital over \$50,000. IBCs are subject to no other fees and are subject to no income tax.

Prior to the invention of the IBC, other jurisdictions marketing themselves to investors as tax havens (e.g., Jersey, Guernsey, Panama) charged minimal income tax on investment earnings or

mandated that boards of directors meet once a year on tax haven soil. The BVI, by placing neither of these constraints on offshore investors, rapidly rose to prominence among the world's tax havens. And in less than 10 years, thanks to the IBCs, the offshore financial services sector has overtaken tourism as the primary source of revenue for the BVI.

Members of the Legislative Council invoke the IBCO almost as often as they used to complain about foreign laws. Legislators proudly proclaim that now other countries copy *their* laws. They have gone from being imitators to being the source. They have become originary. And the IBCO has become a benchmark against which to measure all new legislation coming through the Legislative Council. As one legislator said of a Mental Health Bill (1985) he was introducing, "This Bill which I am asking this Honourable House to pass into law constitutes one of the most far reaching pieces of social reform to be introduced into this Territory in recent times. It seeks to do on a social level what the International Business Companies Ordinance has sought to achieve in the financial sphere" (Minutes 6/28/85).

It bears emphasizing that the IBCO, while certainly one of the most important pieces of legislation for the economic prosperity of the territory ever introduced, occupies a place in the national imagination because it is a "local" law, because "we" wrote it "ourselves" and didn't "borrow" it from anyone, and *not* because it had such a huge impact on the economy. And in a sense, rightly so, for at least one member of the Legislative Council actually *did* have a hand in its drafting. Most BVI Islanders, however, have no idea what an IBC is or how one works, much less how IBCs contribute to the government coffer. People refer to all aspects of the offshore financial services sector vaguely as "trust company business" or "the banks." What is important to BVI Islanders' everyday discourse is not what the IBCO says or does; what is important is that it is "ours" and "our own."

When the IBCO is characterized as "our own law," it establishes a charter for a uniquely national subject, an author of laws. In the world of international finance, IBCs created under the ordinance are the BVI's own in a *proprietary* sense: the BVI owns the possibility of IBC creation, and it is this possibility that is sold to offshore investors. The IBCO thus makes for BVI Islanders a British Virgin Islander author, a speaking subject, a unique national identity as law writer. The subject created is also an owner: it now possesses laws that can be copied by lawmakers in other countries, and it possesses a potential—of IBC incorporation—that can be sold to international investors. For these investors, the IBCO creates a BVI product, a distinctive entity into which they can put their profits. For both local BVI Islanders and international capitalists, the law has produced difference. This differ-

ence is proprietary in character, and constitutive of a national subjectivity.

Local Difference and Global Integration

The IBCO made another difference for the BVI. In 1992 alone, just eight years after the introduction of the law bringing them about, IBCs contributed \$21 million directly to government revenue, of a total revenue of about \$54 million—an increase of more than 30% over 1991 figures (Meyers 1993a; British Virgin Islands Legislative Council 1992). Slumps in the tourist sector led the Chief Minister to report, in 1993, that monies from IBCs had “more than offset stagnating or declining revenues from just about all other areas of the economy,” leading BVI newspaper headlines to proclaim, “Financial Services Driving Economy” (Meyers 1993b).

Since 1984, more than 60,000 IBCs have incorporated in this territory of 18,000 souls.²¹ The discovery of links between financial activities in the Cayman Islands and Oliver North’s arms-for-hostages deals (Lohr 1992), as well as the BCCI scandal, took some of the financial winds out of the Caymans’ sails, winds now blowing toward the BVI. After the fall of Noriega, the BVI turned out to be a godsend for Panamanian financiers. And within the past two years, capitalists in Asia have begun to look at the BVI. The territory is now touted in leading Asian finance magazines as one of the best places to incorporate in preparation for Chinese integration of Hong Kong. The BVI has also become attractive to U.S. and U.K. investors, who are seeking a secure and reputable jurisdiction relatively untainted by scandal and drug money but also conducive to the free movement of capital. As one New York lawyer said in an interview published in the *Far Eastern Economic Review*, “Lawyers love the British Virgin Islands. You can do anything you want” (Burton 1992:43). The *Review* continues, “Obtaining tax-exempt status in the British Virgin Islands is as difficult as choosing a name and paying a registration fee.”

