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Secrecy and Consensus:

The Governmentality of an Offshore Financial Center in Europe

A dissertation submitted in partial satisfaction of the

requirements for the degree Doctor of Philosophy

in Anthropology

by

Samuel S. Weeks

2018

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ABSTRACT OF THE DISSERTATION

Secrecy and Consensus:

The Governmentality of an Offshore Financial Center

in Europe

by

Samuel S. Weeks

Doctor of Philosophy in Anthropology

University of California, Los Angeles, 2018

Professor Nancy Levine, Chair

Inspired by Michel Foucault's interrogation of the practices, logic, and technologies of governance – which form what he calls "governmentality" – this dissertation argues that Luxembourg's banking-secrecy laws and domestic political consensus have led to the dramatic growth of the country's offshore financial center since the 1960s. Secrecy and consensus – central aspects of what I formulate as "offshore governmentality" – characterize the strategies of Luxembourg's state and finance elites as they develop new markets, navigate changing political circumstances, and mitigate risks posed to their niches. Furthermore, I posit that a "state-finance complex" of elite actors in Luxembourg carries out "offshore governmentality."

Proceeding from this theoretical scope, I demonstrate how a governmentality of secrecy and consensus has enabled Luxembourg's "state-finance complex" to specialize in private

banking, investment-fund administration, and art finance. I base my analysis of these three niches on data collected from media and archival sources, as well as from 80-plus interviews and participant-observation carried out with state and finance elites in Luxembourg. I also address this study's methodological implications and formulate a research platform – which I call "networking ethnography" – for social scientists to use in other elite contexts akin to the Luxembourg financial center.

I conclude my dissertation on an interpretive note, making a conceptual linkage between the figures of the banker and the priest. The 1981 banking-secrecy laws were premised on a statute from Luxembourg's nineteenth-century criminal code, which implies that a priest cannot divulge any information that he has heard from a confessing parishioner. During my fieldwork, I was told on a consistent basis that one of the main reasons for the growth of offshore finance was so that clients could hide money from their spouses, ex-spouses, and children. Thus, I draw a conceptual parallel between the banker and the priest, both of whom learn about the more delicate aspects of someone's life but are legally bound to keep this information secret. My closing argument is that it is this shared act of *confession* – a practice spanning secrecy and consensus – that gives "offshore governmentality" the profound social, economic, and political significance it enjoys in contemporary Luxembourg.

The dissertation of Samuel S. Weeks is approved.

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Nancy Levine, Committee Chair

University of California, Los Angeles

2018

DEDICATED TO:

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ACRONYMS, INITIALIZATIONS, AND PORTMANTEAUX

ABBL – Association des banques et banquiers, Luxembourg

ACD – Administration des contributions directes

ADR – Alternativ Demokratesch Reformpartei

AED – Administration de l'enregistrement et des domaines

ALFI – Association luxembourgeoise des fonds d'investissement

AML – Anti-Money Laundering

ARBED – Aciéries réunies de Burbach-Eich-Dudelange

BBC – British Broadcasting Corporation

BBH – Brown Brothers Harriman

BiL – Banque internationale à Luxembourg

BVI – British Virgin Islands

CAA – Commission aux assurances

CSSF – Commission de surveillance du secteur financier

CSV – Chrëschtlech Sozial Vollekspartei

DP – Demokratesch Partei

EEC – European Economic Community

EIB – European Investment Bank

EU – European Union

EY – Ernst & Young

FATCA – Foreign Account Tax Compliance Act

GDP – Gross Domestic Product

GNP – Gross National Product

H29 – Luxembourg Holding Company

HNWI – High-Net-Worth Individual

IBC – International Business Company

IMF – International Monetary Fund

IOS – Investors Overseas Services

IRS – Internal Revenue Service

KBL – Kredietbank Luxembourgeoise

KPMG – Klynveld Peat Marwick Goerdeler

KYC – Know Your Client

LAFA – Luxembourg Art Law and Art & Finance Association

LSAP – Lëtzebuerger Sozialistesch Aarbechterpartei

LSE – Luxembourg Stock Exchange

MEP – Member of the European Parliament

MP – Member of Parliament

NBB – National Bank of Belgium

NHS – National Health Service

OECD – Organization of Economic Cooperation and Development

OFC – Offshore Financial Center

OPCVM – Organismes de placement collectif en valeurs mobilières

PwC – PricewaterhouseCoopers

RAIF – Reserve Alternative Investment Fund

RTL – Radio Télévision Luxembourg

SICAR – Société d'investissement en capital à risque

SICAV – Société d’investissement à capital variable

Soparfi – Société de participations financières

SPF – Société de gestion de patrimoine familial

STS – Science and Technology Studies

UBS – Union de banques suisses

UCITS – Undertakings in Collective Investments in Tradable Securities

UHNWI – Ultra High-Net-Worth Individual

VAT – Value-Added Tax

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During the process of writing this dissertation, I accumulated innumerable debts to scores of individuals who aided my research in concrete and intangible ways. I would particularly like to acknowledge and thank my informants who patiently answered the *hundreds* of questions I had about their views on, and experiences in, the Luxembourg financial center. Unfortunately, their names are too numerous to list in this brief section. Likewise, this study would not have been possible without the Fulbright/IIE research fellowship I received to spend the 2015-16 academic year at the University of Luxembourg. Chérie Francis of the UCLA Graduate Division was instrumental in helping me prepare my application and navigate the entire process. Additional funding came from the UCLA Department of Anthropology and the Dean's European Fund of the UCLA Social Sciences Division. Regarding these latter two grants, Ann Walters and Tracy Humbert deserve a special mention and many hearty thanks.

On the academic side, the sizeable number of references I make to the work of fellow researchers indicates my gratitude to those who write about offshore finance and the social science of finance more generally. This estimable group includes Bill Maurer, John Zarobell, Douglas Holmes, Omri Marian, Filipe Calvão, May Hen, and Hannah Appel, among others. I am very grateful for the untold number of discussions I have had about the topics in this dissertation with these colleagues, professors, and mentors. In this regard, selections from this study were presented at the University of Luxembourg, the Ecole des hautes études en sciences sociales in Paris, and at the 2016 and 2017 annual meetings of the American Anthropological Association. Sections from the introduction are currently under submission in the journal *Ethnography*.

While I am not much of a name dropper, I must acknowledge the support and encouragement of many friends, colleagues, and comrades – who are spread over four countries

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in French that I received at UCLA. Three kind souls were indispensable vis-à-vis my formation in *la langue de Molière*: Katherine Mullen, Laurence Denié-Higney, and Laure Murat. In Portugal – a place so dear to my heart – *abraços e agradecimentos* go to Paulo Silveira e Sousa, António Ramalho, and Luís and Lourdes Soares Rodrigues for their generosity and friendship during much-needed times of rest and relaxation in Lisbon.

Closing this section is difficult because the depth of my gratitude is so immense. Comments and suggestions from those who read all or portions of this dissertation have helped me to sharpen and clarify its arguments and approaches. In this light, I would like to underscore my appreciation to Bernard Thomas, João de Pina Cabral, Andrew Apter, Gabriel Zucman, and Jens Beckert for their insightful feedback – as well as to my sister and brother-in-law, Margaret Weeks and Abraham Adams, for their meticulous and thoughtful revisions of the manuscript. And of course, completing this dissertation would not have been possible without the steadfast guidance of my trusted advisors and committee members Nancy Levine and Sherry Ortner. Over these past six years, I have internalized your methods and approaches to studying "culture" and "society." A million thanks for your mentorship, understanding, patience, and flexibility.

Last, but by no means least, I come to my marvelous family. My aunts Ann and Arleen have always greeted me with open arms – facilitating long weekends in Sonoma, memorable dinners of Singapore crab, and multi-year storage for my L.A. possessions. My grandmother Terry, sister Meg, and brother-in-law Abe have been my unwavering companions during particularly difficult times in recent years and have carried me along when the challenges seemed too great. My life partner Lizzie has been the steady anchor during the voyage that has been this dissertation. Her love, wisdom, and sense of humor have sustained and enriched my life these past four-plus years – something for which I am eternally grateful. I have the utmost respect and

affection for you. Our life together is only just beginning! Lastly, I dedicate this thesis to my mother, Chris, and late father, Kip, who passed away in 2011. Without the resolute support and devotion they showed me throughout my life, I would have never had the confidence and initiative to see this project to its completion.

Before proceeding to the dissertation, I wish to state that I take full responsibility for any errors or omissions included herein. While many people and institutions assisted me throughout the project, the views, analysis, and interpretations presented in this dissertation are mine alone.

BIOGRAPHICAL SKETCH

Samuel S. Weeks is a doctoral candidate in sociocultural anthropology at the University of California, Los Angeles. Concurrently, he is an affiliated researcher at the Ecole des hautes études en sciences sociales in Paris. From 2006 until 2008, he served as a U.S. Peace Corps volunteer in the Republic of Cape Verde. After winning an Ambassadorial Scholarship from the Rotary Foundation, Weeks completed a master's degree in sociocultural anthropology at the Institute of Social Sciences of the University of Lisbon. He was the 2013 winner of the Eric R. Wolf Prize from the Society for the Anthropology of Work. For the 2015-16 academic year, Weeks was a visiting researcher at the University of Luxembourg with the support of a Fulbright/IIE fellowship. His research has been published in the journals *Anthropology of Work Review*, *Deleuze and Guattari Studies*, *Review of Radical Political Economics*, and *Anthropology Now*, among other publications. In August 2018, Weeks will begin an assistant professorship in anthropology at Thomas Jefferson University in Philadelphia.

INTRODUCTION

Outside the capital city of the Grand Duchy of Luxembourg – currently a hub for the EU administrative apparatus and for financial and multinational corporations – you will find three towering 1.2-megawatt radio transmitters, a capacity that far exceeds the requirements for broadcasting within a European microstate. This complex, however, was where the French-, English-, German-, and Dutch-language programs of Radio Luxembourg (currently RTL) were broadcast to listeners throughout Europe. Why, you might be asking, are such gigantic transmitters located in this small country of 600,000 inhabitants? To answer this question, we must go back in time, to the post-WWII period in Europe. Countries such as the United Kingdom, France, Belgium, Germany, and the Netherlands regulated heavily the broadcast media that were produced within their territories. Britain and France, for instance, did not license commercial radio stations until the 1980s.

Photo 1 – Radio Luxembourg and its three transmitters; Junglinster (source: Wikipedia)

Tiny Luxembourg, in contrast, did, starting in the 1920s. Due to the country's central position within Western Europe – nestled between Germany, Belgium, and France, and a one-hour flight from London – executives for the Luxembourg state broadcaster realized that they could reach large audiences throughout Europe hungry for commercial radio, that is, radio not

subject to “national content” requirements or government stipulations obliging media to fulfill the “public good,” and not simply profit-making interests.

The idea behind Radio Luxembourg seems simple to us now, but at that time was revolutionary: while broadcasting equipment is located within a particular nation-state, and therefore is subject to its regulations, airwaves can easily transcend these boundaries. Technically, the stations of Radio Luxembourg were legal; as a sovereign entity, the Grand Duchy had every right to erect massive radio transmitters and broadcast commercial radio. Of course, the country’s broadcasting authorities knew very well the true intention for these stations. The success of Radio Luxembourg with its pan-European audiences, after all, generated income, licensing revenue, and jobs for people in the country, something few governments would want to forego (Palan 2006:22).

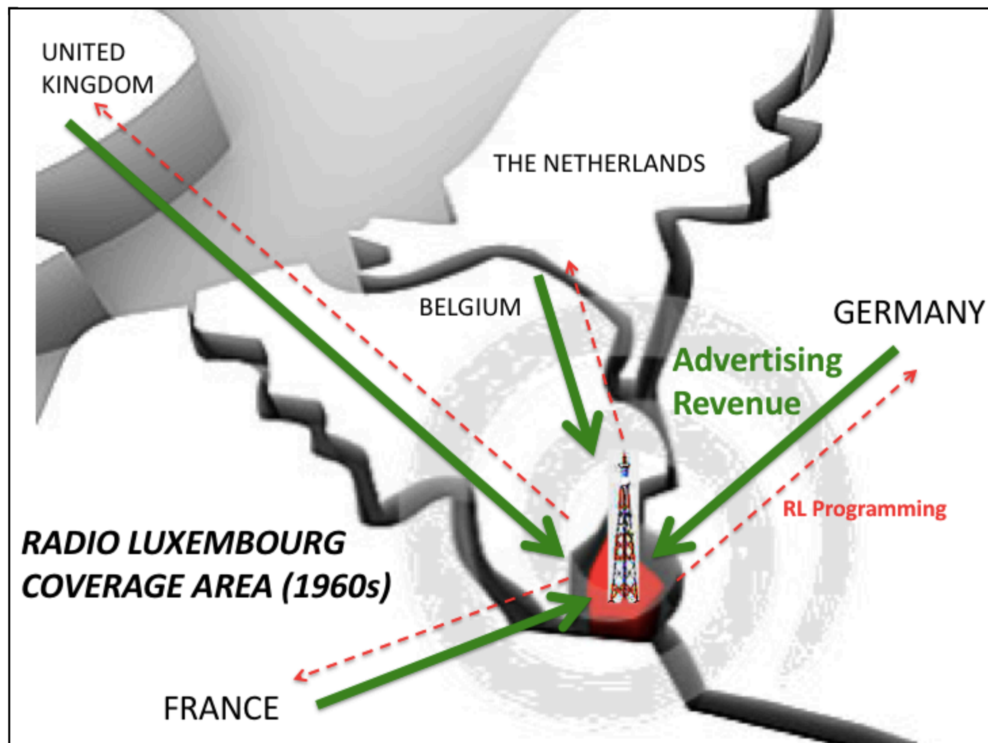


Figure 1 – The “offshore” model of Radio Luxembourg

Following Aliber (1987:173-174), and without going into further detail, I use the example of Radio Luxembourg as a means to conceptualize another, far more important sector of this country's political economy: its international, or offshore, finance center. Both Radio Luxembourg and the offshore finance found in the Grand Duchy are classic examples of what economists such as Aliber call "externalized economic activity" – that is, goods or services produced in one legal jurisdiction yet consumed in another. What they both share is a unique legal character that was created with the aim of subverting, or even eliminating, regulations for people living in other nation-states. In this regard, Radio Luxembourg could be seen as an inspiration, or template, for subsequent economic developments in the country, including the offshore financial center that has turned the tiny Grand Duchy into having Europe's highest GNP per capita, at approximately $75,000 per year.

In the chapters that follow, I use ethnographic and historical methods to analyze the post-1960s development of three niches of the Luxembourg financial center (*place financière*) – private banking, investment funds, and art finance – within the context of a changing political economy at the national, European, and global levels. As I argue, far from representing mere opportunistic activity in an economically marginal jurisdiction, the offshore finance akin to what takes place in the Grand Duchy is the result of *political* choices made within a context of a morphing and internationalizing global capitalist system. In fact, it is precisely the state-based system of legal sovereignty that not only underpins offshore finance but in fact enables and facilitates it.

Yet "offshore" is not simply a byproduct of global capitalism's recent and uneven growth. It has provoked widespread economic and social change the world over, "[dislocating] the international state system and [inducing] its substantial reconstruction" (Hampton and Abbot,

eds. 1999:43). Since the 1970s, worldwide capitalism has been witness to a proliferation of offshore centers, as jurisdictions such as Luxembourg establish themselves as legal enclaves with low taxes and capital-friendly regulatory regimes, aimed at harvesting rents from movements within the global financial system. Maurer ties the dramatic growth of offshore finance to developments in the economies of Global North countries over the past 40 years: "Post-Fordist flexible production strategies have gone hand in hand with flexible financing, made possible by regulatory change in the major banking centers, the rise of non-bank financial entities, and the development of offshore centers as nodes in capital networks" (1997:254).

When I refer to Luxembourg as an "offshore finance center," I mean that this is a legal and legislative space of special proportions. Since the 1960s, but with precedents going back as far as the late 1920s, the Luxembourgish state has continuously drafted laws and formulated legal structures to facilitate the economic activity of people who neither reside in nor are nationals of the Grand Duchy (cf. Ötsch 2016:322). In this light, we could say that this activity happens "offshore" – in that it *legally* takes place in Luxembourg but it *actually* occurs elsewhere (Palan 2006:1-2). Here we see a central tension of offshore finance at work: domestic political systems based on the principles of sovereignty and national self-determination in the service of an ultra-liberal global economic system dedicated to extreme capital mobility. In Luxembourg over the years, this contradiction has led to financial transactions being undertaken free of tax, subject to little regulation, and protected by secrecy laws that hide the assets' ultimate beneficiaries – all to the substantial enrichment of the country's political and financial elite (Zucman 2015:83-84).

Given these dynamics, my interviewees – and elites in Luxembourg more generally – are loath to use the adjective "offshore," preferring instead "international," "cross-border," or

"global." "We are not offshore; we are landlocked," asserted a senior regulator to me, relying on the obvious fact that Luxembourg's only shore is along the calm Moselle River that separates the country from Germany (interview, March 2016). To quote a senior civil servant: "To speak of the principle of 'offshore' seems to me presumptuous (*me paraît osé*), verging on inappropriate. These arguments are at best advanced by ignorant, incompetent, or jealous actors" (cited in Thomas, "Unique Selling Position," 3/4/16). It is clear, however, that these senior figures have not consulted the emerging body of social-scientific literature on offshore finance, and "offshore" more generally (see Hampton 1996; Shaxson 2012; Urry 2014; Harrington 2016). If they were to do so, they would see that many of the niches developed in the Grand Duchy do not just meet the basic criteria of offshore markets, but are in fact – like Radio Luxembourg – archetypal examples of them.

The first of these criteria is the "virtual geography" that marks much of the economic activity taking place within the Luxembourg financial center. Companies and wealthy individuals pay a premium to the Grand Duchy's lawyers, bankers, and accountants to incorporate their assets (*patrimoine*) – mostly of the financial kind, but increasingly physical ones as well (see chapter five) – in a jurisdiction other than the one where they are really located. It is this "virtual residence in a virtual space" (Palan 2006:4), driven by a commodified form of sovereignty, that has led tiny Luxembourg to becoming the world's second-largest investment-fund domicile after the United States, with over four trillion dollars in assets under administration. To paraphrase tax-justice campaigner Richard Murphy, in a presentation he gave in Luxembourg City in April 2016: the Luxembourg financial center is very good at "accounting tricks." They record money coming in and out and "things that happen *elsewhere*" (emphasis

added). As we will learn later, this concept of "elsewhere" is key to understanding the development and activities of offshore financial centers like the one in Luxembourg.

The second characteristic making the Grand Duchy an offshore center *par excellence* can be captured in one word: avoidance. For years, the country's financial center has enabled wealthy companies and individuals to avoid the taxation, regulation, and scrutiny found in other jurisdictions – much of which has been implemented under the progressive auspices of democratically elected governments. Palan et al. write, "the regulations [elites] seek to avoid are often the financial and business rules and norms that states introduced to maintain order and stability – without which the wealthy would not have gotten so rich in the first place" (2009:6). Commenting on the Panama Papers – an April 2016 data leak from the Panamanian offshore-services provider Mossack Fonseca – journalists Obermayer and Obermaier quip "those who dutifully paid their taxes [are], in fact, dupes. The rich, it [turns] out, had exited from the messy business of paying tax long ago" (2016:vii).

