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### 25 Years on: Changes and Constants

In Voltaire's novella *Candide* (also known as "Candide - or, the Optimist") which he published in 1759, he gave his satirical view of society and nobility, besides criticising aspects of the philosophical movement of the Enlightenment. In *Candide*, when she is asked what optimism is, replies "...it is the madness of maintaining that everything is right when it is wrong". Over 35 years of writing, including my *Offshore Pilot Quarterly*, I have not only got some things wrong but also experienced moments of justified optimism - although some of my predictions have brought about the complete opposite emotion when they turned out to be right.

I thought that as this year will be the 25th anniversary of the OPO, and will see its 100th issue published, it would be right to take stock of some of my past commentaries and essays. One constant throughout, however, is the course of human nature. Friedrich Nietzsche's 19th-century proclamation that in "individuals, insanity is rare; but in groups, parties, nations and epochs it is the rule". Voltaire and Nietzsche

would doubtless have had a lot to say about this century.

Although some of the situations and players may have changed, this first commentary from 2017 remains food for thought:

#### *The Jar and the Worm*

*"The Cayman Islands, the Channel Islands, the Turks & Caicos Islands and Panama all have something in common. Although 3 are islands, whereas one is an isthmus, each (along with others) has suffered from slanted views and distortions of the truth over the years when it comes to their role in offshore banking and other financial services. I have witnessed this first-hand in each place during my career and I have concluded that, for some people, the prejudice runs too deep to ever change their minds. They are lost causes and suffer from, what I call, worm syndrome, because it reminds me of the attempt made by a gentleman of the cloth to convert an alcoholic. He dropped a worm in a jar of pure alcohol and both watched it disintegrate before their eyes. "What does*

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that tell you about alcohol?” admonished the minister. “That you’ll never get worms”, came the reply.

Some people will never have their minds changed and you would be forgiven for thinking that I wrote that paragraph following the 2016 incendiary Panama Papers and, more recently, after Bermuda’s Paradise Papers. But no, it was written precisely 20 years ago this month when the very first Offshore Pilot Quarterly was published. Prejudice, as all of us know, has a very long shelf life. And so does bias. I will be quoting other extracts from previous OPQs if only to reflect on how we’ve moved on – or not.

In December 1998 I wrote once again on the subject of prejudice when I referred to Andrew Edwards, the British Treasury official at the time commissioned to review the laws, regulations and procedures governing financial services in the British Crown Dependencies, such as Jersey in the Channel Islands and the Isle of Man. Dependencies are distinct from British Overseas Territories, such as the Cayman Islands and the British Virgin Islands, in that they can have separate laws as they are not controlled by the British Government even if they remain the property of the Crown. British Overseas Territories, on the other hand, fall under the jurisdiction of the United Kingdom but do not form part of it; they do, however, have to follow British laws – although over the years one could be forgiven for thinking otherwise when one reads how some of their political leaders have threatened to defy decisions made by the British Government. As a former Caribbean regulator and Crown servant and who once had a similar remit to Mr. Edwards regarding the Turks and Caicos Islands, a British Overseas Territory, I recognise the important distinction, particularly in relation to the supervision of offshore financial services, even if some island politicians in those overseas territories do not.

Concerning Mr. Edwards, in 1998 I wrote thus: “There will be plenty to write about in 1999 as the future of offshore financial services continues to be examined by the leading industrial countries. Unfortunately, a lot of the bureaucrats reaching conclusions and making decisions are not members of The Order of the Hammer (see the Articles section of our website) and are inverse pyramids: top-heavy with technical ability, but thin on the ground with experience. This can be a fatal imbalance. Besides the crux being transparency and the absence of it, what about his

knowledge of the subject under review? Besides knowledge, and equally important, what about the inconsistencies found between countries in the West on that very question of transparency?”