Although most people have no idea what goes on inside “the trust companies,” they cannot miss the public presence of the world of international finance in the BVI. New buildings housing lawyers and consultants are springing up throughout the capital city of Road Town. The road coming from the east into this town

²¹ This may seem a small number given the huge revenues generated by IBCs, and is based on a count of IBCs that were *still on the books* when the count was done. It is the only figure now available. The newspaper reporter who provided this figure did not attempt to count the *total* number of IBCs that have incorporated in the BVI since 1984, which would include IBCs that were incorporated and dissolved between 1984 and the present. Many IBCs have a “shelf life” of only a few weeks or years before they are dissolved; others have been around since the ordinance was passed. A new computer system is being installed by the Ministry of Finance which may help provide better counts of IBC incorporation and dissolution in the future.

of 8,000 is flanked on both sides by these new "trust company" buildings, and the seaward facade of Main Street is dominated by two such structures. Each week, 1 to 3 pages of each of the BVI's two 20-page weekly newspapers are taken up by IBC incorporation and dissolution notices. High school students see "working for the trust companies" as lucrative, prestigious, and glamorous—even when the only jobs available for them are limited to front-end office work. Indeed, teachers bemoan the fact that the best and the brightest of the BVI High School are looking to "the banks" for careers, instead of pursuing vocational training or college degrees. People who get "trust company" jobs, meanwhile, are relatively highly paid and so themselves make the best advertisement for the "trust company" career path.

While the offshore financial services sector might mean little more to the public than "bank jobs" and the prestige associated with them, government and offshore investors are keenly aware of the instability of the investment market and the risks involved in depending heavily on revenue from financial services. Examples of failed tax havens—like Panama—put a damper on optimism. Many factors influencing the success of the BVI as a tax haven are beyond the government's control; but the government has actively pursued the one crucial intangible that seems to make or break a haven: reputation. In a *Euromoney* marketing brochure, BVI government officials and members of the Legislative Council repeatedly stressed that the BVI is a stable jurisdiction, free of drug money and shady dealings, and only for "legitimate" business enterprises:

[W]hile the Government strongly encourages some types of activities, it strongly discourages others, including certain types of banks. "We have not and will not be granting offshore banking licenses to individuals or unproven entities," says Financial Secretary Robert Macthaviour. "They can go elsewhere and form their bank in a day or two. But we do invite those banks with an established track record to consider the BVI. They can expedite their application through a local legal advocate or through one of the trust or service companies already established here. I should emphasise, however, that we will search into the bona fides of all applicants, and it may take some time. . . . This is an offshore center that is not for everyone. But it is for those who want to do legitimate business in a stable environment, a British dependency based on Anglo Saxon common laws. For those who want to do business from such a jurisdiction, we strongly believe that they can find no better place to do it." (*Euromoney* 1989:49).

The Chief Minister stated in the same brochure:

We always ask, does this go with our image, and whether or not it has the wherewithal to be a credit to those here and to the people who choose to come here. That's the recurring theme in everything we do. . . . We have been very conservative in our

approach. We may have been too conservative at times for some people's taste. But, we want to make sure everything we do does justice to and enhances the reputation of the Territory. (Ibid.)