The third "offshore" feature characterizing Luxembourg's financial center is its business model, which seeks to extract rents and fees by servicing the activities of global finance. In this regard, the Grand Duchy is, in large part, a conduit that allows companies and individuals to use their jurisdiction and legal structures in exchange for a fee.[1] Due to competition among the world's many offshore financial centers – such as Switzerland, Ireland, the Cayman Islands, Singapore, Jersey and Guernsey, among others – these sums are usually low, often tenths of one percent of the assets in question. Yet due to the small size of these territories, and the massive volume of global financial transactions they attract, offshore centers such as Luxembourg's can usually support a welfare state, *grands projets*, and a generally high standard of living for the country's inhabitants – though it is certain the sizable earnings to be made in offshore finance are

poorly distributed. Luxembourg's first experiment with the offshore business model was its 1929 introduction of the holding company legal structure (*société holding*). From its 1960s heyday until its discontinuation in 2010 – for being deemed "incompatible" with the mandates of the European Common Market – the H29 holding company had long generated substantial revenues for the Luxembourgish state and the country's financial center. A minimal fee was charged to incorporate the H29 holding companies, in addition to a small annual "subscription tax" (*taxe d'abonnement*) on the total assets held within these legal structures.

The fourth characteristic of the Luxembourg financial center, its "offshore" nature, is the most complex and is one of the reasons why the country's officials and financial elites can object – erroneously, in my opinion – to the "offshore" label with some plausibility. Admittedly, the boundaries between "offshore" and "onshore" are, after all, relative, conceptual, and fluid. Though this trend has been reversed somewhat in recent years, until the global financial crisis of 2008-09 there was a tendency for "offshore" financial practices to be adopted by regulated, "onshore" jurisdictions such as the United States and France, via the liberalization and deregulation of their financial markets. For example, rather than combat the ultra-low tax rulings long given to large corporations by offshore centers such as Luxembourg, Switzerland, and the Netherlands, states such as Ireland (during the 1980s) and Belgium (during the 1990s) simply adopted similarly lax standards for themselves. The consequences of this offshore-to-onshore trajectory have been extraordinarily grave: throughout the Global North and South, tax burdens have been shifted away from large corporations and the wealthy onto the middle and working classes. To quote from a 1998 OECD report: "globalization has also had the negative effect of opening new ways by which companies and individuals can minimize and avoid taxes, and in which countries can exploit these new opportunities by developing tax policies aimed primarily

at diverting financial and other geographically mobile capital… tax schemes aimed at attracting [these] activities can create harmful tax competition and could lead to the erosion of national tax bases" (cited in Palan et al. 2009:211).

As mentioned, Luxembourg's initial foray into the world of offshore finance can be traced to the 1929 law on holding companies (H29). Given that this legislation was passed four months before "Black Tuesday" in New York, which signaled the beginning of the worldwide Great Depression, the 1929 holding companies attracted little interest. It was not until the 1960s, however, that holding companies and other financial activity became significant within the country's political economy, which had previously been dominated by ARBED, the country's flagship steel producer.[2] In the mid- to late 1960s, large British and continental banks used the Luxembourg Stock Exchange (*Bourse de Luxembourg*) as a booking center for Eurodollar transactions, the first offshore financial niche to achieve a global scale. Without going into too much detail, the Euromarket dealt in U.S. dollars held abroad, that is, outside the regulatory and fiscal purview of the U.S. Federal Reserve, IRS, Securities and Exchange Commission, and other agencies. By using Luxembourg as a booking and administrative center, European banks could prepare "offshore" loans and securities denominated in U.S. dollars (later extended to Deutsche marks and Swiss francs) without being subject to the regulation or duties that lenders would otherwise face in the United States. Luxembourg's initial foray into the Euromarkets – wildly successful, by all accounts – built up a base of banking expertise and infrastructure within the country, resources that the financial center could use at a later date to develop new offshore niches.

The steel crises of the mid-1970s and early 80s, and the ensuing reduction in employment at ARBED, caused the Luxembourgish state to look to the financial center as a possible new

basis for the country's political economy. This period in the Global North marks the end of the post-World War II economic boom – known in French as *les Trente Glorieuses* – and signals the demise of these countries' Fordist models of relative social democracy and labor-management consensus. Palan writes, "far from representing a market response to a surge in regulation and taxation, the proliferation of offshore jurisdictions and enclaves [such as Luxembourg] was a response to the crisis of capitalism" (2006:73-74), in particular falling rates of profit for companies from the early 1970s onwards (Brenner 2006). Amidst soaring prices for oil and other raw materials, creeping inflation, and declining growth, large European and U.S. businesses were keen to use offshore finance as a means to re-augment their profitability, and financial centers such as Luxembourg's were only too happy to oblige.

Thus, the budding Eurodollar market continued to grow in a robust fashion until it too crested, with advent of the so-called Third World debt crises of the early 1980s. A number of large borrowers in Latin America and Eastern Europe, deemed a safe bet by Luxembourg's banks for re-payment with interest, defaulted on their loans denominated in Eurodollars, leaving lenders in the Grand Duchy scrambling for a government bailout and a new business model. State and finance elites eventually decided to focus on two promising niches: private banking and investment funds – in both of which the Luxembourg financial center could already cite experience. While frequently thought to have different origins – private banking serviced a regional clientele, whereas investment funds date from an EU directive – these two niches are similar in how they cater to the individual investor, be they a small saver or a wealthy oligarch. Just one element was needed to jumpstart both these markets: secrecy laws.

Offshore and Secrecy

"Secrets nowadays are hidden in plain sight. On the screen as well as offshore, they are mostly about speed and liquidity and human engagement with prolific technologies" (Nuttall and Mbembe 2015:S320).

In addition to "offshore," the second main element of analysis in this study is *secrecy*, in particular Luxembourg's notorious and hermetic banking-secrecy laws. Secrets are not a new topic to either social theory (Simmel 1906; Derrida 2001) or anthropology (Morgan 1985; see Manderson et al. 2015 for an overview). Jones writes, "[anthropologists have] a distinctive claim on secrecy. [They] have established a singular body of comparative, cross-cultural scholarship on dynamics of concealment and revelation" (2014:60). One cannot discuss the growth of offshore financial centers without a concurrent examination of banking secrecy, a line of enquiry that is absent from both the anthropological literature on secrets and on finance. Though banking secrecy has become a more charged topic in recent years, offshore financial centers have long stood out for their draconian secrecy laws, a trend that started in the Swiss financial center in the 1930s. Other jurisdictions – for example, Liechtenstein, Jersey and Guernsey, the Bahamas, Luxembourg, and Singapore – followed suit during the last thirty years or so of the twentieth century.

In the tradition of Simmel and the generations of anthropologists who have studied secrecy in its diverse forms, I turn a critical eye to Luxembourg's secrecy laws and their many economic, legal, and social complexities and ramifications. My analysis here is twofold. First, I examine the development, practice, and defense of banking secrecy in Luxembourg. Second, I link this discussion with ethnographic, journalistic, and archival data on banking secrecy's many implications, which I collected while in Luxembourg over the 2015-16 academic year. I should

state upfront that I have no secrets *per se*; I have no revelatory information in the vein of that found in Lux Leaks or the Panama Papers.

While my informants undoubtedly kept the specific banking activity of individual clients a secret, they were more forthcoming about *the ways in which* these secrets are protected. I have, as a result, many reflections, accounts, and interpretations on secrecy as it has been applied to financial matters in Luxembourg, both those offered to me by my informants and those I have gathered from bibliographic and archival sources. In this light, my study reveals the practices, discourses, specialist knowledge (*savoir technique*), and justifications associated with Luxembourg's banking-secrecy laws. As such, my objective is to approach this topic economically, socially, culturally, politically – and in later chapters, its aesthetic and religious dimensions.

While in the field, I quickly realized that secrecy as applied to financial activity is rarely a straightforward issue to analyze, but rather is riddled with contradictions and discordance. There is, of course, the obvious difficulty of trying to make sense of *secrecy* when the *secrets* themselves are almost always beyond that which can be known publicly. I depart, thus, from positing secrecy as simply having access to valued information and instead view it as a part of an intricate socio-economic process, "known but not knowable, hidden in plain sight, performed but not spoken" (Manderson et al. 2015:S184).

Within the ranks of social theorists, Simmel (1906) was the first to take up specifically this weighty and illusive concept. For him, secrecy was a social form whose rules and limits pervaded modern society. For secrets to exist, their bearers needed to find an effective means of concealment and common purpose, including – as he seems to imply – resistance against the authoritarian regimes of the era (Nuttall and Mbembe 2015:S318). To Simmel, maintaining

secrecy necessitates that those implicated be patient, discrete, cunning, trustworthy, and, of course, silent.

Two aspects of Simmel's interrogation of secrecy seem particularly salient to my study of the Luxembourg financial center. The first is the exclusive nature of those sharing valuable secrets. Simmel writes, "secrecy and the pretense of secrecy (*Geheimnistuerei*) are means of building higher the wall of separation, and therein a reinforcement of the aristocratic nature of the group" (1906:486-487). The second speaks to the difference between secrecy and *privacy*, a distinction I encountered often in Luxembourg, with those on the financial center believing themselves to be defenders of the latter rather than enablers of the former. Presaging this current debate by a century, Simmel believes privacy to be a mere withdrawal from the public order, whereas secrecy opposes or subverts it – as in the formal, conscious, and deliberate concealment of information. He states, "the secret group pursues its own purposes with the same inconsiderateness for all purposes outside itself which, the case of the individual, is precisely called egoism" (1950:367).

In studying banking secrecy, I attempt to take the longstanding anthropological enquiry on secrecy into new territory, to consider how secrets inform and enable the financial activity that increasingly defines the political economy of global capitalism. Though my analysis of these phenomena is critical in tone, I recognize that those people and institutions that make up the Luxembourg financial center can have "necessary" secrets, as well as the right to not to disclose certain information (cf. Manderson et al. 2015:S186). As I show in subsequent chapters, these actors and groups gather, use, and curate the secrets afforded to them in particular and social significantly ways.

By means of its legislative and administrative structures, the Luxembourgish state has assisted this process in establishing laws and decrees aimed at protecting financial secrets, deterring potential whistleblowers,[3] and defining the norms under which such information can accessed. These are, to quote Nuttall and Mbembe, "a set of rules and regulations governed what was to be kept secret and how, who could be entrusted with secrets, and what sanctions applied to secrecy breaches" (2015:S317). In sustaining these ideological and legal edifices of banking secrecy, as I argue, the Luxembourg financial center has enabled wealthy companies and individuals to bypass their societal obligations, obscured its clients' roles in eroding the tax bases of other countries, and insulated the country from the pressures of austerity felt elsewhere.

In an era in which real transparency has increased in many realms of society (Schudson 2015) – medical, political, bureaucratic, alimentary, among others – the secrecy laws found in many offshore jurisdictions remain something of an anachronism, though this appears to have changed somewhat in recent years. The link between offshore finance and secrecy is obvious. As places of legalized secrecy, offshore jurisdictions such as Luxembourg do not require the public disclosure of ownership information for shell companies, trusts, foundations, "family offices," and other legal entities. Thanks to these opaque structures, the "rich global class" made up of "ultra-high net-worth individuals" (see chapter three) can redirect their financialized wealth to "own mansions, yachts, art masterpieces and various assets, but also to gain tax advantages and anonymity not available to average citizens" (Urry 2014:2). Nuttall and Mbembe lament,

> An offshore class and an offshore world are produced in the process by which regulations are avoided and secrets kept. The offshore… has become a key location for understanding the effect of economic globalization insofar as the latter is buttressed by a new topography of concealment and secrecy (2015:S320).

How do these dynamics manifest themselves in Luxembourg at the ethnographic level? Unsurprisingly, they do so with an air of discretion, verging on invisibility, among those

associated with the financial center – people whom Ziegler would call the "secondary oligarchy" (1979:11). I did have one advantage in this regard: the timing of my study. Due to recent pressure from the OECD, European Commission, and the U.S. Treasury Department – the reasons for which I explain in chapter three – the Luxembourg financial center has become obliged since 2015 to make certain of its activities more "transparent." In such a context, certain financial center figures have found it prudent to embrace a logic of "transparency" – to the point, I believe, that many of my interviewees agreed to talk with me as part of this process. Having insisted that the rules of the "secrecy game" were changing, my interlocutors were instead keen to emphasize their "discretion." Thus, it was now supposedly due to "discretion," and not "secrecy," that they could *not* be more open about their activities and clientele. Mahmud's analysis of the discrete behavior of Italian Freemasons could easily apply to those working in the Luxembourg financial center of today:

> Discretion can be defined as a set of embodied practices that simultaneously conceal and reveal valued knowledge. Being discreet was essential to my informants' way of being in the world, and it was an attempt to reconcile the different pulls between secrecy and having "nothing to hide" (2014:28).

Offshore and Consensus

The third main element I analyze in this study is consensus, as in political consensus. What I am studying, in fact, is closer to the French word *connivence*, which in English would mean something halfway between consensus and collusion. In English, however, I have chosen the word "consensus" as opposed to "collusion" due to the latter word's causal and accusatory undertones. In certain cases, "collusion" might be a more appropriate way to describe the activities of people in the Luxembourg financial center. But for the most part, I would say that these take place according to some kind of *strategy*, yet without a lone *strategist* consciously guiding all the events (cf. Feldman 2011).

In his *Security, Territory, Population* lectures of 1977-78, Foucault notes a trend transpiring throughout the eighteenth century among Europe's consolidating nation-states: an increasing ability to make meaningful and far-reaching interventions among their respective populations. In this vein, he cites the rise of "administrative assemblages" (2009:315), "complex organs of coordination and centralization" (2009:381), and "administrators who had to secure the development of the state's forces" (2009:318). In the *Birth of Biopolitics* seminar a year later (1978-79), Foucault comments on the result of these efforts, as countries in northwestern Europe began their experiments with liberalism and capitalism in the nineteenth century: "there is a tendency to centralization; there is a tendency to an incorporation of the economy in increasingly closely connected decision-making centers of the administration and the state" (2008:177).

Fast forward to the end of the twentieth century. I argue that these processes of centralization and coordination within Europe's emerging liberal capitalist states, as described by Foucault, have assumed new and significant dimensions among territories specializing in offshore finance. Keeping with the general line of Foucauldian analysis, I theorize these changes in governance as forming a distinct "offshore governmentality," the characteristics of which I detail in chapter two. Whereas classical liberals – and especially neoliberals – maintain a suspicion towards the workings of the state apparatus, proponents of offshore finance harbor no such animosity. This group of defenders could hardly be described as anti-state, as they have little reason to be. In fact, it would be counterproductive for them to dismantle state structures, because "creative compliance" with these is the source of their power as experts, and is the basis for their remuneration. In the case of Luxembourg, we see at numerous junctures the essential role played by the state in the development of the country's financial center. Its consolidation in the 1960s and 70s could be ascribed in large part to decisions made on the part of the state: the

passage of the financial holding-company law, the absence of minimum reserve requirements for banks, the lack of taxation on foreign capital gains, and the ability to register Eurocurrency securities on the stock exchange without having to pay a listing fee.

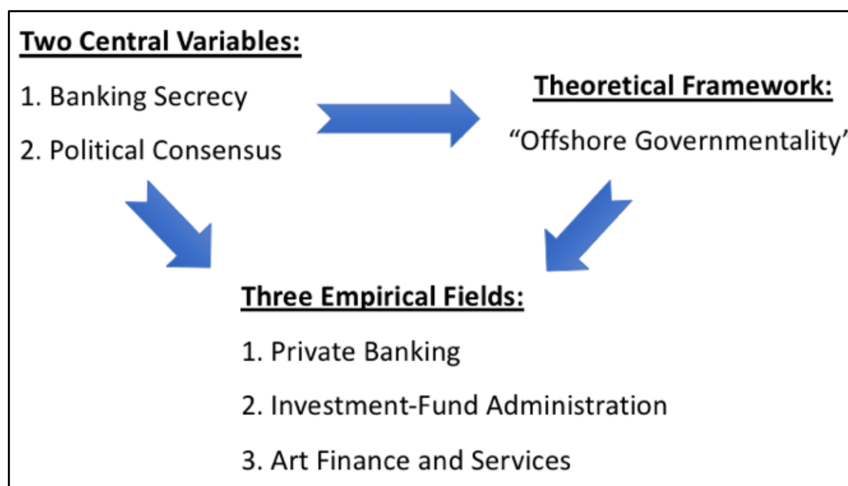


Figure 2 – The thematic, theoretical, and empirical scope of my study

Without going into too much detail, I briefly note some of the peculiarities of the role afforded to the financial center within Luxembourg's overall political economy. Given that the Luxembourgish state serves as a main organizing force for the financial center, capital flows into the country become inextricably linked with their administrators' political access to executive and state agencies. And because the state, banks, and fund companies all collect rents and fees on the global capital attracted into Luxembourg, the financial center acts as the *centralizing* force among the country's political and economic elites (cf. Watts 2004:214). Indeed, the boom in financial activity over the past 40 years has helped to bridge several sectors of the national economy, "establishing particular patterns of solidarity within the dominant class" (Coronil 1997:358). In turn, the rents and fees – which are collected and taxed in distinct ways – serve as potent source of revenue for the government, which affords it an unusual degree of political and economic autonomy to fund the country's welfare state, build new infrastructure, and design *grands projects*. In this vein, Kmec (In Press) notes that public investments in Luxembourg in

2011 accounted for 9.1 percent of state expenditure, which is almost double the Eurozone average.

Unsurprisingly, these massive capital inflows have, over the decades, caused the rapid expansion of the country's apparatuses in service of the state and financial center; a sizable part of the rents and fees from financial activities has enabled the state and financial center to pay handsomely its civil servants[4] and, more generally, extend its reach within Luxembourgish society. The remaining portion of this rent-and-fee surplus is absorbed via a local construction boom and a voracious demand for imported consumer and luxury goods – all while other, non-finance sectors lag, especially in manufacturing and agriculture. Among the building spree, there is a tendency toward "overshooting," that is, a difficulty in scaling back the lumpier state-led projects, a process that is compounded by additional borrowing to cover their completion.[5]

Photo 2 – Keeping Europe safe for capitalism; European Investment Bank, Luxembourg City (photo by the author)

To analyze the abnormally close relations between Luxembourg's elites in the government and the financial center, I argue that a "state-finance complex" within the country cooperates to develop new niches, navigate changing political circumstances, and mitigate any risks posed to these markets. In short, this is the class that defines itself as the custodian and manager of the country's main economic activity. I describe the "state-finance complex" in depth in chapter two, so a brief word will suffice for now. I should note, from the outset, that I am not the first scholar to note this tendency. Dörry mentions how the "tight interrelations between economic and political actors [in Luxembourg] could be perceived as a feeding mechanism for 'local bridging' among the political and financial elites or representatives from firms and the state" (2014:236).