“...Mr. Edwards seems to have ignored the fact that many other jurisdictions – including America (Delaware and Nevada states are two) – do not require all companies to file public accounts. The fires of dissent have certainly been stoked but they are no match for those sovereign powers who are in a position to impose a scorched earth policy if they wish and then, from the ashes, re-write the rules. Bermuda, the oldest former British colony and the world’s third largest insurance market after London and New York, has also come under threat. There is a clear attempt by the European Union, the Organisation for Economic Co-operation and Development and the Group of Seven leading industrial countries to end the tax benefits of doing business in this North Atlantic tax haven. Britain is the sovereign power that is accountable (see the Article, “Hostile Exchange: The Pelicans and the Fishermen” on our website) for Bermuda’s offshore activities in the eyes of the Europeans and Americans”.

“...Bermuda at one stage of its development was heavily involved in the salt trade. It still is, but in a different way. Today it helps others to salt away their assets. The leader of the United Bermuda Party, Pamela Gordon, has declared that the diminution of offshore financial advantages can “threaten our jobs, our banks and the economic well-being of every Bermudian. Our standard of living and our future prosperity are threatened by harmful economic regulations being proposed by the British Government, the U.S. Congress, the European Union and the OECD”. Pamela Gordon could be speaking for every offshore financial services centre that does not enjoy the sovereign independence that centres such as Panama do”.

We know that since those comments were made the cavalier regulatory approach towards offshore centres still threatens jobs today – not just in Bermuda – and that the threat has got bigger rather than smaller. And we know, too, that just like the worm in the jar full of alcohol, so many of our assumptions, presumptions and entrenched beliefs have disintegrated since the second decade of this century began”.



This 2020 piece entitled Persian Rugs and Professionalism remains as relevant as if I wrote it today:

*"The Offshore Pilot Quarterly, since its first issue in 1997, has always intended to provide a helping hand for those navigating the hazardous reefs and shoals of offshore, as opposed to domestic, structures. That helping hand has become of greater importance today as we contemplate what 2021 might bring.*

*Guidance, indeed, is in demand. Unfortunately, this becomes fertile ground for the opportunist. I live by the motto of the Royal Society, chartered by Charles the Second in 1660, for the advancement of natural knowledge: "Nullius in verba" (take nobody's word for it). It is a timely warning when some fallacies and perceptions have been exposed to the harsh light of day during this pandemic. In America, for example, this year's presidential election has turned "The land of the free" into "The land of the free-for-all", and Mr. Trump looked more like the impeder, rather than the leader, of the free world. November was a month of great significance for both Americans and, specifically, those countries which, along with America, comprise collectively "the West". When American's celebrated Thanksgiving this year some will have found little to be thankful for, outside their family and circle of friends. The Presidential election may be over, but the problems besetting America, and in consequence the West, are not.*

*Looking at the broader picture, as the world – eventually – recovers from the pandemic, never before has the Royal Society's motto been more apposite and the importance of honesty and competency more crucial. This is the second time that such considerations have been put in the spotlight during the 21st century. The first time was during the financial fiasco at the start of the century, an event I termed the Great Recession. Little did I know, or did anyone else for that matter, what was round the corner.*

*Some things will always be worth repeating. In the early part of the last century, J.P. Morgan, the American banker, was questioned by a congressional committee about the workings of Wall Street. To the question of whether commercial credit should first and foremost be based on money or property he replied: "No Sir: first thing is character". In business it is the people behind the logo that count.*

*Professionalism (in every sense of that word), not Persian carpets (a useful facade), is what matters.*

*As businesses in the financial services industry (embracing lawyers, bankers and accountants) attempt to stay afloat, new services, to supplement or replace the old, are being offered to clients. The presumption, however, that they will be delivered with equal quality as the core services on offer are, should not be assumed. We know, for instance, from past experiences just how disastrous it was for some top tier accounting firms to include consultancy services in conjunction with their basic accountancy operations, and if their sets of accounts added up, some of their consultancy skills certainly did not. Chasing profit saw lawyers chasing them.*