The Gallagher Report

But how to maintain a good reputation in such a fickle and risky business as offshore finance? For the BVI and other Caribbean dependent territories who took the tax haven road, the answer was an in-depth study of the financial services of each of the territories, to determine what loopholes needed to be filled and what safeguards were needed to lessen the chances that money laundering and other illegal activities would occur. The territorial governments and the Foreign and Commonwealth Office invited Coopers and Lybrand, a well-respected financial management consulting firm, to conduct such a study. In 1990, the firm issued its *Report* published by Her Majesty's Stationery Office and "ordered by the House of Commons to be printed." This report became known in the BVI as "the Gallagher Report" and it reviewed, territory by territory, the operations of the financial services sector, the potential weaknesses, and possible remedies to enhance "supervision and regulation" (Gallagher 1990:3).

There were two main recommendations. One was "legislative changes, including new legislation in a number of instances." For the BVI, the Report specifically recommended "new legislation in order to give legal strength to . . . proposed regulatory procedures." The other recommendation was "the establishment of a Financial Secretaries Advisory Panel" which, "for consistent progress to be made," required, in Gallagher's opinion, "an on-going programme of technical assistance support" to be provided by "H[er] M[ajesty's] G[overnment]."

The legislative recommendations in the Gallagher Report were not vague or general. The Report contains drafts of proposed legislation which Gallagher thought appropriate for each territory. These drafts, in fact, make up the bulk of the Report. For instance, the section on the BVI (pp. 46-89) contains only 13 pages (pp. 46-56, 88-89) on the problems and prospects of the financial services sector, while the other 31 pages (pp. 57-87) are proposed legislation: a "Draft Bank and Trust Law," a "Draft Insurance Law," and a "Draft Company Management Law." These drafts are detailed and complete, right down to the dotted line. Each concludes in standard legal drafting form:

Passed the Legislative Assembly this day of _____, 1989.

President

Clerk of the Legislative Assembly

All the Legislative Council had to do to adopt Gallagher's "laws" was to fill in the appropriate date, change the words "Assembly" to "Council" and "President" to "Speaker," have the Speaker and Clerk sign it, and send it off to the government printers.

And this is exactly what it did. The Draft Bank and Trust Law became the Banks and Trust Companies Act (No. 9 of 1990); the Draft Insurance Law became the Insurance Business (Special Provisions) Act (No. 1 of 1991); and the Draft Company Management Law became the Company Management Act (No. 8 of 1990), each with only minor additions, deletions, and modifications from Gallagher's original.

The other recommendation of the Gallagher Report, the establishment of a dependent territories financial advisory panel, at first wholly supported by the Legislative Council (Minutes 9/10/90), is perhaps bearing fruits the legislature did not expect. The Foreign and Commonwealth Office (FCO) and dependent territories did not follow the recommendation outright. But late in 1992, the FCO announced the creation of a Board of Management for Dependent Territories (later named Ministerial Group of Dependent Territories). It was to be composed of the Crown-appointed Governors of each territory, and its role would be to consider "aid allocation, [to] monitor drug trafficking activities, and [to] revise outdated laws in the dependent territories" (Meyers 1993c:3). An explicit purpose of the proposed board was to give international investors some degree of confidence that Britain's dependent territories were "clean" of illegal offshore activities. The impetus for the proposal for the board grew from a variety of factors, but the BCCI scandal involving the Caymans was surely a great embarrassment to the FCO and a contributing element in the decision. There is probably, too, an implicit racism in the FCO's decision: investors would be assured that, a British Virgin Islander might say, "the English boys are looking over things."

The proposed board is now a sore point and, recently, the occasion for fiery words from the Chief Minister to the FCO. The Chief Minister (who at first supported the idea of a board) has maintained that such a board is an insult and an affront to the "sovereignty" of the BVI and other dependent territories. His arguments exemplify the teleology of BVI historical progress, of moving ever "forward" toward the nation-state—a goal jeopardized by the possibility of the board. The local newspaper reported:

The chief minister [*sic*] said he views the establishment of the board as a "backward" step. "We've had 25 years of ministerial government and now we've got to move on," he said. "Therefore I am still not happy that there is now a move to have certain intrusion on our present constitution." (Meyers 1993c:3, 12)

Note that his statement does not *challenge* the present constitution, the constitution that guarantees colonial status, but rather argues for protecting it. The Chief Minister has made no calls against continuing the colonial relationship between the British Virgin Islands and the United Kingdom. Progress, it would seem, marches on but never quite reaches independence.