I go further than Dörry, however, tracing the implications of the "state-finance complex" both on the financial center and on Luxembourgish society more generally. In fact, one can see a number of interesting patterns in this regard by examining the career trajectories of its most important members. The first would be their alternating stretches occupying high-level posts in the civil service (*haute fonction publique*) and at institutions within the financial center. Longtime financial center executives are called to put their technical expertise to work "in the public service" – frequently in regulatory positions supervising their old firms – while retired politicians and senior civil servants (*hauts fonctionnaires*) often augment their state pensions via directorships and consultancies in the financial center. Carrier and Miller, eds. believe such arrangements to be characteristic of the "transnational capitalist class" and note the inevitable proximity among its members: "in most representative democracies, elected politicians and officials must respond to the interests of their local constituents; but these interests are more often than not defined in terms of the interests of the corporations that provide employment and

make profits locally" (1998:145). This consensus (*connivence*) found among members of the "state-finance complex" forms an additional feedback loop with the interests of the wealthy clients who hold their assets with Luxembourg's banks, insurers, and fund companies. As Harrington argues, the highly complex and fragmented global tax systems "keep wealth managers in business and their clients wealthy enough to contribute to the political campaigns of the lawmakers… [this is] a 'delicate balance' among elite interests, often at the expense of democratic participation and popular sovereignty" (2016:18).

Anthropology Goes Offshore

"[Bankers] pose the same problem to a cultural anthropologist as a non-literate tribe deep in the Amazon" (Lewis 1989:34).

I turn now from the study's central themes to its methodological implications. An obvious inspiration is Laura Nader's classic 1972 article "Up the Anthropologist" in which she implores her colleagues to "study up" – that is, to analyze dominant individuals, institutions, and processes in contexts such as the contemporary Global North. Using language more typical of a manifesto, Nader urges her fellow anthropologists to research the rich and powerful people responsible for the fate of society – and not just the poor and those who cannot protect themselves as easily from the enquiries of probing social scientists. Another source of inspiration for my study comes from the growing body of literature on the social science of finance, including Abolafia (1998), Zaloom (2006), Fisher and Downey, eds. (2006), Ho (2009), and Knorr Cetina and Preda, eds. (2012). A guiding premise that I share with these researchers is how to approach "the market" as a set of embodied, daily practices. In what ways can we as social scientists go about examining the "building blocks" of the global financial system?

Given that an offshore financial center is not a typical field site for research in anthropology – Maurer (1997) and Rawlings (1999) are exceptions – I have had to reflect upon the practice of ethnography in a context that does not follow the standard model. I began this project with the hope that I could analyze offshore finance "from the ground up," countering the tendency of some works of social science and journalism to view this phenomenon as abstract, illegible, unwieldy, and totalizing. Central to this effort is treating "offshore finance" as set of social relations (Pina Cabral and Pedroso de Lima, eds. 2000:47). In this regard, I do not take the "markets" my informants constantly talked about to be undifferentiated, taken-for-granted, and all-powerful – as they are frequently presented in many neoclassical economic studies. Instead, I explore the relations that underpin the ability of the Luxembourg state and finance elites to structure and reproduce particular financial niches within the contemporary system of globalized capitalism.

In this study, I analyze the specific social and technocratic processes behind the development and operation of the Luxembourg financial center. As such, my ethnographic approach focuses not only on the growth of offshore financial services in Luxembourg, but also on the values and strategies of the people making and administering these markets. I examine these disparate-yet-linked phenomena at their respective scales in order to "recognize their power [but also] demonstrate their locality and instability, [and] even fragility" (Ho 2009:37). In doing so, I depart from many of the extant critiques of offshore finance (e.g., Shaxson 2012; Obermayer and Obermaier 2016), which unintentionally yet frequently re-affirm the power of these markets by emphasizing their supposedly virtual, nebulous, and uncontainable nature.

This tendency to mystify offshore finance – whose rise is claimed to be driven by "globalization" and technological advances – is precisely what my study challenges. As Palan

asserts, “offshore has to be ‘unmasked’ and shown to be onshore, located within *the power of the state*” (2006:164; emphasis added). My approach, it should be noted, is hardly new among the practitioners of the critical social sciences. Over his long career, Marx pushed back against the idea of capital as an abstract and omnipotent force, which he believed to be a bourgeois ideology underpinning the works of classical political economy. Yet my intervention is nevertheless important: how the practices of offshore finance have come to affect so many millions of people throughout the world is a frightening ethnographic question to be asked indeed.

I proceed to the study’s treatment of scale. Given my focus on political, social, economic, and technical questions, it was necessary to pursue my analysis using a variety of data sources – from interviews with officials and representatives of the financial center to journalistic and archival enquiries on how these offshore sectors developed and grew within the context of profound changes in global capitalism. While in the field, I came to appreciate how ethnographic methods – premised on interactions and relationships with informants – could render a globalized phenomenon such as offshore finance into something that a lone researcher could possibly analyze. Ethnography allowed me to survey institutions or structures that are global in scale by focusing on the actions, understandings, decisions, and relationships of those implicated in them.

This multi-level approach, in a certain way, mirrors Foucault’s theorization of governmentality: “to my mind [the fruitfulness of analyzing the state] is linked to the fact that we can see that there is not a sort of break between the level of micro-power and the level of macro-power, and that talking about one [does not] exclude talking about the other” (2009:358). In my view, examining these dimensions and their interaction is essential. While other studies concentrate on the specific structures implicated in offshore finance (e.g., Zucman 2015; Marian

2016), my research surveys the people responsible for creating and managing these structures. Using this approach, I emphasize the individual and collective agency of my informants and their peers, at the same time that I recognize their aggregated role in exacerbating global inequalities of income and wealth.

While in Luxembourg, my ethnographic aims were simple enough: to understand how state and finance elites view and undertake their roles within the country's financial center. Akin to Fisher and Downey's examination of "circuits of knowledge" (2006:27), I was curious in how my informants – elite bankers, fund administrators, consultants, lawyers, politicians, and regulators, among others – mobilize their technical and political expertise to make, expand, and protect the niche markets of the Luxembourg financial center. I was not after the interior lives or secrets of my informants, but rather wanted "to understand their frames of reference… for a project of tracking the global" (Ong and Collier, eds. 2004:248). In this regard, ethnography was an efficacious method for studying the Luxembourg financial center whose members might otherwise be skilled at subverting other data collection methods, such as questionnaires or journalistic enquiries (cf. Riles 2011:13).

Photo 3 – An anthropologist goes offshore; Luxembourg City (photo by the author)

That my informants are "elites" was also significant for this ethnographic approach. Given that "elite" is a contested analytical distinction, I use this category in a holistic sense that speaks to the agency, exclusivity, and interconnectedness of my informants. Marcus notes, "elites span formal dynamics of state and economy, which organize populations and territory in modern societies, and create their own subcultures around their institutional functions and involvement" (1983:30). In this regard, I was particularly attuned to the loose connections, or networks, that exist among my informants across the various institutions making up the Luxembourg financial center. Rather than assuming the existence of a lone and tightly knit assemblage of elites, I proceeded from the notion that the financial center is in fact "a complex intertwining of elite organizations of varying character that crosscut institutional and regional boundaries" (Marcus 1983:30).

Yet I also assume a critical stance of my informants' emic views of themselves as "elites." Marcus warns us that elites generally see each other in personal and not structural terms, "conceiving power in society and attributing responsibility *to persons rather than to impersonal processes*" (1983:10; emphasis added). As such, my elite informants tend to believe that Luxembourg's "success" is due to their abilities or, to use the emic term, "talent" – and not the current worldwide historical context marked by financial deregulation and a fiscal "race to the bottom." Following Mahmud, I therefore treat the elite status of my informants not as "a static position on a class ladder but, rather, a set of relations, desires, and aesthetics performed within and beyond class lines to conjure a collective identity category" (2014:15). Significant no doubt in this "ethnography of elites" is my informants' ability to "run the big corporations, [and] the machinery of the state" (Mills 1965:3-4). In doing this, they were often explicit about what they seek to achieve and how they intend to accomplish it. All I had to do as an ethnographer was sit

back and listen to those affiliated with the Luxembourg financial center talk about making policy and wielding power.

Akin to the study as a whole, my ethnographic “points of enquiry” were atypical. That my field site was an offshore financial center required that I conceive my ethnographic access not in terms of continuous presence among a group of informants over a period of time, but rather as surveying the people and institutions that make up its diverse realms (cf. Feldman 2011). In this light, I found that my focus on elites provided me with a personal, small-group perspective on a political and economic apparatus of far greater scale. In contrast to non-elites, elites are involved in charting and maintaining the order of large socio-technical systems such as the Luxembourg financial center. While the internal activities of non-elites can also reflect the workings of larger structures, the study of elites obliges ethnographers like me to examine societal-level processes and reflect upon how elites figure into these both subjectively and objectively.

Ethnography, however, was not sufficient in itself to understand the Luxembourg financial center as a “total social fact” à la Mauss.[6] I could not just study my elite informants as such but rather needed to survey the power structures in which they operated, those “intermediate-level factors – institutions, legal standards, technical limitations, social alliances… [and] communities of shared skills” (Fisher and Downey, eds. 2006:24). How exactly, I asked, did my informants and their peers – at the level of the everyday – succeed in creating a globally significant offshore financial center? In other words, how did my informants channel and manipulate the global processes that “arrived on their doorstep”? On this continuum between the micro and macro, I posit the agency and views of my informants within larger historical and economic trends such as offshorization and financialization. To be clear, I am not claiming that

the values and actions of my informants can be generalized to those working in offshore financial centers around the world. My goal is far more modest: to pay ethnographic attention to the ways in which the particular logics, technologies, and practices of offshore finance are employed in certain times and places (cf. Miyazaki 2013:11-12) – in the case of this study, the contemporary Luxembourg financial center.

My Fieldwork

"[Ethnography's] open-endedness is further heightened by [its] social nature… which makes it fundamentally ad hoc*, sense-making as the poetics of the possible and negotiated, equal measures of serendipity and deliberate enterprise. Where, when, how and whom we encounter can never be subject to our firm control" (Amit, ed. 2000:16).*

This study combines findings from archival, journalistic, and bibliographic sources; notes from participant-observation; and transcribed interviews – a process that has allowed me to triangulate between disparate types of data and move along different scales of analysis. In line with Gusterson's "polymorphous engagement" (1997), the variety of data types I have collected – such as interviews, legislation, public statements of officials, press releases, newspaper articles, video clips, and email correspondence – reflects the mix of research techniques I employ, as I believe that no single source or method can lead to a satisfactory description of offshore financial activity as it currently exists in Luxembourg. Since sustained participant-observation was mostly not feasible for this study, I interacted

> with informants across a number of dispersed sites, not just in local communities, and sometimes in virtual form… collecting data eclectically from a disparate array of sources in many different ways [such as] … formal interviews… extensive reading of newspapers and official documents… as well as informal social events outside of the actual corporate office (Gusterson 1997:116).

Thus, this methodologically flexibile approach results in a range of distinct, if ultimately related, analytical frameworks concerned with the contexts in which Luxembourg's state and finance

elites operate. With these, my goal is to piece together an ethnographic account that cannot be fully apprehended through participant-observation alone. To use Amit's succinct formation: in my study, "it [was] the circumstance which defined the method rather than the method defining the circumstance" (2000:11).

I have often reflected on the reasons that made it possible for me to do the ethnographic fieldwork that I did. The period in which I carried out my research, during the 2015-16 academic year, was rife with events worthy of ethnographic and historical attention: the curbing of banking secrecy for foreigners, the exchange of tax information, the adoption of "transparency" discourse, experiments in art finance, and the response to the release of the Panama Papers. While some in the financial center lamented these developments, I embraced them as opportunities to question my informants about the circumstances that lead to these changes as well as their consequences. When I began the project, I did not know that these incidents would come to bear so significantly on how my informants came to perceive their roles within the Luxembourg financial center. Following this lead, I have situated my field site as a geographically centralized context from which we can see how offshore-finance professionals have responded to these global dynamics.

I began my fieldwork with only a rough idea of how to proceed, yet over time I started to recognize patterns in the kinds of ethnographic access I was achieving. Central to this process was "networking" or "making connections," an exceedingly common practice within Luxembourg's many white-collar milieus. Thus, in conducting research over approximately ten months, I came to know approximately 60 of the thousands of bankers, fund administrators, lawyers, and regulators who work in Luxembourg – those who make up what I now call the "state-finance complex" (see chapter two). The study that follows is based on some 80

interviews I carried out with these informants – completed in either English, French, or Portuguese – at numerous locations in Luxembourg and Belgium between September 2015 and July 2016.

Although I did undertake participant-observation while in the field, I did not – nor was it my intention to – obtain official permission to "hang out" in the workplaces of the Luxembourg financial center. An attempt along these lines would have been immediately rebuffed or, at best, would have resulted in meetings with the public-relations officers of the banks, lobbies, firms, or ministries in question (cf. Ortner 2010:218). Indeed, the very thought of "pitching tent" in a Luxembourg bank or state ministry, for example, "is not only implausible but also might be limiting and ill-suited to a study of the 'power elite'" (Ho 2009:19; cf. Mills 1965). As Gusterson warns us, after all, "participant-observation is a research technique that does not travel well up the social structure" (1997:115).

Photo 4 – A typical field site; Luxembourg City (photo by the author)

In this light, most of my fieldwork took the form of lunch-time or after-work interviews – for which I usually prepared a rough list of questions in advance. During these semi-structured interviews which were *not* recorded, I jotted copious notes that I almost always transcribed later that same night. As a result of this process, the quotations of my informants represent my best effort to capture their actual words. In the instances in which I am not using exact quotations, I make note to the fact that I am paraphrasing their speech (cf. Welker 2014:xvii-xviii).

In addition to interviews, and more in the realm of participant-observation, I attended a number of conferences on topics relating to the financial center, as well as panel discussions and informal social events. I also did extensive archival work in the well-resourced and -staffed National Library and at the main financial regulator, the CSSF – research that helped me to better understand the complex convergences of history and circumstance that have made the Luxembourg financial center what it is today. Likewise, every morning, I scoured the domestic and international French-, Portuguese-,[7] and English-language press for stories about financial operations in Luxembourg. This approach introduced me to the linguistic norms of my informants and their many supporters in the media, thus helping me to improve the quality of the questions I was asking.

At this point, it might be instructive to mention the "circumstances, connections, and affiliations that allowed (as well as circumscribed) my access to potential informants" (Ho 2009:19). In the ten months of fieldwork that I completed, I was able to access several fruitful networks of interviewees by drawing on a web of contacts established via alumni organizations, the University of Luxembourg,[8] friends and acquaintances, and the U.S. Embassy. These initial "points of entry" quickly segued into other venues and networks of potential informants. This process was very much along lines of Amit's description of the peculiarities of ethnographic

fieldwork: that “the researcher and his/her personal relationships serve as primary vehicles for eliciting findings and insight” (2000:2).

While there were some “dead ends” in my outreach, in which people were unresponsive to or rejected my enquiries, several contacts proved to be exceptionally accommodating, each resulting in subsequent interviews with multiple new study participants. One particular demographic of respondent was the most helpful: retired or partially retired professionals who remain active as informal “ambassadors” for the Luxembourg financial center. Not only has their insight resulted in invaluable chronologies and empirical sources of data, but also the breadth of their contacts allowed me to access people working throughout the various sectors that make up the financial center.

Essential to gaining access to members of the Luxembourg financial center was successful networking on my part, that is, “making and aggressively using connections” (Abolafia 1998:80). The various people whom I met for the study first needed to know that I would not divulge in a haphazard manner the information they were providing to me. In this regard, I went to some pains to reassure them that I was not after trade secrets, proprietary information, or a sensationalist scoop. My academic affiliations were not sufficient in themselves; rather, a personal introduction was needed to “open the door.” As previously mentioned, a number of people functioned as the “gatekeepers” to what became my multiple networks of informants. Interviews would often begin by rehashing how all these connections were made. To this end, I was frequently introduced as being the acquaintance of X. New interviewees thus knew who my key interlocutors were – meaning that I had stumbled onto a source of credibility that subsequently took me a long way. My list of previous contacts served to

signal that I was "connected" as much as might be possible for a foreign graduate student eager to learn more about the Luxembourg financial center.

To reference again Laura Nader's classic paper (1972), my fieldwork was an exercise in "studying up." My interviewees are experienced financial professionals – nearly all white men – who are educated, wealthy, and connected locally and internationally. They share interests, ideals, lifestyles, attitudes, forms of behavior, and ways of self-presentation, thus forming a relatively close web of relations (cf. Pina Cabral and Pedroso de Lima, eds. 2000:33). They lobby local and EU officials, write finance-related legislation, serve on advisory committees and working groups, and promote the financial center globally. To use the idiom of this study, this is the population that formulates, implements, and reproduces the "offshore governmentality" of Luxembourg's financial center (see chapter two). In line with Miller and Rose's "political history of our present," these are the "minor figures" who are "largely below the threshold of visibility" of journalists and historians, yet who are important nevertheless: "it is through their activities that states… could govern at all" (2008:5). I quote Miller and Rose at some length to provide a sense of our overlapping study populations:

> It was only because of the work of our small figures, with their own aspirations as well as those foisted on them, together with their instruments, that rule could actually occur. It was only through these means that the "cold monster" of the state could actually seek to shape the ways in which people conducted their daily lives, their interactions with themselves and others, and their relations with the various manifestations of social authority. It was these authorities, whether questioned, contested, admired or aspired to, that made it possible for states to govern (2008:6).

To my interviewees, I presented myself as a foreign graduate student curious about the formidable role played by the financial center within the country's political economy. In a manner that I did not anticipate, my student status was both strategically useful and epistemologically productive, and aided me greatly in attaining interviews. After a month or two,

I realized that it is a rather established practice for senior officials and representatives to give interviews with students researching the financial center for degrees in management and economics.[9] That I fit into this mold of student, without trying, amounted to a huge break – a form of "ethnographic serendipity" (cf. Amit, ed. 2000:16) – and ultimately resulted in the access and data that underpin this project.

Likewise, the set of methods that I utilized – interviews; participant-observation; and bibliographic, archival, and journalistic enquiry – followed precedent and ethical norms for anthropological research. I did not conduct research covertly, nor was it necessary "go undercover." At all times, I used my real name and institutional affiliations. Since I was not after "secrets" *per se*, but rather accounts of how the practice of banking secrecy has changed over the years, it was not necessary to entice my informants to breach their duties of confidentiality, an action that would have nevertheless violated anthropological research ethics.

For reasons of confidentiality – and due to the political nature of this study – I have not used any names, genders, or nationalities when referring to my informants. The Luxembourg financial center is a small place where "everybody knows everybody." In this regard, I have taken pains to remove all non-scientifically significant information that could tip off the identity of an informant to others "in the group." Instead, I make deliberately vague references to an individual's professional position within the Luxembourg financial center, such as "regulator," "trade-group representative," "securities attorney," or "fund administrator" (cf. Welker 2014:xvii). If I have inadvertently made reference to some of my interviewees in the text, I strenuously apologize. Harrington faced similar constraints in her recent study of global wealth managers:

> I considered creating a table of pseudonyms showing the age, nationality, ethnicity, and other demographic characteristics of individual participants in this

> study, but had to abandon the idea when it became clear that it would make them too easily identifiable. This was a particular concern for the participants working in small jurisdictions with few practitioners, in which two or three characteristics would suffice to distinguish individuals (2016:35).