*Professor Roger Kneebone, author and surgeon, says that becoming an expert of any kind takes years and requires dedication to mind-numbing, repetitive work. Like many words today, the word "expert" has been devalued – especially in the financial services industry. Still, there are four fundamental values you need to look for: ethics, efficiency, ability and craftsmanship. Although the first three qualities need no explanation, craftsmanship is not a word commonly associated with financial services; it is normally thought to be more of a manual, not mental, nature. You can be assured, however, if it ever gains common usage in the financial field, it will be eventually diluted in strength in the same way that "expert" has been. There are many craftsmen who, over the centuries, have stuck to their knitting. I think of Faber-Castell, enjoying a reputation for quality pencils since 1856; Vincent van Gogh extolled their virtues. This old-fashioned family firm has not moved from its core business – and presumably would never dream of commenting on how Vincent van Gogh drew with its pencils. The firm has stayed within its sphere of competence and has not strayed into businesses that could put its reputation at risk".*

This quote from Marcel Proust, considered one of the twentieth century's leading writers, could not be more apt in 2022: "We don't receive wisdom; we must discover it for ourselves after a journey that no one can take for us or spare us". Be sure any professional you engage has taken that journey.

To round off this journey of reflections I turn to estate planning. If ever good advice was paramount, it is in the



field of trusts - a field full of landmines for the unwary, as this extract from one of my essays shows:

***Plato, Frankenstein and Offshore Estate Planning***

*"Plato said that nothing in the affairs of men is worthy of great anxiety. Perhaps not, but flawed estate planning can cause great anxiety for the heirs you leave behind. I want to address in this article one of the fundamental mistakes which I have come across in the offshore financial services industry: the failure of those with assets held offshore to adequately deal with succession before the (usually) unexpected event of death occurs. It doesn't matter in what offshore jurisdiction those assets are controlled, the potential dangers, delays and, often, distress remain. Those readers who have wisely put in place appropriate offshore wills, trusts or foundations need not read on. Everyone else with offshore assets should consider carefully what follows.*

*Shakespeare said that "he that dies pays all debts". Not so, because your debts must first be paid before any beneficiaries can receive any inheritance, and so it is important to have your affairs in order. In so many instances, a simple trust will suffice – and I mean "simple". I have found in my career that too often people are offered complex solutions to their offshore affairs when a very direct path can be travelled. If, for example, all a person is concerned about on his death is that the assets of his offshore company will be enjoyed by his heirs, then why should a deed of more than one page be required? Skilled draftsmen can be concise and you just have to choose professionals of the right calibre. Firstly, they shouldn't be chosen because they were the cheapest you could find and, secondly, they must have the right background experience, which brings me on to hammers. An Engineering Plant Manager was unable to fix a mechanical breakdown and in sheer desperation he contacted the retired engineer who had installed the*

*equipment. After a brief inspection, surrounded by the manager and his team of technicians, the elderly engineer took a hammer and, with a resounding blow, hit a particular piece of piping. Suddenly, the machinery sputtered and sprang to life, much to the relief and delight of the manager. The next day, the retired engineer sent a bill for \$1,000 and the manager, although grateful, protested that this was excessive for one solitary blow from a hammer. "Oh", countered the retired engineer, "I only charged \$1 for hitting the pipe. The other \$999 was for knowing where to hit it." Look beyond an academic degree to the professional's degree of experience. If, for example, he tells you that a bare trust is associated with nudity and that the 3 established essentials of a valid trust in law are a client, his cheque book and a pen, my advice to you is to make a hasty departure."*

Alas, space does not allow Frankenstein to feature, but you will find him mentioned in the rest of the essay included in the Guides section of our website.

The raison d'être behind the OPQ can be summed up in these comments from an article by Dorothy Leonard and Walter Swap published in the Harvard Business Review: "We would all rather fly with a pilot who has taken off, flown and, especially, landed in all kinds of extreme weather than one who has always enjoyed smooth conditions".

Seek out an offshore professional who, similar to that pilot, has very broad experience, and then get your international affairs in order.

One final thought. Mark Twain, who died nearly 112 years ago, bemoaned the fact that "If you don't read the newspaper, you're uninformed. If you read the newspaper, you're misinformed". Ah, those constants in life confronting the tide of uncertainties determined to continually wash over any optimism we may hope to experience along the way.

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*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.*

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