The Mutual Legal Assistance (United States of America) Act of 1990

It was not just the British who were concerned with the "reputation" of the BVI's offshore financial services sector. The United States, too, became involved officially to stem the tide of drug traffickers using tax havens to launder money. Just as the Chief Minister and other legislators did not see the Gallagher Report as an occasion to challenge their colonial relationship with the U.K., so they did not view the U.S. actions in terms of their own subordination to a foreign power. In 1990, the Legislative Council adopted the Mutual Legal Assistance (United States of America) Act (No. 5 of 1990). As the Chief Minister reported to the legislature, "the purpose of the Bill is to give effect to a Treaty providing the Governments of the United States and the BVI to help each other in the investigation of a variety of serious crimes" (Minutes 8/31/90). The treaty which the bill was to rubberstamp provided for "mutual assistance" in investigation, enforcement, and prosecution of cases of transnational crime, mainly drug-related. In the BVI, the treaty provided legal means for U.S. federal investigators to scrutinize offshore financial records.

The Leader of the Opposition spoke eloquently and with humor against the bill, yet he, along with all the other legislators, voted in favor of it. His comments illustrate clearly the contradictions of the BVI's colonial situation:

You know it's very difficult for me to take on a situation where unequal partners or incompatible partners go to bed together. There is in this community a wise old sage . . . who at one time found himself in a sort of partnership with the Government in an enterprise and he wanted to move ahead at his pace. The British Virgin Islands Government could only move at its pace; and his comment at the time was 'we are unevenly yoked; separate me, Banabas [*sic*] and Saul.' So he went his way. . . . Here in this Measure we find ourselves unequally yoked, not because it's something we want to do as a Legislative Council but because our metropolitan masters have deemed it fit to enter into a Treaty with a . . . friendly foreign power, a superpower if you please, and have entered into that Treaty with the object and intent and the power to ensure that it takes place, of us having to comply here in the British Virgin Islands. I don't have any problem with that; that's the Constitution under which we ex-

ist; that's our preferred association with Britain; and you can't have your cake and eat it too; but I just want to point it out for the benefit of those who will, ultimately, like myself, criticise this relationship. (Minutes 8/31/90)

The Gallagher Report and the Mutual Legal Assistance Act broke the relationship between British Virgin Islands legislative jurisdiction and "real" territory. Prior to these developments, the Legislative Council could operate as a quasi-autonomous body solely responsible for the laws of a particular space. Now, however, other actors have a part to play in the creation and enforcement of law. Part of the resistance to the Dependent Territories Board and the Mutual Legal Assistance Act stems, I think, from this erosion of the legal-spatial relationship between the physical space of the BVI and its legislature.

More significantly, however, when Rodney Gallagher's draft legislation became "real" legislation, the Legislative Council effectively deferred its authorship to Coopers and Lybrand. For the members of the legislature at least (and somewhat after the fact), that action represented a tragic abrogation of authority to another power: international finance capital. For Coopers and Lybrand, in contrast, the situation could not have been neater: the consultants got to design laws to benefit investors consulting them (cf. Dezalay 1993). Herein, I believe, lies a part of the reason for the turn-about on the issue of the Dependent Territories Board. When BVIlander legislative power over the BVI began to dissolve, the Legislative Council had to take a stand against further "encroachment" into its domain, its "sovereignty." Of course, the encroachment was already complete. The Gallagher Report established a precedent. The Legislative Council is no longer autonomous. Similarly, the Mutual Legal Assistance Act, as the Leader of the Opposition pointed out, is an agreement between unequals. The United States has executive authority to intervene in BVI affairs in the pursuit of criminals. The Executive Council, never autonomous because of its links to the U.K., now has to contend with a bigger and more powerful executive and judicial space, one that includes and is dominated by the United States of America.