Although I also struggled with whether to identify the institutions for which my informants work, I ultimately decided not to. Again, such indications would likely result in clues as to the identity of my interviewees. Since this project is about the "offshore governmentality" of secrecy and consensus, as carried out by the Luxembourg "state-finance complex" – I am after general ethnographic and historical data and *not* information on specific banks, institutions, or practitioners.

Without a doubt, the study's most vexing issue was whether or not I should subvert my critical views of offshore finance. For the first half of the project, this dilemma was less pressing, given that my initial research focus was to investigate the link between offshore finance and Luxembourg's abnormally high percentage of non-nationals in the workforce, which is as much as 80 percent by some accounts (Kmec In Press).[10] Some months into this initial iteration of the study, however, I realized that my access among those working in the financial center would be far better than I had anticipated when writing my prospectus. Eventually, I settled on the topics and approach of this current study.

In my research, as is common in the social sciences of finance, I proceed from a critical stance, questioning the logics, practices, structures, and values of my interviewees. Ho writes, "the politics of ethnographically representing and interpreting the powerful [involves] de-centering their models and histories" (2009:30). Yet the members of Luxembourg's state and finance elite would undoubtedly be wary of, even hostile to, such an upfront stance. It was all too clear from interviews that my informants wanted me to share the assumptions of their worldviews and appreciate the significance of offshore finance in Luxembourg – not to question

it. In such a context, a forthrightly critical stance would make me into an outsider who was not to be trusted.

Admittedly, this conundrum put me an uneasy position. Being an academic, I turned to the literature for ways out of this impasse. To my relief, I learned that the predicament in which I found myself in Luxembourg was common among the social scientists of finance and other elite activities. Miller and Rose discuss questions of positionality in their studies of elite research centers in the human sciences: "to analyze what one might term 'the will to govern' is not to participate enthusiastically in it" (2008:29). Thus, the way forward I chose was to be a moderately sympathetic listener, open to anything. While I would pose a more difficult question now and then, I was ultimately after my informants' views on, and descriptions of, the status quo.

In this light, I was helped by yet more "ethnographic serendipity"; curiously, my informants rarely quizzed me on *my specific opinions* regarding the Luxembourg financial center, an omission that runs counter to the experience of other ethnographers studying elite milieus (e.g., Le Wita 1994:20). While a small portion of my informants were initially defensive upon becoming "research subjects," most easily assumed the role. Reflecting on how her Hollywood-insider informants would often reverse the interviewer-interviewee dynamic, Ortner discusses how she would try not to reveal the entirety of her own views:

> I tried to give general answers (especially since I was not entirely sure for a long time what the project was in fact about) but occasionally individuals would press the question and I would mention some line of thinking I was pursuing. This was almost always a mistake, as the person would immediately disagree with whatever premise I seemed to be working from (2010:224).

While I would have pursued a similar strategy if an analogous situation arose during the interviews I conducted in Luxembourg, it was undoubtedly a relief to *not* have been put in a

position like this. Thus, I was able to keep my views on offshore finance to myself in large part because few of my informants ever asked explicitly for my opinion on, or analysis of, their activities. Nevertheless, this strategy of "keeping to myself" was challenging at times due to some of the more eyebrow-raising comments my informants offered.

There were also moments – rare, I must admit – when there was a temptation to "go native," to buy the interpretation of the global economy my informants were selling, literally and figuratively. At times, I saw how easy it could have been to assume their worldview because it is such a potent and profitable one (cf. Abolafia 1998:82-83). Ortner warns against becoming "a complicit ethnographer, overly cautious in the interview situation, and timid in what one writes, wanting to please and impress informants" (2010:226). The ideology of ultra-liberal finance capitalism is common among those within the Luxembourg financial center; for its proponents, it provides a pure and far-reaching means to understand all aspects of the human experience. What happens to them on a daily basis, in turn, is refracted through this ideology. While in the field, I was keen to record all the views of my informants – yet at the time to begin analysis, my critical and interpretive faculties returned. The norms, procedures, and values I perceived among members of the financial center thus become yet more socially and culturally embedded phenomena to be analyzed in my ethnography.

I end this section with two brief reflections. The first is an anthropological caveat. Because secrecy is a main topic of the study, I fear that my anthropological account of this always-elusive phenomenon might result in a loss of context that is essential for understanding it *in situ*. In this vein, I follow Jones in his assertion that ethnographers must express "interpretive humility" in any analyses that extract "systems of secrecy" from the contexts in which they were formulated and are utilized (2014:64). My second parting comment speaks to the political

implications of this study. While I am undoubtedly concerned with the social, political, and economic consequences of offshore finance of the kind found in Luxembourg, I do not make "judgements as to whether and why this or that policy succeed or failed, or [devise] remedies for alleged deficiencies" (Miller and Rose 2008:29). My goals for this study are more modest – while at the same time, I do not avoid political confrontation entirely. One could say that one of a number of endeavors of this study is to bring offshore finance *à la luxembourgeoise* out into the open and away from the "stifling and alienating blanket of fog which is produced by the ruling discourse and [results in] silence and uniformity of consent" (Ziegler 1979:7). As such, I dip into the tradition of polemic that has characterized extant social-science research on finance and elites in the hope that my account can prompt meaningful discussion about socio-economic inequality and the unequal exercise of political authority that pervades the advanced liberal societies of today.

Networking Ethnography

At this point, I wish to use my fieldwork experience in Luxembourg as a means to reflect upon what I call "networking ethnography." I believe that formulating some of insights I gained while in the field might help inspire ethnographers to investigate other field sites of global politico-economic significance, akin to the Luxembourg financial center. In this sense, I am responding to the provocation of Smith (2006:621) who urged anthropologists to develop methodologies to interrogate the legal and technological machinations of capitalist reproduction. Marcus and Fischer foreshadow this sentiment:

> What we have in mind is a text that takes as its subject… "the system" itself – the political and economic processes spanning different locales or even different continents. Ethnographically, these processes are registered in the activities of dispersed groups or individuals whose actions have mutual, often unintended consequences for each other, as they are connected by markets and other major

> institutions that make the world a system. Pushed by the holism goal of ethnography beyond the conventional community setting of research, these ideal experiences would try to devise texts that combine ethnography and other analytical techniques to grasp whole systems, usually represented in impersonal terms… These are truly ambitious experiments in the political-economy vein (1986:91).

In spelling out "networking ethnography," I offer an approach that ethnographers can use to analyze the physically dispersed but structurally linked "amorphous regimes of global governance [that often] absorb millions of people within their purview" (Feldman 2011:187). As the Comaroffs remind us (2003:153), the practice of ethnography arose from the premise that a full picture of power relations can be mapped if one stays long enough with the proverbial "tribe," or – in my case – in a decentralized system whose scope may once have entailed multiple field sites. The analysis of such globalized activity thus necessitates an approach that allows the ethnographer to transverse milieus in order to understand the converging elements that make up the system in question.

In this light, "networking ethnography" combines immersion and movement – sufficiently comprehensive to consider the logics and activities of those working at various points within the system, while precise enough to delineate how such norms came into being during a certain time and place (cf. Ho 2009:18-19). For example, studying a field site such as the Luxembourg financial center requires concurrent analysis of knowledge practices, regulations, ideologies, discourses, technologies, and institutions that collectively facilitate the administration of trillions of dollars linked to globalized financial products. Thus, "networking ethnography" does not call for its practitioners to be immersed solely in one location or with a lone group of informants, but rather to attend to the contexts, actors, and rationales that enable the system in question to exist in the first place.

There is ample scholarly precedent for "networking ethnography." It resonates with Marcus's "ethnography of complex connections" (1989), Ortner's "interface ethnography" (2010), and Feldman's "non-local ethnography" (2011). These methodological approaches were formulated to analyze topics that had typically been outside the purview of anthropology: markets, financial crises, social movements, media production, the circulation of money, and international bureaucracies. I see my "networking ethnography," as such, to be an offspring of this not-so-new movement in anthropology.

I also intend for it to be in the spirit of Foucault's "toolkit" (*boîte à outils*): prospective "networking ethnographers" should take from the approach whatever is useful or helpful in analyzing reigning systems of power and influence. Rabinow asserts, "Foucault's analytics of power is Nietzschean [in this regard]: weapons against weapons, archives against archives, tactics against tactics, strategies against strategies" (2003:50). Yet anthropology and social theory are not the only disciplines in which "networking ethnography" might be of interest. Such an approach is also sorely needed to enrich and extend the existing literature on offshore finance. Since very little of the reflective or critical "spadework" vis-à-vis methodology has been done to this end, I outline in what follows a possible way forward.

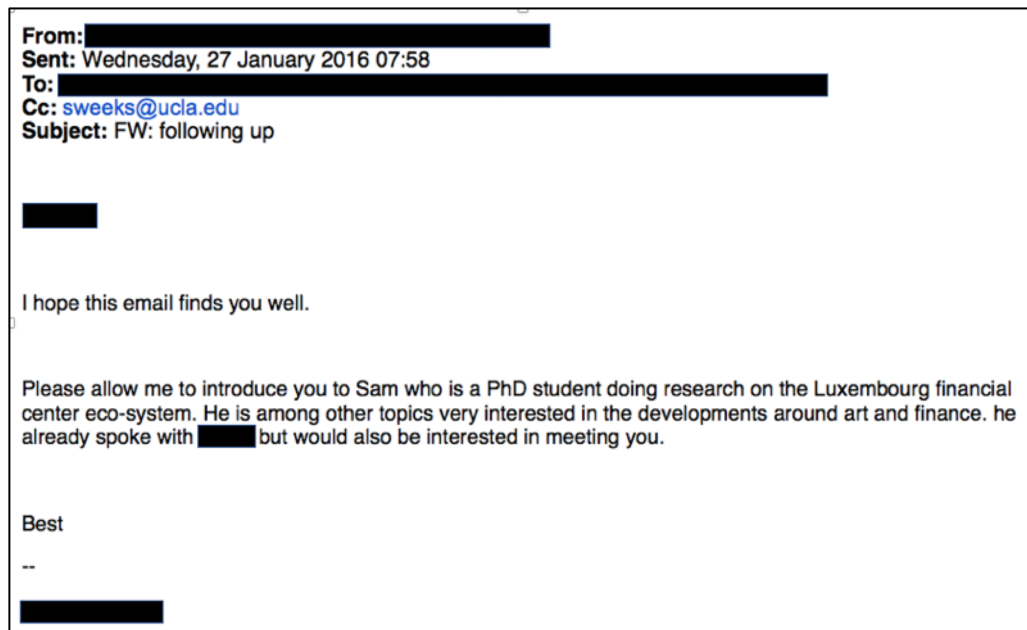
As referenced in the previous section, "networking ethnography" privileges the interview form, even as it readily incorporates other methods and forms of analysis. For example, many of my interviewees think through, and with, "the market" – which means that I must include ample technical background information with my ethnographic description. To this end, I draw from a number of excellent academic studies and media and policy reports that have gathered diverse types of data on the global reach, power, and consequences of offshore finance. While most data collection in "networking ethnography" takes place via interviews, it also maintains the other

core methods to anthropological research, namely participant-observation and a long-term commitment to developing rapport with informants. As in most other qualitative research, a reliable test of the impressions gleaned from these methods is what I call "saturation," after which point the "networking ethnographer" should be able to predict the tenor and direction that her informants' comments take (cf. Hertz 1994:4).

My emphasis on interviews is not due to personal preference, but rather because it is realistically the only plausible method for an ethnography of elites. In this study, most of my ethnographic data comes from interviews carried out during pre-arranged meetings with informants from the financial center, supplemented by field notes collected via participant-observation. In this case, it would have been supremely difficult – and may have jeopardized the rapport I had already established – to try to secure additional access, which in all likelihood would have been refused (cf. Abolafia 1998:82). Financial-center elites, after all, have greater power, wealth, and prestige than graduate students in anthropology; they are used to the deference of others.

In researching contexts for which "networking ethnography" is appropriate, an essential first step is to look for "points of entry." While these initial contacts can stem from many sources, in my case they originated from shared institutional, academic, or personal connections. What to look for is any kind of "opening" into the social milieu that forms the topic of analysis. Due to the "everybody knows everybody" mentality of many localized socio-economic apparatuses akin to the Luxembourg financial center, it is possible to develop a network of subsequent contacts once you are "on the inside" and have managed to build some rapport with participants.

To get a sense of this process of finding "entry," I offer some instances that happened to me in the field. Once, in a frank admission, a senior Luxembourgish banker mentioned that he agreed to see me in large part out of obligation to the friend who put us in touch. Introductions such as the one in figure three were frequently done via email – without, it often seemed, the initial informant letting her colleague know beforehand about the request. Such situations – with one informant asking another via email if she could speak with me, and I am included as a CC in the correspondence – almost always resulted in an interview, most likely due to the position and influence of the person putting us in touch. This dynamic repeated itself over multiple occasions during my fieldwork and was usually a positive development. In this regard, my incipient interviewee networks among financial-center representatives, in many ways, mirrored previously established ties between my informants.


From:
Sent: Wednesday, 27 January 2016 07:58
To:
Cc: sweeks@ucla.edu
Subject: FW: following up

I hope this email finds you well.

Please allow me to introduce you to Sam who is a PhD student doing research on the Luxembourg financial center eco-system. He is among other topics very interested in the developments around art and finance. he already spoke with but would also be interested in meeting you.

Best

--

Figure 3 – An example of a "point of entry"

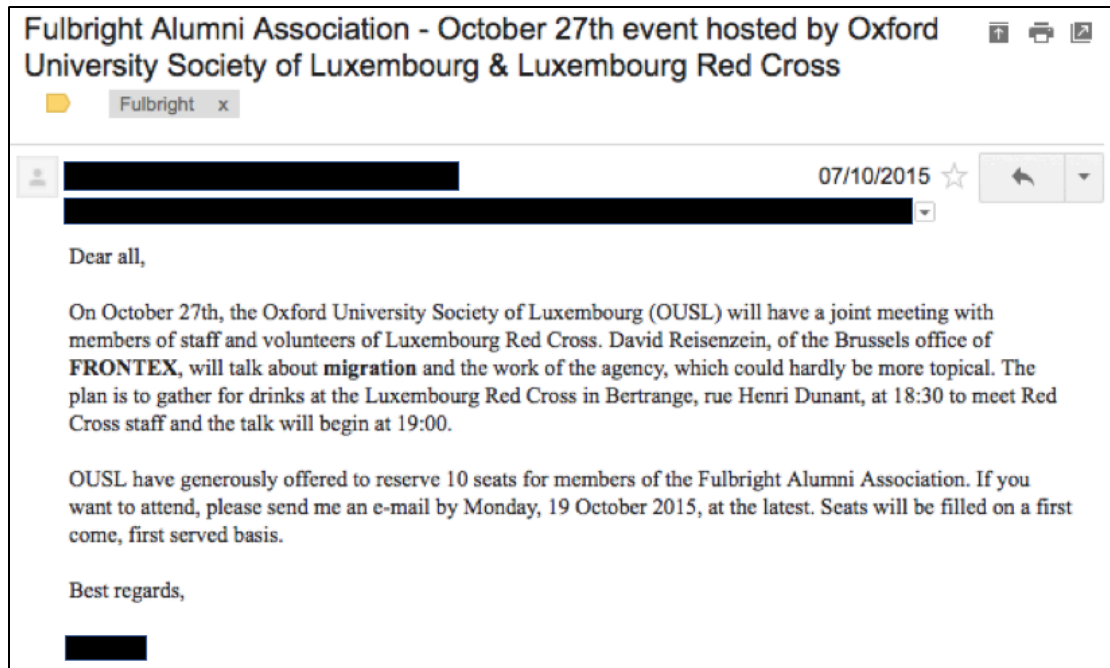
My attempts to "cold-call" potential interviewees were hit or miss. A more successful strategy was contacting local elites likely to serve the role of "gatekeeper" that we all know so well from classic works in social anthropology (Casagrande, ed. 1960). These were frequently

retired or partially retired senior figures who were likely to serve as brokers between the financial center and "the outside world." Marcus notes the benefits of reaching out to this sub-population:

> Within an elite organization, out-of-power, retired, or marginal members are likely to be the subjects most accessible to ethnographers. Accessibility is a fundamental factor affecting… [those] who… will serve as subjects and informants for ethnographers. It is among elites in decline or of marginal importance in their fields of activity that ethnographic research can most likely be done (1983:38).

Moreover, this group was much more accessible and generous with its time and contacts than those currently occupying senior positions within the financial center. As such, a number of these "gatekeepers" not only guided my initial attempts at meeting potential informants, but also provided me with essential knowledge on which I could begin my larger analysis.

With regards to this outreach, my numerous academic affiliations came in particularly handy. There were several instances in which an informant I met via academic connections agreed *in an unsolicited manner* to introduce me to other "fellow grads." Even as such developments were exciting as they transpired, they should have not come as a surprise; among the elite, white-collar, technocratic milieus most appropriate for "networking ethnography," educational qualifications are an essential mark of social prestige and technical competence (Bourdieu 1996). A common venue for this elite sociality to take place is the "alumni association" (*association des anciens élèves* in French). While the most active of Luxembourg's many alumni associations were linked to universities I did not attend, some of these – to my great luck – offered relations of "reciprocity" to groups with which I was affiliated.


Fulbright Alumni Association - October 27th event hosted by Oxford University Society of Luxembourg & Luxembourg Red Cross

Fulbright x

07/10/2015

Dear all,

On October 27th, the Oxford University Society of Luxembourg (OUSL) will have a joint meeting with members of staff and volunteers of Luxembourg Red Cross. David Reisenzein, of the Brussels office of **FRONTEX**, will talk about **migration** and the work of the agency, which could hardly be more topical. The plan is to gather for drinks at the Luxembourg Red Cross in Bertrange, rue Henri Dunant, at 18:30 to meet Red Cross staff and the talk will begin at 19:00.

OUSL have generously offered to reserve 10 seats for members of the Fulbright Alumni Association. If you want to attend, please send me an e-mail by Monday, 19 October 2015, at the latest. Seats will be filled on a first come, first served basis.

Best regards,

Figure 4 – The alumni association as a "point of entry"

Commenting on a previous generation of anthropological research, Marcus nevertheless notes the important facilitating role played by academic institutions: "entering the field often requires good contacts at various levels of organization in a society. If the ethnographer is fortunate, these contacts begin, not within the society in question, but among members of the society's elite who study in Anglo-American universities" (1983:35). For a more contemporary example, in a study about U.S. filmmakers, Ortner discusses how her eventual "breakthrough came via academic channels, that is, through professors in the UCLA film school" (2010:222), after a series of initial attempts to access informants via personal connections resulted in dead ends.

My emphasis on interviews is not to say that I did not complete any participant-observation while in Luxembourg. At times, it was hard *not* to do this. Indeed, from early in the morning until long after work, the cafés and restaurants close to the country's many banks, law and accountancy firms, and state and EU offices teem with people gathering for *rendez-vous*.

Additionally, my informants invited me out for coffee, drinks, and dinner, as well as to the private members-only clubs to which they belong (see chapter four). As such, my fieldwork resulted in me experiencing a number of the social contexts frequented by state and finance elites in Luxembourg (cf. Pina Cabral and Pedroso de Lima, eds. 2000:48). To a "networking ethnographer," these are opportune moments not only to conduct interviews with study participants, but also to undertake participant-observation within the spaces that make up the country's financial center. Beyond the information gathered during these opportunities, the trust and rapport established with informants in face-to-face settings often opened doors to new and significant data sources, introductions to other interviewees, and the provision of archival materials otherwise unobtainable or previously unknown (cf. Harrington 2016:29).

Participant-observation as part of "networking ethnography" can also take place at those instances in which "the closed community, organization, or institution interfaces with the public" (Ortner 2010:213). The most indicative example of an instance along these lines was a guided tour and question-and-answer session I attended at the European Investment Bank (EIB; see photo two) in Luxembourg City. Even though my attempts to schedule follow-up interviews went unanswered, the afternoon was nonetheless informative to hear how those associated with the financial center represent what they do and how they do it. This is often couched in euphemistic language and sometimes corresponds in little way to reality – for example, "the EIB is active in mobilizing economic growth and job creation in Greece" (presentation, September 2015) – yet nevertheless can constitute valuable ethnographic data about the logic and practices of elite informants.

To quote Ortner: "people in these [interface] contexts always reveal more than they intend, especially at the level of the deep background assumptions that shape what they say and

what they do not say, as well as the body displays and interaction rituals they perform" (2010:221). In the instances in which I did succeed in scheduling follow-up interviews with presenters from events I attended, they frequently offered information or anecdotes similar to what I had heard initially at the conferences or panel discussions. Although interviews constitute the bulk of data collected for this project, undertaking a kind of participant-observation at the financial center's public events not only provided me with essential information and leads on finding new interviewees, but also resulted in some significant ethnographic insight on how financial-center representatives present themselves to the outside world.

Photo 5 – A mise en scène *for "interface ethnography" (Ortner 2010), September 2015; European Investment Bank, Luxembourg City (photo by the author)*

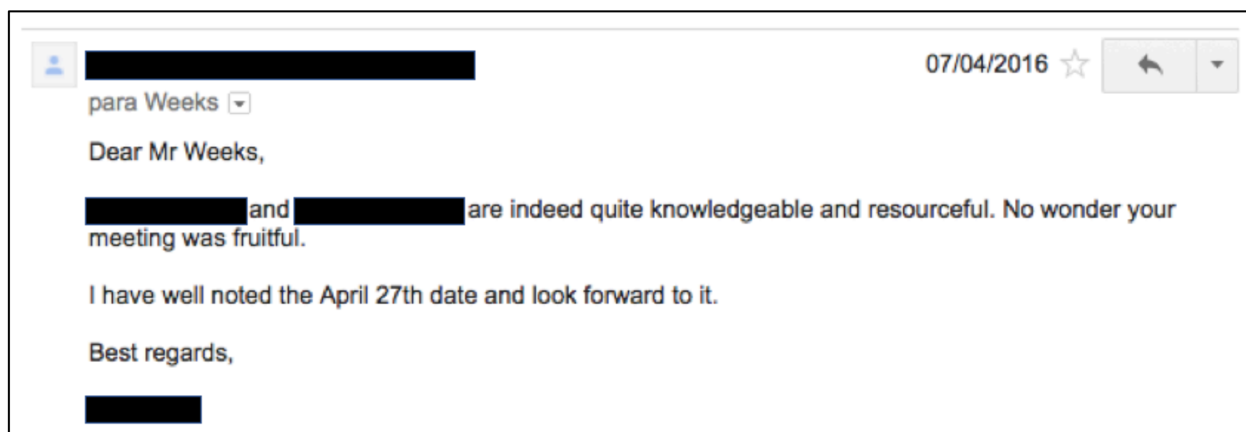
Yet even after one has gained access such as this, a successful project via "networking ethnography" is not inevitable. Informants may remain somewhat suspicious of the study's objectives. In this light, the "networking ethnographer" must take pains to assure study participants that "her motives are… scientific rather than commercial, that the project is important enough to be worth their time, and ultimately that the researcher is capable of 'getting it right.' The quality of the ethnography is contingent on the extent to which trust is established"

(Abolafia 1998:80-81). Because interviews with informants normally happen only once and usually focus on "technical" matters, it is essential that the "networking ethnographer" seek to build rapport primarily on the basis of intelligently formulated enquiries and the ability to probe effectively their implications. As such, via such carefully chosen questions, one can show to informants that time had been taken to understand the current concepts and issues implicated in their work.

In my case, I designed a broad enough frame for the study, through which I could pursue a number of lines of enquiry in the interviews I scheduled. Since Luxembourg's financial-center professionals on the whole consider themselves to be maligned and misunderstood, in particular at the hands of foreign journalists, it was not hard to convince certain informants that a serious study of their activities would be beneficial. Indeed, the more that I directed the interview and pursued questions that my informants cared about, the more responsive they became. The openness that resulted from this approach – perhaps another example of "ethnographic serendipity" – was likely due to the fact that I was an informed-yet-nonthreatening listener, eager to learn about something of great professional importance to them: the financial center. Once this "sweet spot" was achieved, the interviews often went well over the time we had scheduled to talk. When I mentioned the three-hour meeting I had recently had with one informant, a mutual colleague and friend said that the two of them actively *enjoy* discussing their involvement in, and knowledge of, the Luxembourg financial center (interview, July 2016).

In this regard, I believe that a *mutual interest* between the interviewer and interviewee is an essential component to "networking ethnography." For her recent study of U.S. cinema, Ortner believes this to be the reason that she was ultimately able to access "independent" filmmakers but not Hollywood executives: "there is also the question of interest in the sense of

curiosity, of intellectual or 'gut' engagement with the idea: somebody needs to *feel*, for whatever reason, that this is an interesting project, and get behind it" (2010:218; italics in the original). As I began interviewing figures from the Luxembourg financial center, it became obvious that a mutual interest in the subject matter was largely the reason they agreed to speak with me. While there was a chance that these informants were responding to me due to the position and influence of the person who put us in touch, many did seem genuinely interested in participating. Of course, there is ample ethnographic precedent for this (Casagrande, ed. 1960). Reflecting on his fieldwork in Algeria, Bourdieu writes, "my inevitable disquiet was relieved to some extent by the *interest* my informants always manifested in my research whenever it became theirs too" (1990:3, italics in the original; cited in Ortner 2010:223).


07/04/2016

para Weeks

Dear Mr Weeks,

and are indeed quite knowledgeable and resourceful. No wonder your meeting was fruitful.

I have well noted the April 27th date and look forward to it.

Best regards,

Figure 5 – The ethnography of "mutual interest"

Yet pure interest or curiosity was not the only reason I sensed for my informants' participation. The period of my fieldwork, from September 2015 to July 2016, coincided with the Luxembourg financial center's adoption of the OECD's automatic exchange of fiscal information and its related discourse of "transparency." To some of the people I interviewed, particularly those from the lobbies or trade groups, it seemed normal, even desirable, that these efforts would be documented by foreign scholars. Thus, from the moment my interviews started in earnest until my last day in Luxembourg, many informants – coming from all areas of the

financial center – wanted to talk with me about "transparency" (cf. Hertz 1994:1). In this regard, most members of the financial center seemed acutely aware of Luxembourg's reputation as a "tax haven," especially in the wake of the 2014 Lux Leaks revelations. Perhaps then agreeing to sit for an interview with me was an opportunity, however small, to promulgate this rhetoric of "transparency," in order to counter some of the prevailing criticism that casts the financial center in an unkind light (cf. Mahmud 2014:11). Palan et al. note, offshore financial-center "authorities have also learned that it is to their advantage to cooperate with academic researchers who can then present, at the very least, their side of the argument" (2009:48). As such, in a number of interviews, some informants wished that all their colleagues would be more open about their work, so that the greater public would realize that the Luxembourg financial center has "nothing to hide."

An additional consideration regarding "networking ethnography" is the need for its practitioners to adopt "context-specific behavior." While much as been written about the social comportment of "the dominant class" (see Bourdieu 1984, 1996), I believe that the "networking ethnographer" should at least note the "scripts" or "choreography" (Dörry 2016:26) of contemporary elites, such as those making up the Luxembourg financial center. Aligning one's self-presentation to these elite "scripts" or "choreography," to the extent that is possible, may be methodologically advantageous or even essential. Le Wita describes the typical first moments with her French high-bourgeois informants: "the informant simply wants to know whether the person in front of him belongs to his world or not. The trouble is, in his world, that question does not arise: one usually knows with whom one is dealing" (1994:10). While studying elites can put an ethnographer in all manner of difficult positions, one can learn to ease the tension of these situations by borrowing from the informants' own cultural schemata. In this regard, a form of

self-presentation compatible with that of the financial elite might include the "proper" management of one's facial expressions, styles of dress, and speech patterns.

It was also no doubt helpful that – akin to the majority of elites in the Luxembourg financial center – I am a white English- and French-speaking male, possessing of a white-collar *habitus*. Discussing similar methodological implications in her ethnographic study among global wealth and trust managers, Harrington admits, "the necessity of having the right 'tone,' the right 'gestures,' and 'appropriate language' when studying elites has been well documented, and these… assisted me in accessing [my informants]" (2016:27). Yet even though I share some of the same social and cultural capital as my informants, there was much I had to learn along the way. Over the course of my fieldwork, I had to train myself to see, speak, move, and consume differently, in order to fall more into line with my informants and navigate certain spaces with a similar rapport. While I did remain conscious of my "normal" abilities, the new form of self-presentation I adopted was not just another exercise in reflexivity; it was, we could say, a methodological imperative of "networking ethnography."

My Study Within the Literature

My project seeks to contribute to debates within the social science of finance – with particular relevance to the sub-genre of "offshore finance studies" – by addressing two questions that remain largely unexplored in extant literature, the first regarding sample and the second analytical framework. While influential studies of offshore finance – exposés (e.g., Lux Leaks in 2014 and the Panama Papers in 2015) or research in sociology (Pinçon and Pinçon-Charlot 2015) or economics (Zucman 2015) – provide compelling accounts of how these arrangements allow individuals and companies to hide money, few of these works elicits the views of the professionals and officials *who enable these markets in the first place*. Given the growing public

and scholarly awareness into offshore finance, an understanding of how its practitioners carry out and make sense of their work is a research concern of paramount importance. My second contribution pertains to the study's analytical framework. In contrast to existing scholarship, I do not draw attention simply to a particular offshore center (Jersey, in the case of Hampton 1996) or a single niche (wealth management, in the case of Harrington 2016), but rather use my empirical data to formulate a model – "offshore governmentality" (see chapter two) – that can analyze how the world's many tax-haven jurisdictions have developed offshore financial centers similar to Luxembourg's. Given that no fewer than 80 countries count offshore finance to be a main pillar of their political economies (Palan et al. 2009), a model to understand this growth over diverse locations would represent a significant scholarly contribution.

I believe these objectives of my study to be situated within a number of currents within the social science literature. The first of these would be the anthropology and sociology of finance. This field dates from the 1990s, when leading figures in sociology and science and technology studies (STS) – such as Michel Callon, Karin Knorr Cetina, Donald MacKenzie, and others – turned their collective analytical attention to global finance. The result of these initial efforts has come to be known as the "social science of finance," whose corpus now features numerous influential titles: Fisher and Downey, eds. (2006), Lépinay (2011), Riles (2011), and others. Even as they work on diverse projects, these scholars are united in their belief that "financial markets" entail a networked configuration of personnel, legal and digital technologies, economic theories, calculative formulas and algorithms, and institutional and organizational arrangements. As in the field of STS, the thread connecting these studies is how their authors show the ways in which human and non-human elements converge within systems to set the boundaries of financial practice. For instance, Zaloom (2006) studies international commodity

traders in Chicago and London and analyzes their trading philosophies and practices, which used to be based on face-to-face interactions on the trading floor but now take the form of streams of information passing on their computer screens.

While many would agree that financial markets function symbolically as much as they do economically, their social, cultural, political, and ideological effects have occasioned less scientific attention. Into this void has come the anthropology of finance, which in recent years has turned into a serious, innovative, and wide-ranging subfield within the discipline (see Hertz 1994; Maurer 1997; Roitman 2005). To date, anthropologists – or more accurately, ethnographers – have drawn attention to the rituals, logics, and motivations of those who have self-consciously developed and expanded particular markets within the financial services industry (Abolafia 1998). Moreover, ethnographers have detailed the "expert knowledges" and socio-cultural formations of the people who bring financial markets of all sorts into being (Miyazaki 2013). The global financial crisis of 2008-09 has only reinforced these trends (Gudeman 2015) and brought a new and wider readership to anthropological studies of finance (see Graeber 2011). Given the nearly unprecedented scale of this lengthy crisis and its manifold reverberations, completing additional ethnographic analyses on the workings of global finance constitutes an urgent anthropological task. While this effort has been ably assisted by media reports, insider exposés, and theoretically driven critiques of capitalism, the anthropology of finance differs from these approaches via its unique methodological and analytical bases.

In this light, a brief discussion of the intellectual background of the present study might be helpful. This research project traces its scholarly roots to a number of classic studies in social theory. I demonstrate how today's offshore finance is akin to the "fictitious capital" theorized by Marx, in how it surpasses state boundaries and augments social inequalities. From Weber, I draw

historical connections between capitalism and Christianity, given that Luxembourg's banking secrecy finds one of its legal and social bases in canonical law – that is, the *silence* that a priest must maintain after hearing the confession of a parishioner (see the conclusion). Likewise, Simmel masterfully shows us the power of money and secrecy to "connect socially distant individuals, mute passions, and ignite economic lust" (Zaloom 2006:11). Lastly, I engage the concept of "governmentality," which Foucault provocatively yet incompletely theorized in the late 1970s, in order to analyze the logics behind particular legal and fiscal practices within the Luxembourg financial center.

This intellectual heritage not only informs my own work, but also that of other anthropologists of finance. This loosely organized group – which includes Maurer, Holmes, Lépinay, Miyazaki, Riles, and others – has covered significant topical, theoretical, and analytical ground. Among other themes, this scholarship has examined the intersection of economic and juridical domains that govern "the economy," and how global financial markets have increasingly become the province of lawyers as much as they are for financiers. Additionally, these researchers have surveyed the conditions under which financial predictions are made, particularly in the context of new markets or shifting economic conditions. Other topics of analysis taken up by anthropologists of finance include the diverse understandings of financial circulation – which possess distinctive "forms of abstraction, evaluation, and constraint" (Lee and LiPuma 2002:191-192) – and the dizzying array of bureaucratic tasks carried out by "back office," "middle office," and "front office" financial employees: filling out forms, keeping records, making "paper trails," analyzing trends, and preparing presentations (Ho 2009).

Within the literature on the social science of finance, my two closest interlocutors would be the political economist Ronen Palan and ethnographic sociologist Brooke Harrington. Palan,

whose work (including 2006 and Palan et al. 2009) I liberally cite throughout this study, examines the roles of states – and the strategies their leaders use – in developing worldwide markets for offshore financial services. Furthermore, Palan tracks the mutations that have taken place within large “onshore” countries in the context of widespread offshorization at the global level. I concur with his hypothesis that offshore finance is one of central reasons for the post-1980s “decline” of functions typically carried out by the world’s nation-states, such as regulation, progressive taxation, and workplace and environmental protection. Examining similar processes as Palan but from a different angle, Harrington focuses on the social underpinnings of offshore financial markets, in particular those for private banking and wealth management (2016). She is an ethnographer – and, as such, employs an analogous set of methods as I use – in order to analyze the practices of offshore financial professionals and the ways they understand their responsibilities to clients. Moreover, Harrington traces how the individual action of her informants and their peers aggregates upward to the levels of institutional cultures, political economies, and global markets.

In my study, I stake out a number of positions within the literature on the social science of finance. In the heated debate between Michel Callon and Daniel Miller (Callon 2005; Miller 2005), Callon argues that the theories and models of finance capitalism are not “virtual,” as claimed in Carrier and Miller, eds. (1998), but “real” in the sense that these theories and models actually engender the behavior of *homo economicus* on a daily basis. As Callon (2005) takes pains to explain, the social construction of “economic practice” creates the conditions under which “economic thought” can be developed, and vice-versa. Given this dialectic, Callon rejects Miller’s implicit dichotomy of “virtual” and “real” elements in the globalized and financialized political economy of today. I concur with Callon’s critique here: allowing global finance to be

"virtual" overlooks the social basis of its operations and the very real consequences of its activity. In this project, I make the case that the "offshore governmentality" (see chapter two) found in Luxembourg is not the result of abstract financial models as it is by the localized practices of the country's state and finance elites in conjunction with the global financial-services industry.

Additionally, I have avoided two of the totems that define much of the scholarship on offshore finance. I avoid entirely the narrow and hermetic debates around financial markets and their regulation (or lack thereof). Common to U.S. political discourse, this "debate" is overly preoccupied with the question of "rationality" versus "irrationality" and the idea of a "free market" versus the need for "government regulation." Such an approach assumes a clean break between "the market" and "the state" and thus de-emphasizes the historically specific institutional, intellectual, and socio-cultural configurations in which these realms overlap and mutually constitute each other. Instead of this tired dichotomy, I prefer the formulation of the "state-finance complex" (see chapter two), which points to the significant interconnectedness of the Luxembourgish state apparatuses and the country's finance center, and the fact that many institutions spanning these entities have converged to form a "complex" for collective action.

The second totem from "offshore studies" that I avoid is the usual reference to greed. As such, I imply no judgement about the actions I describe from some fixed, absolute ethical or moral stance. In this project, I focus instead on the structural logics of offshore finance through which we can understand of the practices and values of those who make up the Luxembourg financial center. The global capitalist system enables financial capital to travel from site to site at breakneck speeds, entering and leaving jurisdictions such as Luxembourg in its permanent pursuit of profit. Along the way, multinationals and financial institutions seek to align changes in

market conditions to their cycles of accumulation and dispossession – processes that result in the widespread use of deregulated, ultra-low-tax offshore centers such as Luxembourg's. If anything, greed does not so much signify excess within financial capitalism but is rather built into the system itself.

The last position I take relates to how the loose grouping of scholars known as the "Anglo-Foucauldians" analyzes the techniques and strategies that make up "governmentality." In line with the approach of these scholars, I must emphasize that my formulation of "offshore governmentality" is not an attempt to devise a sweeping social theory (see chapter two for a description). Instead, I see it as an analytical perspective in the literal sense: "an angle of view, a manner of looking, a specific orientation" (Bröckling et al. 2011:15). My examination of the Luxembourg financial center through the lens of governmentality thus resists the totalizing conceptualization of power that Foucault himself seems to forward in his 1977-79 lectures at the Collège de France. In this regard, I agree with Kerr when he argues that Foucault's views on power "subordinate subjectivity, contradiction, and struggle to a system of positive productive power in a process of perfecting itself" (1999:175). Instead, my version of "offshore governmentality" does not purport a top-down conception of social reproduction but merely constitutes an insightful framework for analyzing the development and administration of the Luxembourg financial center since the 1960s. In this sense, I avoid Foucault's insinuation that one can never escape from systems of governmentality and instead emulate his more modest application of this concept to explain the rise of neoliberalism in post-WWII Germany and the United States.