Conclusions: "Nationhood" for a Colony in an Era of Globalization

I argued that the division of jurisdictional authority among the branches of government created the conditions for the prominence of the Legislative Council, beginning in the 19th century when the legislature came to stand in for the "local." The Legislative Councils of the 20th century furthered the BVI's movement down the path of modernity, as the local legislature became the primary site for inscribing national selfhood through

law writing. As it worked toward "self-rule," the BVI legislature engaged in a struggle for the authority to constitute a distinct national self that could write laws expressing and regulating its identity. This was a struggle over authorship. The stakes were modern identity and subjecthood. The struggle made a "history" for the BVI written as the history of "progress" toward self-determination, and told in terms of law.

But the kind of national self created through law deeply entrenched continued colonial rule and at the same time fostered the integration of the BVI into the world economy. With the authoring of the International Business Companies Ordinance, the BVI named an identity for itself as an author, a modern writer and subject of law, and also as a specialized niche in the world economy, an identity that is marketable. British Virgin Islander "national" identity and identity on the global market are now inseparable, so long as the IBCO remains in effect and so long as current global conditions and inequalities require the movement of capital across legal regimes.

The British Virgin Islands' emergence as a tax haven bolstered continued colonial rule around the idea of reputation. To maintain reputability, the BVI has had to assert its heritage of law and order. The national self envisioned in local lawmaking and popular discourse is a law and order self, a self-regulating and self-disciplining self. Being a law and order people has been founded in contrast with immigrants' "lawlessness" and "disorder." Now, however, after the introduction of the IBCO, being a law and order people also entails assertions of the BVI's connection to the Anglo-Saxon common law tradition. The national self is at once distinct and "British." The Leader of the Opposition's statement quoted above captures the basic paradox in BVI assertions of identity: local claims of autonomy, authority, and self-rule are founded in the territory's "preferred relationship with Britain." The results of the Gallagher Report and the Mutual Legal Assistance Act prove that British Virgin Islanders truly "can't have their cake and eat it too," since the cake comes from a mix of law and history baked in the oven of modernity fueled by an imagined Europe and its historical ends in the nation-state.

And yet, as also expressed in the Leader of the Opposition's statement, and in the Chief Minister's arguments against the proposed Dependent Territories Board, the idea of progress toward self-rule and sovereignty carries great force for current renderings of the British Virgin Islands as a national entity, even as authorship of the national self has been abrogated to extraterritorial legal realms, and despite the fact that maintaining its reputation is linked so closely to maintaining its colonial relationship with Britain. The sense of law and order which is the basis of claims to autonomy has "Britain" as its referent. Yet at the same time law and order keeps the British Virgin Islands in the pro-

gressive and teleological narrative of "history," a story of getting ever closer to self-rule as a distinctive nation. It is a story that paradoxically depends on the British Virgin Islands never reaching that predetermined endpoint.

The case of the BVI may shed light on the role of law in the contemporary internationalization of markets and the simultaneous resurgence of nationalisms. The apparent tension between nationalism and economic integration seems to hinge on a particular understanding of law writing. For the BVI, writing laws for the "nation" does not imply writing laws against the colonial order. In other words, law writing does not center around claims to political sovereignty and independence—even if such claims are occasionally invoked—but rather claims to an essential "difference" constitutive of a "nation" and, not coincidentally, marketable to investors. The analysis presented here suggests that modern law, together with its accompanying rhetoric of progress, its formations of history, and its construction of "national" selves, is a key point of connection between the cultural politics that create differences and draw borders between people and places, and the processes of capitalist integration that demand such differences and at the same time seem to make borders redundant.

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