My overarching goal for this study is thus to provide an ethnographically and historically informed account of the Luxembourg financial center as an *administrative apparatus*. The global

financial crisis of 2008-09 has understandably made offshore centers such as Luxembourg's a target of public criticism in the debate about how to reconfigure financial markets toward less risky and more equitable ends. Despite this charged political context, many scholars and critics of offshore finance inadvertently reinforce its dominance by attributing it to abstract and all-powerful forces. Such narratives can be found in the otherwise well-intentioned criticism that global finance has somehow been "disembedded" from society, and that financial logics are restructuring societies according to "virtual" economic models promulgated by elite institutions and multinational corporations (Carrier and Miller, eds. 1998). In the spirit of Ong and Collier, eds. (2004:321), I resist against these narratives of offshore finance by detailing the localized development of a "state-finance complex" (see chapter two) in Luxembourg that operates in the service of global financial capitalism. As such, I resist the "mystique of finance" by focusing my ethnographic attention on the social and legal systems necessary to *administer* financial activity. "Given that finance and money may be anthropology's 'new exotic,'" as Ho reminds us, "demonstrating the quotidian particularities and insufficiencies of finance becomes all the more crucial" (2009:34).

Lastly, I intend for this study to be a forceful intervention in a – or perhaps "the" – central debate within "offshore studies": is offshore finance a perversion of capitalism? Or is offshore finance capitalism's logical conclusion? Proponents of this first line of reasoning believe that offshore finance makes "normal" markets inefficient. In an April 2016 event in Luxembourg City, tax-justice campaigner Richard Murphy stated that "tax havens are an existential threat to capitalism." Along similar lines, Harrington explains how offshore structures inhibit the proper circulation of capital: "in ensuring that those family assets [in trusts] are not for sale to others – and the wealth is not redistributed though taxation – wealth managers deprive

markets of liquidity, hindering their development" (2016:16). Likewise, Hampton and Abbot, eds. note the prohibitive "costs" of offshore financial centers, as

> vast amounts of resources are diverted from productive investments to secondary services such as accountants, lawyers, and civil servants. Offshore in that sense is not about economic efficiency but perversely, in strict economic terms, about economic inefficacy; the most perfect market is in fact a distortive mechanism, dispersing economic activities away from their "natural" location and grouping them where they would not otherwise be (1999:35).

Some criticism in this vein goes even further, lamenting not only the deleterious effects of offshore finance on capitalism, but also on the entire system of democratic liberalism. Harrington asserts, "[offshore wealth and estate managers'] work radically undermines the economic basis and legal authority of the modern tax state. 'Professional subversion' is their stock and trade" (2016:170). In even starker political and epistemological terms, Shaxson gives his verdict on offshore finance: "Offshore is not only a place, an idea, a way of doing things, and a weapon of the financial industry. It is [also] a *process*: a race to the bottom where regulations – the laws and trappings of democracy – are steadily degraded" (2011:210; italics in the original).

While I applaud these critics' warnings and condemnation, I do not believe offshore finance is an aberration of capitalism. Instead, I contend that it is an "anti-politics" that is entirely compatible with certain logics and practices of finance capitalism. In the words of Palan: "offshore [finance] was, and is, and is likely to continue to be used almost exclusively as a very powerful and effective instrument of power supporting capitalist accumulation" (2006:183). As I show in this study, offshore finance – in Luxembourg and elsewhere – was not a historic or economic inevitability, but was rather a *chosen possibility*, or more accurately, a series of chosen possibilities. Far from representing the "dark side" of capitalism, offshore finance was a common-sense response – made by capitalists, according to capitalist logics – to the crises of capitalism in the Global North during the 1970 and 80s (Brenner 2006).

Why, you might be asking, do I call offshore finance an "anti-politics"? Setting aside the fact that is an experiment in ultra-liberal financial capitalism, offshore finance is first and foremost a *political project*, serving the interests of those who purchase its services, that is, the rich and the powerful. Seen this way, offshore finance is a "technology of state" that is radically changing notions of sovereignty and regulation in the contemporary world. It is also an "anti-politics" because it is decidedly undemocratic. From the turn of the century until the 1970s, Global North democracies built welfare states that sought to alleviate some of the excesses and exploitation caused by the capitalist mode of production. By sending their capital "offshore" to avoid the taxes and regulations of the "onshore" welfare state, the clients of offshore financial centers seek to "outflank and redraw the complex compromises engendered in the (welfare) state – which, however skewed, were still compromises" (Palan 2006:70). As such, offshore finance is a program of "anti-politics" that seeks the removal of even the limited protections implemented by democratic means over the last 100 years.

To this end, offshore finance is hardly an aberration or perversion of capitalism but rather a central dimension in its global reconfiguration since the 1970s. In a dialectical fashion, offshore finance was *both* a response to the crises transforming capitalism during this period *and* a key instigator of the subsequent restructuring process. Since then, the dramatic growth of offshore finance has served to reinforce the profound politico-economic changes implicated by neoliberalism. In this light, we cannot say that offshore finance is a somehow an aberration of capitalism when it itself *is* capitalism. Thus, in order to eliminate the grave injustices provoked by offshore finance, we need a politico-economic system that is not our current capitalist one.

Chapter Summaries

The organization of this study seeks to survey the necessary labors behind a social and historical phenomenon, that is, the rapid growth of offshore finance in Luxembourg over the last 50 years. In this introduction, I have presented some historical background and addressed main concepts of the study: "offshore," secrecy, and consensus. I also discuss my study's methodological implications and formulate a research platform – called "networking ethnography" – for anthropologists to use in other elite contexts akin to the Luxembourg financial center.

Chapter two introduces the project's main theoretical framework, "offshore governmentality." Inspired by Foucault's eponymous concept, I outline how Luxembourg's secrecy laws and political consensus among members of what I call the "state-finance complex" have resulted in the dramatic growth of the country's financial center since the 1960s. As shown, secrecy and consensus – the key ingredients of the "offshore governmentality" found in Luxembourg – encompass the practices and logic of the country's state and finance elites as they cooperate in developing new niches, navigating changing political circumstances, and mitigating risks posed to these markets.

Chapter three describes how an "offshore governmentality" of secrecy and consensus has allowed Luxembourg's financial center to develop an extremely profitable market niche in private banking. In order to create this sector, Luxembourg state and finance elites had to first commercialize the country's legal and fiscal sovereignty. A prime example of this phenomenon is the 1981 passing of banking-secrecy laws enabling foreigners to hide money from their home-country tax authorities. The astonishing growth of private banking has resulted in some $800

billion currently being held in *comptes numérotés*, or secretive numbered Luxembourg accounts (Zucman 2015).

Chapter four details how the Luxembourgish state gives finance professionals *carte blanche* in drafting the laws establishing the country's offshore niches. This occurred when Luxembourg became the first European jurisdiction to write into law the 1985 EU directive on investment funds. While the country's fund administrators believe that this EU provenance points to the supposed "transparent" character of the industry, they rarely mention a significant loophole written into the legislation: the ability of funds to accept money from secrecy jurisdictions, notably Switzerland and Singapore.

Chapter five covers how Luxembourg political and economic elites are keen to emulate any outside legislation or products that they believe will be profitable for the country's financial center – a process I call "offshore mimicry." For example, a number of finance and logistics professionals secured government support to build "Le Freeport," a hyper-securitized warehouse in which works of fine art can be bought and sold tax free and in near-complete confidentiality. This facility, completed in 2014, is a replica of the one operating currently in Singapore. Similar to what happened in these locations, the opening of Le Freeport sparked activity in Luxembourg's fledging "art finance" sector, whose associated transactions are unregulated and opaque, often settled in cash or in kind.

I conclude this study on an interpretative note, by making a conceptual linkage between the banker and the priest. I contend that it is Catholic canonical law as applied to *confession* that provided a social model and precedent for Luxembourg's banking-secrecy laws of 1981. The age-old rite of confession thus stands as a distant origin for the contemporary and secular version of "confession" between a client and banker. During my fieldwork in Luxembourg, I heard on a

consistent basis that one of the reasons for the growth of offshore finance was so that clients could hide money from their spouses, ex-spouses, and children. Thus, I draw a concluding parallel between the priest and banker, who might both learn about the more delicate aspects of someone's life but are legally and professionally bound to keep this information secret. My closing argument is that it is this shared act of *confession* – a practice spanning secrecy and consensus – that gives "offshore governmentality" the profound social, economic, and political significance it enjoys in contemporary Luxembourg.

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[1] An academic who studies the Luxembourg financial center referred to it as a "fee-production machine" (interview, March 2016).

[2] ARBED is currently part of global steel giant Arcelor-Mittal, whose headquarters remain in Luxembourg City.

[3] While the Luxembourgish state long has tried its utmost to deter potential finance-related whistleblowers (*lanceurs d'alerte*), a 2018 appellate court (*Cour de Cassation*) judgment – in light of the case of Antoine Deltour, the former PwC employee who released the documents comprising Lux Leaks – indicates that the judiciary is finally reconfiguring the country's policies toward whistleblowing.

[4] To provide some context to this, a school teacher in Luxembourg earns an impressive, post-tax monthly salary of €8,000. In the words of a local journalist: "the *fonction publique* [civil service] [is] made up almost exclusively by Luxembourgers (because of the language requirement [that one be trilingual])… this redistribution mechanism resembles one of the [Gulf] petro-monarchies where you get a salary just for being a national" (personal communication, May 2018).

[5] Anyone who has seen the massive and awkwardly utilized new shopping-entertainment-university-research-housing complex in Belval (southern Luxembourg) will know what I am talking about.

[6] Mauss's definition of a "total social fact" might be helpful for us to remember:

> [Total social facts] are at once legal, economic, religious, aesthetic, morphological and so on. They are legal in that they concern individual and collective rights… they may be entirely obligatory, or subject simply to praise or disapproval. They are at once political and domestic, being of interest both to classes and to clans and families… They concern true religion, animism, magic and diffuse religious mentality. They are economic, for notions of value, utility, interest, luxury, wealth, acquisition, accumulation, consumption and liberal and sumptuous expenditure are all present (1966:76-77).

[7] Approximately 20 percent of the resident population of Luxembourg speaks Portuguese. This figure consists of nationals of Portugal and Cape Verde, as well as the Luxembourg-born offspring of these immigrants. This migratory trajectory dates from the late 1960s and continues to this day (Weeks 2015).

[8] During the 2015-16 academic year, I was a visiting researcher at the University of Luxembourg as part of a Fulbright/IIE grant.

[9] More than once, I had to explain to informants what exactly anthropology is – and that it does not just mean the study of ancient civilizations or non-western societies. Multiple interviewees found amusement with the seeming paradox that the Luxembourg “state-finance complex” (an etic term) had become my “tribe” (cf. Le Wita 1994:16).

[10] In simplified terms, the division of labor by nationality in Luxembourg reveals a bifurcated structure: Luxembourg nationals are concentrated in the well-paying public sector (*fonction publique*) – while resident foreigners and *frontaliers* dominate the private sector, assuming jobs in everything from the low-wage services to the upper management (*direction générale*) of institutions in the financial center.

CHAPTER TWO

Offshore Governmentality: The Strategies, Practices, and Logic of Luxembourg's State-Finance Complex

My account of "offshore governmentality" in Luxembourg begins in the 1960s. While the Fordist order brought high levels of economic growth throughout the Global North in the post-WWII era, this politico-economic model remained fragile and contradictory, particularly at the international level. As noted by Palan (2006), Shaxson (2012), and others, offshore finance played a key role during the 1970s in dismantling the post-WWII Fordist "compromise" between capital, labor, and the state – one that had resulted in industrial production, mass consumption, social democracy, and high levels of economic growth. Even as offshore technologies such as the H29 Luxembourg holding company and the Swiss numbered bank account (*compte numéroté*) date from the 1920s and 30s, they only became significant starting in the late 1960s, as the Fordist version of capitalism in the Global North entered its first sustained crisis of profitability (Brenner 2006). The timing here is significant and reflects the fact that it was *not* initially due to increases in taxes and regulation that banks, individuals, and companies began to use the techniques of offshore finance, but rather a profitability crisis that steered these entities to look for ways to boost their profit levels. Palan argues,

> The general crisis of corporate profitability which began to be felt from the late 1960s, combined with the spectacular development of the [offshore] Euromarket, and improvement in communications and transportation technologies, all rendered offshore jurisdictions a viable and attractive alternative to heavily regulated and taxed states. The discovery of offshore exacerbated, therefore, already existing contradictions in the international dimension of Fordism (2006:123).

The case of Luxembourg itself reflects this general trend. As a leading global steel producer, the Grand Duchy was profoundly affected by the crises in this sector during the mid-1970s and early 80s. The rapid growth of the country's financial center should, thus, be seen as

stemming from time of Fordist crisis – which prompted a burst of technological and political innovation enabling individuals and companies to raise their profit ratios once again to pre-crisis levels. Within this international context favoring offshorization, there was little leading policymakers could do to prevent jurisdictions such as Luxembourg from taking steps to attract and shelter large global capital; the Grand Duchy was a sovereign nation-state, after all, claimed a right to self-determination, and was looking for ways to navigate the choppy economic waters of the mid-1970s.

At this moment of crisis, it became clear that a bold new economic model was needed. In an uncertain global climate, policymakers throughout the Global North embraced a novel economic model – neoliberalism – whose intellectual roots were European and dated to the late 1940s. Foucault was one of the first intellectuals to cast a critical and historical eye on this political, intellectual, and economic conjuncture. In his 1978-79 lecture course *The Birth of Biopolitics*, he traces the genesis and implementation of neoliberalism, that is, a "reprogramming of liberal *governmentality*" (Brown 2015:50) that first took place in Germany in the 1950s and spread to the United States and United Kingdom by the end of the 1970s. As Foucault details, neoliberalism was never adopted in full by any of these jurisdictions and reflected a variety of local configurations – including its co-existence with political forms dating from the earlier eras of classical economic and political liberalism, in addition to those from periods of Keynesianism and social democracy.

It is not my intention to add to the many excellent accounts of the rise of neoliberalism (e.g., Foucault 2008; Harvey 2005), save mention two elements. First, I briefly address Foucault's account of neoliberalism as a new form of *governmentality*, to frame my argument that an "offshore governmentality" has been developed in Luxembourg from the 1960s. I am also

interested in his historical description of this period – from the 1950s to the late 1970s in western Europe – for this is precisely the era in which Luxembourg's financial center witnessed such spectacular growth. Second, and later in this section, I detail the potent linkage between "neoliberal governmentality" à la Foucault and the phenomenon of offshore finance. In doing so, I posit that neoliberalism would have looked much different without the practices of offshore finance, as would offshore finance without the larger socio-economic project of neoliberalism.

Regarding the first element – Foucault's treatment of neoliberalism as a distinct kind of governmentality – he starts by outlining the scales of its multiple interventions: "governmentality… may equally be valid when we are dealing with phenomena of a completely different scale, such as an economic policy, for example, or the management of a whole social body" (2008:186). Thus, neoliberalism not only facilitates an extension of market indicators into realms previously ungoverned by economic logic (e.g., health policy, the carceral system, schooling, et cetera) and the creation of a state apparatus that actively supports mechanisms to foster "competition," but also serves as the basis for an *advanced societal project* at the level of the nation-state.

Regarding the Luxembourg financial center, a significant neoliberal development has been the reception in the Grand Duchy of a global set of legal practices, in particular ones that promote ultra-liberal movements of financial capital (cf. Riles 2011:2). This "neoliberal reason" is disseminated via a distinct meshing of political and business lexicons and features concepts borrowed from the management literature, including "benchmarks," "buy-ins," and "best practices" (Brown 2015:71). Frequently divulged on a worldwide basis by the "Big Four" accountancy firms,[1] the norms and principles of "neoliberal governmentality" do not necessarily dictate precise economic policy *per se*, but rather set out certain ways of conceiving and

managing the government, society, and economy – such as the many instances in which the Luxembourgish state has commercialized the country's sovereignty (see chapter three). As part of this effort, economic principles – such as "competitiveness" – become the model for the state's conduct, with the "economy" becoming the primary object of its concern and policy attention. "In other words," Foucault writes, neoliberalism implies "a state under the supervision of the market rather than a market supervised by the state" (2008:117).

One can see these trends in how contemporary states often attend to the needs of "global investors" before those of their own constituents. This tendency reflects a significant shift in societal goals among advanced capitalist countries in the post-WWII period: from one of full employment, social welfare, and national development to another of consumer rights, business-friendly governance, and free-market ideology. While this change has been destabilizing for the many (and incredibly enriching for the few), it has been presented in the neutral, euphemistic language of technocracy: efficiency, flexibility, consensus, and competitiveness (cf. Palan 2006:14). In Luxembourg, for example, representatives from the financial center give dire warnings about "confiscatory" national governments impinging on the "freedoms" of aggrieved, yet omnipotent global investors. According to this logic, stateless oligarchs need the "protection" that is best found in the realm of offshore financial centers such as Luxembourg's.

The second element in this brief discussion on neoliberalism points to its intimate link with offshore finance. While the Luxembourg financial center had begun growing ten or so years before the neoliberal politico-economic model had become hegemonic in the Global North, the two phenomena came to form something of a feedback loop: the consequences of offshore finance accelerated the rise of neoliberalism, which – once established – gave further impetus to additional offshorization. Palan concludes, "a rapidly expanding offshore economy serves as a

central plank for the neoliberal-driven processes of globalization" (2006:182). In the case of Luxembourg, as this process intensified, peculiar changes started occurring. The country's growing cadres of lawyers, accountants, and bankers pressed decision-makers reeling from consecutive steel crises to introduce or change legislation that would be tailored to the needs of large foreign capital (cf. Ötsch 2016:328). They were all but too successful; throughout the 1980s, foreign money flooded into the Grand Duchy, as this small jurisdiction was "discovered" – then increasingly exploited, some would say – by international banks, insurers, and fund companies.

Offshore Governmentality

"[Luxembourg] is the last state monopoly in Europe. This binds the state to companies." – A senior Luxembourgish regulator (interview, March 2016)[2]

Throughout the turbulent 1970s, it was "offshore governmentality" that offered Luxembourg's decision-makers a way out of the global steel crisis *as well as* a means to re-orient the country's political economy toward more lucrative sectors (cf. Maurer 1998:511). At this point, you might be asking – why am I using one of Foucault's bulkier and contested concepts as way to describe these changes? In response to this question, I cite three reasons. First, Foucault is explicit in saying that changes in governmentality are precipitated by crises affecting previous systems of governance (Miller and Rose 2008:17). In our case, Luxembourg's midcentury Fordist political economy, focusing on mass steel production, segued into the country's adoption of "offshore governmentality" in the 1970s and 80s. Second, I use governmentality as an analytic grid because I am examining anthropologically the rationales and techniques of governance that have underpinned the formation of the Luxembourg financial center since the 1960s. In this regard, my analytical approach best aligns with the first definition (of three total) that Foucault

gives for governmentality in *Security, Territory, Population*: "the ensemble formed by the institutions, procedures, analyses, and reflections, the calculations and tactics that allow the exercise of this very specific, albeit complex form of power, which has population as its target [and] political economy as its principal form of knowledge" (cited in Burchell et al., eds. 1991:102). Even as Foucault's subsequent usage of "governmentality" veers off into different directions, my use of the concept remains close to this initial definition, that is, spanning the conventional sense of "statecraft" to the more contemporary notion of "governance." Third, because I address economic change in this study, adopting Foucault's governmentality to the case of Luxembourg enables me to examine the financial center as a political mode of optimization – whose flexibility and heterogeneity has allowed it to be modified in accordance with the historical circumstances in question. Thus, this Foucauldian concept is well suited to analyze the emergence of specific forms of political economy and to define their objectives and limits (cf. Roitman 2005:3).

How does the "offshore governmentality" found in Luxembourg differ from the "neoliberal governmentality" that Foucault describes in *The Birth of Biopolitics*? There are numerous differences, which I describe in this section, but none is more marked than the role of the state. Foucault talks about neoliberalism as a project in which the state facilitates the workings of capitalism, but does not plan, direct, or contain these. The question of neoliberalism, to him, is one of how "to establish, maintain, and control a government that is at once essential to markets and at the same time menacing to them" (Cisney and Morar, eds. 2015:250). With "offshore governmentality," I depart from this ambiguous role afforded to the state – which Foucault posits as being at once omnipresent and essential, yet contradictory and adverse to profit-making activities. Political economies based on offshore finance are clearly different;

rather than being seen as epiphenomenal or antithetical to economic growth, the state is an absolutely central actor whose policies aim to attract business and revenue into the jurisdiction. In the case of Luxembourg, as will be detailed later in this section, it is the country's "state-finance complex" that serves as the nexus for organizing the activity of the financial center (cf. Bröckling et al., eds. 2011:2).

As with other forms of governance, "offshore governmentality" has its own inconsistencies and contradictions. For instance, the Luxembourgish state remains the essential actor within the political economy – as the main organizer of society and mediator of conflict and tension – at the same time that it facilitates the flight of capital from the regulation and taxes of other states attempting to fulfill the same role. In general terms, this tension points to the overall indefinite relationship between capital and the state. On the one hand, capital activities require broad state support – that is, the provision of a legal and political infrastructure for the economy to function. On the other hand, capital as controlled by capitalists ideally seeks to be regulated and taxed as little as possible, for this impedes the accumulation of surplus-value for its owners (Hampton 1996:39). Using "offshore governmentality," Luxembourg state and finance elites have figured out a way to have it both ways: they can not only attract massive capital flows with low tax rates but also use the some of the proceeds to fund a welfare state for the country's 600,000 citizens.

Many authors have pointed to the *dirigiste* tendencies associated with Luxembourg's "offshore governmentality." "The example of Luxembourg appears atypical. The state remains the central actor of planning policy, which defines the main principles on the one hand, but which also concretely implements its objectives on the other," observes Decoville (2012:262).

More specifically, Sohn writes about the state's guiding hand in the development and planning (*aménagement*) of the capital Luxembourg City:

> In contrast to the neo-liberal trend observed from the 1980s onward in the majority of European countries … the political management of the urban development dynamics of Luxembourg [City] is ultimately seen as the fruit of a state strategy that aims to support the growth of the Luxembourg metropolis and to position itself as a privileged partner for business (2012:36).

In the same vein, Reitel believes that the rapid growth seen in the capital city is not due primarily to "visionary entrepreneurs" or the "critical mass of financial institutions" – two commonly cited emic reasons for the financial center's development – but rather to a state that is proximate and active: "the development of metropolitan functions [of Luxembourg City] is not based on the existence of an urban bourgeoisie or the presence of companies, but rather it is the state that has implemented attractive conditions for economic activities, in particular financial ones" (2012:284). Recognizing the fragility of markets, and their need of constant cultivation and intervention, the Luxembourgish state pursues policies that Foucault would identify as generally being "ordoliberal": "In marked contrast to other countries and their liberal economies, the Luxembourg government has become the main supporter and promoter of economic development, compensating when needed for the deficiencies of private initiatives and the lack of entrepreneurial skills in traditional companies" (Haag 2015:183).

Akin to other politico-economic paradigms, "offshore governmentality" is not without its risks. While Luxembourg's state and finance elite likes to present itself as acting in a deliberative and strategic manner, its independence and margin to maneuver are often more apparent than real. As an economy in which some 35 percent of GDP stems from financial activities and administration, the development and societal goals of the "state-finance complex" – to be explained later in this chapter – can be subject to the whims of foreign capital. Given that

"offshore governmentality" is oriented toward servicing mobile capital, it renders its implicated jurisdictions supremely vulnerable to the tribulations of global financial cycles. In this regard, Watts's verdict on the Nigerian oil sector is also valid for the Luxembourg financial center: "the petro-state, as the landlord and entrepreneur, is 'internationalized' (that is, expands its reliance on the world market through a growing monocultural dependence on oil revenues)" (2004:414). As is obvious, Nigeria and Luxembourg as countries are little alike, but they are comparable in one regard: their enormous wealth comes primarily from a single economic sector – and if this were to fail or decline for any reason, the fallout would be painful.

The Luxembourg "state-finance complex" is, however, aware of the financial center's unique exposure to external developments. For this reason, state and finance elites are constantly assessing any potential fallout on the financial and administrative activity taking place in the country. Dörry writes, "the dependency of the economy and its elites on external forces further explain the enduring significance of having sound, durable relationships with other international elite groups. This enabled both the anticipation of new dynamics and adaptation to new circumstances" (2016:33). This flexibility that Dörry cites is a key characteristic of "offshore governmentality" and is something I address later in this chapter. The Luxembourg financial center is not an immutable structure, but rather can adjust to both internal and external pressures – so long as these developments do not threaten its foundations or general business model.

Social Democracy, Offshore

"When the flamboyant Monte Carlo Casino… opened its doors in 1879, the citizens of Monaco were banned from entering there. The Monaco authorities thought to preserve 'morale and money' of the local population" (Thomas, "Rentiers et héritiers," 11/25/16).

"The economy has few problems, so we don't ask questions." – A longtime Luxembourgish activist (interview, July 2016)

Social democracy and offshore finance might not seem to be the most obvious of associations, yet in Luxembourg both are clearly on display. Once again – akin to the neoliberalism-offshore finance dialectic discussed earlier – the money made from offshore finance has enabled the Luxembourg state to build a fairly comprehensive welfare state along social-democratic lines. In fact, public spending in 2011 amounted to €34,400 per person,[3] compared with €14,000 on average in the Eurozone (Kmec In Press). Palan et al. call this "the miracle of running a properly functioning state without raising [all the] revenue through taxation" of the resident population (2009:31). In turn, however, the expense of the welfare state – combined with the downward pressure on certain rent-seeking activities of the financial center – creates another dialectic: offshore finance leads to social democracy, which in turn necessitates more offshore finance to fund it: "the economy that [is] necessary to generate the wealth that supports government" (Kelly 2014:148). Later in this chapter, I detail how the consolidation of the Luxembourgish welfare state during the 1980s served in part to legitimize the financial center and its activities.

Luxembourg's merging of offshore finance and social democracy is another reason to focus on the concept of governmentality, as Foucault points out that "neoliberal governmentality" is often "nested somewhat uneasily with other governing rationalities," such as social democracy (Brown 2015:56). Ferguson and Gupta point out that "transnational apparatuses," such as "offshore governmentality," do not so much replace older systems of

governance, but rather "overlay and coexist" with them (2002:994). Ong (2006) demonstrates how governing rationalities – including "offshore governmentality," in the case of Luxembourg – are always likened to other modes of power, technology, and social administration and control. A welfare state, as she shows, can shield certain populations from the ravages of neoliberalism, at the same time that it can exclude others from the wealth created via its financialized economic activity (cf. Maurer 1993:15).

Since its adoption in the 1970s, "offshore governmentality" has resulted in Luxembourg having one of the world's highest GNP figures per capita, at $75,000 per person per year – success that can be attributed almost exclusively to the country's financial center (Palan et al. 2009:119). Shaxson adds, "poverty [in Luxembourg] is exceptionally [low] by European standards, and the GDP per inhabitant is three times greater than that of the EU average" (2012:356). From where does all the money come? In a word: rent. As such, "offshore governmentality" resembles something of a developmental model – one that ensures an inflow of hard currency via service and registration fees and rent surpluses that would otherwise accrue to other states. Such wealth, not surprisingly, allows Luxembourg to avoid – or at least defer – the economic hardship that has taken place in other Global North states in the post-Fordist period, including the adoption of neoliberal measures such as structural adjustment, fiscal austerity, and privatizations (Maurer 1997:261). Using offshore finance as a way of reducing economic strife – a paradoxical attempt at resolving the age-old contradictions of capitalism, at least at the domestic level – has no doubt been in the minds of Luxembourg's state and finance elites. Reminiscent of Ferguson's idea of a "scientific capitalism" (2006:77-83), it is as if the smoother profit-making processes of offshore finance were themselves a solution.

Paradoxically, the "state-finance complex" has made an effort to not to maximize, but rather *minimize* the influence and visibility of "offshore governmentality" among those who do not occupy elite positions in either the state apparatus or the financial center. To illustrate this point, I present a counter example, that of the United Kingdom and its City of London:

> In Britain, [there is] a largely unthinking willingness for government to adopt City approaches to other aspects of society. Kynaston, discussing "City cultural supremacy," says that "in all sorts of ways (short-term performance, shareholder value, league tables) and in all sorts of areas (education, the NHS and the BBC, to name but three), bottom-line City imperatives had been transplanted wholesale into British society" (Lancaster 2008).

Within Luxembourgish society, in contrast, the logic and practice of "offshore governmentality" has largely been contained to the realm of elites, to the point that most Luxembourgers have little-to-no idea as to what takes place in the country's scores of banks, insurers, and investment-fund companies. The local media assist the country's elites in this process, not bringing too much attention to the exact nature and extent of the financial center's activities.

Even as the "state-finance complex" minimizes the role of the financial center among its domestic audiences, and generally refrains from applying its logic to greater Luxembourgish society, the role of fees and rents is nonetheless structural and very significant in the country's political economy. To quote a former local bank director:

> We were very fortunate that the financial market took off at a breathtaking pace [during the steel crisis]. As the margins on the [offshore] eurocredit market were quite healthy, the eurobanks were reaping huge profits, which had a very positive effect on governmental revenue. So positive, in fact, that when the steel industry fell into a depression [in the late 1970s], it was the banks' tax contributions that filled the hole in the country's budget. Without this… our country would have found itself in a desperate financial situation (cited in Moyse et al. 2014:80).

In this regard, Luxembourg's state and finance elites had found in "offshore governmentality" during the 1980s a winning economic-*cum*-electoral strategy:

> Successive governments profited from the liberal project within the European [Union] assemblage. And the "last Communist" Jean-Claude Juncker[4] could claim to have stopped at the borders of the Grand Duchy the neoliberal onslaught. In truth, it surfed the wave: taxing at a marginal rate the large mass of capital, his governments were able to buy decades of public support. A few drops suffices to fill up a tiny pond in the heart of Europe (Thomas, "Les renards," 1/2/15).

Shaxson continues this line:

> [Juncker] is not at all an enraged libertarian like I met in other tax havens, but rather a social democrat in the European style, happy to share with others the wealth of the country and dedicate to international aid a higher part of national revenue than almost everywhere else (2012:356).

As a result – and unlike in the United Kingdom, where "City cultural supremacy" (per Kynaston) has instilled privatization and financialization as the dominant logic of governance – successive governments in Luxembourg have used the rents and fees collected from offshore finance to consolidate the country's welfare state. For example, in 2014, out of a total budget of €14 billion, fees from the Soparfis – the successor to the H29 holding company (see chapter three) – netted the Luxembourgish state €715 million, or a little more than 5 percent of public expenditure (Thomas, "Naissance d'un paradis fiscal," 8/5/16). A longtime activist described to me the symbiosis between the Luxembourgish state and the country's financial center, and I paraphrase: The government and the financial center have linked interests. Profitability for these businesses means tax revenues for the government. *The state's current pension liabilities necessitate future growth of the financial center* (interview, July 2016; emphasis added).

In addition to swelling the coffers of the national and local governments, the financial center also provides ample employment to Luxembourgers, non-national residents, and *frontaliers*[5] – those workers who live in France, Belgium, or Germany, but commute to the Grand Duchy. That the Luxembourg financial center has been able to create jobs for the local population is something of a feat within itself. The focus on local employment dates to the early

days of the financial center. Although the H29 holding companies were prohibited from engaging in local commercial activities, they were expected to carry out some activity within the Grand Duchy, “a requirement that encouraged the renting of local commercial premises and the engagement of local personnel” (Hampton and Abbot, eds. 1999:146). While many “tax havens” such as the British Virgin Islands simply collect fees from the incorporation of companies, “financial centers” such as Luxembourg’s favor offshore operations that also provide employment opportunities – the income from which the government can subsequently tax progressively[6] at levels that mirror the European average.

Photo 6 – Frontaliers *board the evening train to Lorraine, in France; Bettembourg, Luxembourg (photo by the author)*

As the “Greater Region” (*la Grande Région*) has deindustrialized over the years – an area covering Lorraine in France, the Belgian province of Luxembourg, and the *Land* of Rhineland-Palatinate in Germany – the growth of offshore finance in Luxembourg has meant that the regional unemployment rate is lower than it might be otherwise, as the financial center offers

jobs to French, Belgian, and German citizens who are able to withstand the crushing daily commute into the Grand Duchy.[7] These banks, insurers, and fund companies operating in the financial center are able to offer wages that are more than the regional average, as the higher-than-usual profits to be made in Luxembourg provide enough surplus to ensure that most employees have a comparatively decent standard of living (cf. Ziegler 1979:85). While boosters of the Luxembourg financial center are keen to cite this net positive effect on regional employment, the benefits of offshore activity are – again, not surprisingly – distributed unevenly among those who toil within this vast administrative apparatus. The real advantages of employment in the Luxembourg financial center have largely accrued to a “pinstripe class” of national and foreign[8] private bankers, fund administrators, lawyers, accountants, and former politicians and senior civil servants.

Luxembourg’s offshore financial center brings with it other advantages. To illustrate the financial center’s unique use of space and resources, I cite as a counter example the country’s other major industry: steel. In the south of Luxembourg, centered on the city of Esch-sur-Alzette, one can still see some residual activity of a once-mighty steel-making operation. The amount of space and physical infrastructure that steel making requires is remarkable. The main campus of the country’s lone university – with a student population of some 6,200 – takes up just a fraction of one of the many former production locales of the steel giant ARBED. The site’s blast furnaces (*hauts fourneaux*) have been preserved and rival in height and stature the university’s imposing 18-story central administrative building.

Unlike the steel industry, the financial center necessitates a fraction of the space and much less physical infrastructure. Indeed, much of the “added-value” from the activities taking place on the Luxembourg financial center is ultimately due to the state’s implementation of

capital-friendly legislation. The rents and fees collected from the domiciliation of companies and investment funds bring vast revenues to the state while encountering few significant costs. As such, the Grand Duchy develops little high technology and has few research-and-development facilities; the country's lone university was only built in the mid-2000s (cf. Palan et al. 2009:3). Likewise, the financial center is environmentally clean, does not occupy large areas of land, nor does it interfere significantly with local businesses. In short, small jurisdictions such as Luxembourg favor offshore activities because they have a small domestic tax base to fund and thus are unlikely to experience the deleterious effects of its practices. For these countries, lowering or eliminating taxes does not usually cost them much in economic terms. We might say then that, in the short term at least, an offshore financial center represents that ideal of politico-economic models: one that can generate the greatest stream of revenue while placing few demands on local investment and resources.

The State-Finance Complex

"The most successful ideological effects are those which have no need for words and ask no more than complicitous silence." – Pierre Bourdieu (1977:188)

Thus far, I have cited the "state-finance complex" without defining it sufficiently in detail. In what follows, I sketch an outline of its basis premises, while in subsequent chapters I provide historic and ethnographic examples of the "state-finance complex" in action. Following Ong and Collier's theorization of "assemblages," I argue that Luxembourg's "state-finance complex" is a "dominant form of organization" that entails "material, collective, and discursive relations… [among] actors in diverse situations" (Ong and Collier, eds. 2004:4). By "state-finance complex" I mean an *apparatus* of "processes, instruments, programs, calculations, [and] measures… making it possible to form and control modes of action, structures of preference, and

premises for decisions by societal agents in view of certain goals" (Bröckling et al., eds. 2011:12). To use the formulation of Foucault, the Luxembourg "state-finance complex" mixes "predispositions [and] legal structures… its hierarchy [is] carefully defined, [yet with] a relative autonomy in its functioning" (1982:792).

In this light, the Luxembourg "state-finance complex" takes the form of an apparatus that can be adapted to changing circumstances even as its disparate elements obtain a power of synthesis. Among other things, it generates abstract-yet-accessible representations to the public, while devising strategies to position itself in relation to other financial centers. Its propositions, such as "transparency," are sufficiently imprecise but require little abstract thinking to be understood and make for convenient policy positions (cf. Feldman 2011:16-17). While not guided by a single central command (cf. Foucault 1979), those working within the Luxembourg "state-finance complex" become actors in its deployment, expansion, and refinement. Given their positions at its multiple locales, the country's finance and state elites create a plurality of policy and market outcomes, which vary according to external developments yet converge on a common set of goals. And of course, members of the "state-finance complex" are hardly alone in their work, but rather can count upon the full weight of mainstream opinion in Luxembourg as well as a vast array of institutional resources within the country.

What are the characteristics of the "state-finance complex" in Luxembourg? Its first defining feature is an ability to group heterogeneous elements into a common network or regime of practice. Examples of "heterogeneous elements" include "discourses, institutions, architectural arrangements, policy decisions, laws, administrative measures, [and] scientific statements" (Rabinow 2003:51) – the disparate phenomena that the country's state and finance elites are tasked with bringing together. Thus, it is the "state-finance complex" that crystallizes the

“rationales, discourses, and narratives as well as the dynamic forms of technical and bureaucratic organization” (Feldman 2011:180) that are found at present within the Luxembourg financial center.

In this regard, the “state-finance complex” is amenable to analysis via actor-network theory (Callon and Latour 1981), as it is a socio-technical arrangement through which markets are created and technologies of power mobilized. Carrying out these objectives is a wide array of loosely connected specialists: bankers, fund administrators, corporate and securities attorneys (*avocats d’affaires*), consultants, and accountants (*experts-comptables*). Even as they work in different professions, these members of the “state-finance complex” nevertheless draw from a repository of common knowledge when making their policy- and market-related decisions. In doing so, they standardize and integrate frameworks of meaning that are not tied to a specific place or field but rather extend virtually across the global economy.

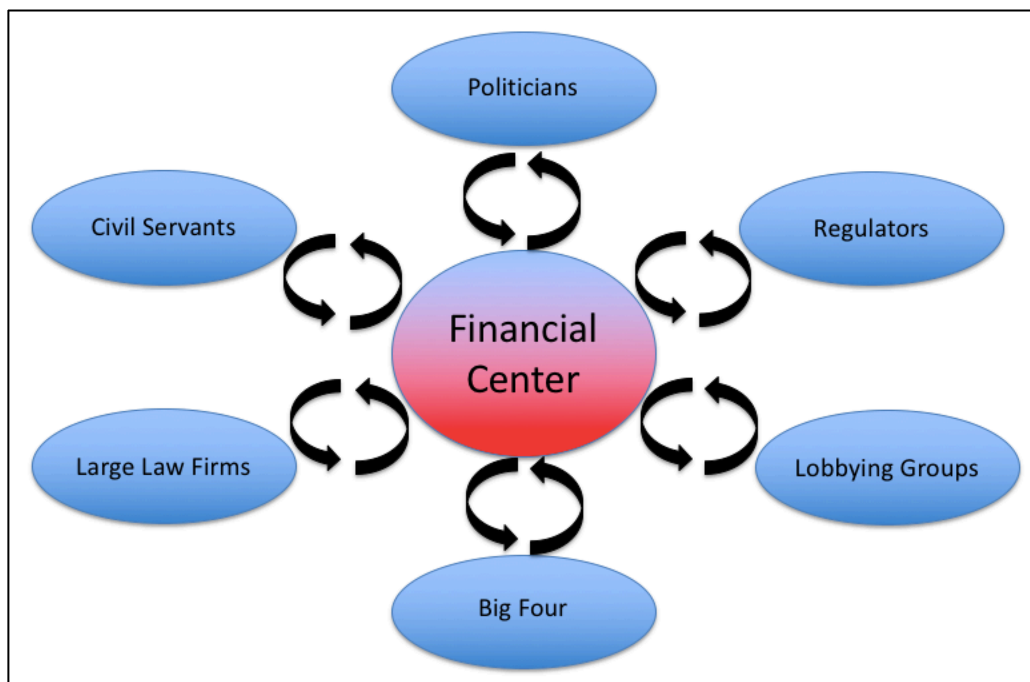

Figure 6 – The financial center as a centralizing force among the country’s political and economic elites (cf. Watts 2004:214).

Adaptability is another crucial feature of the "state-finance complex." Even as its constituting elements can vary widely, they share a certain abstract, generic, and highly rationalized quality that allows for easy application into new markets and situations. Thus, the polymorphous and flexible nature of the "state-finance complex" gives it an ability to reformulate itself in light of positive or negative developments caused by changing local and global circumstances (Ötsch 2016:326). Simplicity, too, defines the Luxembourg "state-finance complex," which can be seen in the vague-yet-convenient "solutions" it formulates in the face of countless "problems." These often take the form of rhetorical tropes such as "we need to cut taxes to remain competitive," "Luxembourg is now a transparent jurisdiction," and "what is good for the financial center is good for the Grand Duchy." Even as it undoubtedly assists in exacerbating worldwide income inequality, the "state-finance complex" nevertheless thinks of itself in such positive terms as "safeguarding family wealth," "protecting the privacy of clients," and "enabling economic growth." The result of these discursive processes, widely reproduced in the news media, not only creates an inwardly referential social dynamic, but also shuts out alternative or dissenting positions. Indeed, the hegemonic discourse used by members of the "state-finance complex" frequently serves to limit its range of discussion and parameters of intervention.

Perhaps the most significant aspect of the "state-finance complex" is its disciplinary character, "the diverse mechanisms through which the actions and judgements of persons and organizations [are] linked to *political* objectives" (Miller and Rose 2008:26; emphasis added). Rather than inhibiting all individual initiative, the Luxembourg "state-finance complex" expects its members to operate according to what might be called "regulated autonomy." Accordingly,

similar to how Feldman describes the culture within the EU institutions charged with regulating immigration, the "state-finance complex" makes it

> utterly reasonable to accept the choices it presents and offers few discernible targets of resistance. Conformity and agency combine to create hegemony. The effect is to render the language of "common sense" and technical administration interchangeable. To go against the grain requires that people make their own lives more difficult, which is always possible but discouraged at every turn (2011:17).

With such tactics, Luxembourg's "state-finance complex" can easily marginalize any opposing or heterodox views. While not reducing its members to automatons, the "state-finance complex" nonetheless encourages and expects them to forgo their criticism in favor of perpetuating the status quo (cf. Coronil 1997:282).

Though the "state-finance complex" cannot be said to represent an enclosed or totalizing organizational form, many segments of Luxembourgish society certainly push it in that direction. As such, the "state-finance complex" is supported wholeheartedly by the country's media establishment, professional organizations, and other entities – including the Grand Ducal family. Shaxson's verdict is damning:

> Finance [in Luxembourg] is protected by a vast consensus that nourishes the media, and criticism of the financial center is extremely rare. This sector is far and away the greatest employer in the country and contributes a quarter of state revenues. The press, which receives large subsidies from the government, relays tirelessly the same message to the population: Luxembourg is a responsible financial center, not a tax haven. Luxembourg is a clever and honest David, surrounded by menacing and greedy Goliaths (2012:356).

Thus, by means of its well-oiled publicity machine and ability to commandeer the political process, the "state-finance complex" has succeeded in aligning offshore financial activities with the national interest of the Luxembourgish state and its people.

As mentioned, the Luxembourg financial center counts on a largely pliant domestic press corps – again, with a few notable exceptions. Advertising, subsidies, and purchases of copy[9]

from the "state-finance complex" keep the Luxembourgish news media in business. None other than former Minister of Finance Luc Frieden is, in addition to his role as Chairman of Banque internationale à Luxembourg is also head of Groupe Saint-Paul, the country's largest news, media, and publishing company. Not surprisingly, two recent histories published by the group – Moyse et al. (2014) and Haag (2015) – leave out any mention of major scandals that have beset the financial center, notably the 1991 collapse of the Luxembourg-based bank BCCI and the 2014 Lux Leaks affair (see chapter four). These damning and embarrassing episodes were reportedly deemed "too complex" and "too political" to warrant inclusion in the aforementioned histories of post-WWII Luxembourg.

Another telling example of the largely docile domestic press corps with regards to the financial center is an April 2016 editorial – about the release of the Panama Papers just days before – in *Le Jeudi*, a French-language weekly newspaper. Entitled "Dangerous Malaise," the editorial makes a typical center left-liberal critique of offshore finance in general, except that it makes *no mention whatsoever* that the Luxembourg financial center had extensive ties to Mossack Fonseca, the disgraced Panamanian law firm whose leaked records make up the Panama Papers. In fact, Luxembourg-based firms and banks have opened over 15,500 offshore entities via Mossack Fonseca, a figure only eclipsed by the über tax havens Hong Kong, Switzerland, and the City of London (Cravina de Sousa 2016). In this regard, the editorial committee of *Le Jeudi* is merely following the lead of Luxembourg's current "socialist" Deputy Prime Minister Etienne Schneider, who bizarrely proclaimed that "Luxembourg is not implicated" in the Panama Papers (Le Jeudi 2016) irrespective of much evidence to the contrary.

In addition to the domestic press corps, Luxembourg's lobbies and professional-services firms occupy central supporting roles in the "state-finance complex." Etienne Schneider has

described the country's powerful banking lobby, the ABBL, as "a sort of first advisor to the government" (cited in Thomas, "De Bankestat," 3/28/14). With its coterie of financial technicians and some 80 working groups, the ABBL has at its disposal an impressive array of resources for a context as small as Luxembourg. A team of five handles the outfit's "media outreach" operations on a permanent basis; its lobbying, technocratic, and public-relations machinery intervenes before, during, and after the passage of legislation specific to the financial center. Moreover, the ABBL participates in the CSSF committees (see chapter four) where laws and circulars are drafted, is a "guest of honor" at meetings of the Ministry of Finance, and – according to Thomas ("De Bankestat," 3/28/14) – is even the ghostwriter of the position papers and press releases that the Chamber of Commerce disseminates on behalf of the financial center.

Two additional mainstays of the "state-finance complex" are the large local law firms and the national operations of the behemoth Big Four accountancies: Deloitte, Ernst & Young, KPMG, and PricewaterhouseCoopers. A senior securities attorney curiously calls the large law firms' participation in the CSSF working groups as "*our service as citizens*. We are not remunerated, apart from symbolic compensation paid for a committee of the CSSF. We discuss [in these groups] very complex legal questions, often [EU] directives that must be made compatible with our legal system." Another senior attorney described this process in franker terms as "lobbying for the financial center, not for a single client" (cited in Thomas, "Les maîtres," 5/16/14; emphasis added).

While the local law firms are responsible for formulating capital-friendly legislation, it is the Big Four accountancies that usually bring the latest trends in global finance capitalism to Luxembourg. Even as they fulfill a central role in the "state-finance complex," the Big Four service a client base that is almost never local. In the words of Palan et al., "their reason for

being [in Luxembourg] has little to do with geography [and] everything to do with the money flows they are managing" (2009:13). Indeed, the worldwide reach and sheer size of the Big Four – their combined global workforce exceeds by a factor of two the total number of inhabitants in the Grand Duchy – means that small jurisdictions such as Luxembourg have few defenses to avoid being "captured" by these representatives of large international capital. A local politician described to me the sway that the law firms and the Big Four have on the country's political process (interview, July 2016): being an elected official in Luxembourg is a half-time position, meaning that MPs continue to engage in their professional activity – frequently as securities attorneys in local law firms or as tax advisors at the Big Four. In the view of my interviewee, this has been one of the ways by which the financial center has come to wield its outsized influence over legislative developments in the country.

Photo 7 – The new headquarters of PwC Luxembourg (photo by the author)

The Strategies of Offshore Governmentality

"The small world of offshore finance always knows how to be creative." – Jérémie Baruch (Le Monde 2016)

So far in this chapter, I have introduced the two central concepts of this study: "offshore governmentality" and the "state-finance complex." In the present section, I detail how the Luxembourg "state-finance complex" uses the techniques and strategies of "offshore governmentality" to develop, build, and protect its lucrative niches in the global financial services industry. Thus, I change my analytical emphasis from the institutions of the "state-finance complex" itself to the scope of its practices and tactics. Following Foucault in his article "The Subject and Power," I use "strategy" to signify three things:

> first, to designate the means employed to attain a certain end; it is a question of rationality functioning to arrive at an objective. Second, to designate the manner in which a partner in a certain game acts with regard to what he thinks should be the action of others and what he considers the others think to be his own. It is the way in which one seeks to have the advantage over others. Third, to designate the procedures used in a situation of confrontation to deprive the opponent of his means of combat and to reduce him to give up the struggle (1982:793).

Building on this definition, Dean posits "strategies" to be "specific ways of acting, intervening and directing, made up of particular types of practical rationality ('expertise' and 'know-how') and relying upon definite mechanisms, techniques and technologies" (2010:33).

In what follows, I detail three specific strategies of the Luxembourg "state-finance complex" – legal entrepreneurialism, niche development, and international-pressure management – and show how these have coalesced into the collective practice of "offshore governmentality." While describing the practices of a political economy premised on offshore finance might seem like a daunting task, we should note the basic premise that brings clients to Luxembourg: how financial institutions in the country provide services to clients *elsewhere*, using a set of capital-friendly laws, regulations, and tax rates not found in the clients' home jurisdictions. In this

regard, "offshore governmentality" hinges on "legislation designed to assist non-resident persons or corporations avoid the regulatory obligations imposed on them in the places where those non-resident persons undertake the substance of their economic transactions" (Palan et al. 2009:8).

The first main strategy of "offshore governmentality" is an economic-juridical ensemble I call "legal entrepreneurialism," that is, "local innovativeness… found outside the actual conception of financial products and management tools, but merely in the process of making these products viable from a regulatory perspective" (Walther and Schultz 2012:89). This process entails the construction of so-called "sovereignty niches" based on ultra-liberal regulatory decisions and taxation policies. Offshore jurisdictions such as Luxembourg are experts in applying such arbitrage strategies to attract the mobile capital of persons and institutions located beyond their borders. Indeed, a foreign banking executive – whose bank recently moved its headquarters to Luxembourg – praised Luxembourg as the "Silicon Valley of *legal* innovation" (cited in Thomas, "Le Grand Bond," 8/7/15; emphasis added).[10]

Because the Luxembourg financial center is in competition with other offshore jurisdictions, the "state-finance complex" is obliged to engage in this "legal entrepreneurialism" on a continuous basis. Members of the "state-finance complex"[11] regularly meet in working groups hosted by the regulatory authority and the main lobbies in order to formulate ever-newer techniques of tax avoidance, which they in turn sell to their clients. As such, any laws related to the financial center are usually written and implemented by the "state-finance complex" itself, which allows its members to not only create innovative "solutions" to their clients' "problems," but also further the complexity and opacity protecting the clients' fortunes in the first place.

Photo 8 – The home for the financial center's multiple lobbying organizations; Luxembourg City (photo by the author)

This "legal entrepreneurialism" is not just a generative process; it also covers the *non-implementation* of established national and EU laws. "A very important characteristic of Luxembourg as a financial center… is the scandalous divergence between the text of the law and its application," a local journalist writes. "Even as international pressure has obliged Luxembourg to adopt restrictive measures concerning financial activities on its territory, it is indispensable to take into account the non-application of said measures by the legal authorities" (cited in Shaxson 2012:354-355). Marian (2016) notes that this process – or anti-process – was illuminated by the 2014 Lux Leaks revelations, which showed that the "tax rulings" provided to multinational corporations by the Luxembourgish fiscal authorities stood in violation of a number of domestic and EU mandates and protocols, but proceeded nevertheless.

In a global context of competition and continuous "legal entrepreneurialism," the speed with which economic activity is carried out is essential. In this vein, the small size of the Luxembourg "state-finance complex" is an incredible boon, in that it can implement new EU directives at a quicker rate than its competitors. This is the so-called "first-mover advantage," the six-month or so head start that the Luxembourg financial center has – due to its size and organizational capacity – over other member states.[12] This ability is lauded in the pedagogic literature of the UK-based Society of Trust and Estate Practitioners: "Being small and tightly focused on finance allows jurisdictions [such as Luxembourg] to amend laws and rules quickly, taking advantage of changes in the financial industry. Large diversified economies [in contrast] must consider and negotiate with many varied interests in order to make any changes" (cited in Harrington 2016:263).

The second strategy entailed in "offshore governmentality" is an inclination to develop new offshore niches. To paraphrase a local activist I interviewed: there is an obsession among Luxembourg's elites to build market share in whatever the newest internationalized financial activity is (interview, July 2016). Indeed, in jurisdictions such as Luxembourg, professionals and lawmakers "innovate" by creating novel fiscal and legal structures in the hope that some of these will become the basis for new and important niches of contemporary finance capitalism. Whether or not this "innovation" is a success is determined by one measure alone: the ability of the structure in question to attract mobile foreign capital. "The more money that goes in," Zucman writes, "the more the strategy of the aggressive tax havens is validated" (2015:61).

In the world of tax havens, the Luxembourg financial center is one of the more successful and "reputable" ones on offer. While certain of its behaviors mirror the "race to the bottom" logic of the most permissive tax havens, Luxembourg's "state-finance complex" is nevertheless

not absolutely beholden to this dynamic. In the 1980s, when offshore finance experienced its "golden age," the "race to the bottom" – that is, the trend towards regulatory laxity – had already reached its logical conclusion with regards to taxation and regulation. From then on, notes Palan (2006:130), a process of "internal differentiation" took place, whereby the shrewder of the world's offshore centers began to pursue "niche strategies" – often prompted by the counsel of the large accountancy firms (which now make up the Big Four). As such, the savviest offshore financial centers became less willing to simply emulate each other's legislation (see chapter five for a discussion of "offshore mimicry"), but rather began developing niches in just a few of the growing number of sub-sectors within globalized finance capitalism. Palan et al. survey this landscape:

> Jersey is primarily an offshore private banking center, Guernsey a dominant captive insurance center, the Isle of Man the fastest-growing life insurance sector, and Dublin (IFSC) is a large fund management center. Bermuda is world leader in captive insurance and reinsurance. The Cayman Islands are a major banking center. BVI are world leaders in the formation of IBC [shell companies] (2009:139).

The final strategy of "offshore governmentality" is what I call "international-pressure management." Indeed, the "state-finance complex" takes this strategy so seriously that it recently enlisted a former senior civil servant to respond to, and deflect, "the growing pressure on the fiscal niches of the Grand Duchy originating from international institutions" (Pinçon and Pinçon-Charlot 2015:209). We should not be surprised by this development. Even as it is now common for critics to challenge publicly particular offshore activities, jurisdictions such as Luxembourg have become keen at adapting to such changing conditions via a prescribed set of defense mechanisms and justifications (cf. Rawlings 2014:287).

As mentioned before, the most successful offshore jurisdictions, Luxembourg included, have learned that they often stand to gain more by cooperating (or by appearing to cooperate)

with international authorities than by stonewalling all efforts to curb their aggressive fiscal opportunism. However, from the vantage of the "state-finance complex," agreeing to rein in the fiscal opportunism of one niche does not mean that it cannot go about establishing another. Shaxson recognizes this game of "cat and mouse":

> Even while the EU sometimes convinces Luxembourg to eliminate its most ostensible fiscal bait, massaging certain of the most aggressive aspects of its legislation, its adroit management of numerous niches of the offshore ecosystem and its knowledge of the extraordinary complexity of EU law have permitted its financial industry to develop itself in a spectacular fashion (2012:359).

A Luxembourgish tax specialist admitted this much in 1994, when he defined the country's fiscal regime as "the art and manner of choosing the least detectible way, *without going too far*" (cited in Thomas, "Les renards," 1/2/15; emphasis added). As mentioned, this flexible and adaptable quality of "offshore governmentality" is one of its most significant features. The structures of the Luxembourg financial center that have brought it so much success over the years – such as banking secrecy, low taxes, and lax regulations – are not as immutable as they may seem. On the contrary, these can adjust to changing external political circumstances so long as such developments do not threaten the structures' very foundations.

Even as the "state-finance complex" likes to think of itself as a cooperative partner in international negotiations, it has routinely "dragged its feet" to slow down – or even derail – all sorts of efforts to promote transparency, accountability, and fairness in global financial markets. There are two central dimensions to this tactic. The first exploits weaknesses in the governing structures of the European Union, which allow the Luxembourgish state to give its financial center a voice equal to that of other (much larger) countries. This clear example of uneven and inequitable governance is due to the fact that tiny Luxembourg, like every EU member state,

possesses veto rights over a wide range of regulatory matters, including fiscal policy. Within the European Council, decisions must be made unanimously, which means that "the representative of the 500,000 inhabitants of Luxembourg can impose his will on 500 million Europeans" (Zucman 2015:90).

Since it is a bad negotiating strategy to always be the lone detractor, successive Luxembourgish governments have allied themselves with other finance-dependent EU countries – at times, the Netherlands, Ireland, Belgium, Malta, Cyprus, and the United Kingdom – to block efforts to combat tax evasion within the bloc. What brings together these loose coalitions of countries might be called "offshore solidarity," which is the second essential ingredient in the "foot dragging" strategy of the "state-finance complex." Swiss sociologist Andreas Missbach notes a certain choreography to such maneuvers:

> The division of labor between the Swiss and the Luxembourg Ministers of Finance is: "You, you delay the automatic exchange of information in the context of the EU and we will furnish you with arguments to escape the pressure. You refer to us and we will refer to you" (cited in Thomas, "Liaison fiscale," 11/22/13).

A shining example of "offshore solidarity" came in 2005, when Luxembourgish officials – alongside their homologues from Austria, another private banking-friendly jurisdiction with secrecy laws – succeeded in watering down an EU-wide "savings directive" that sought the exchange of individuals' tax information among the bloc's national fiscal authorities. Thus, in exercising its veto rights, the Luxembourg "state-finance complex" was able to scuttle legislation that would have nominally ended the laws ensuring secrecy for the very rich beneficial owners of the private-bank accounts, foundations, and holding companies domiciled in its territory.

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To conclude – inspired by Michel Foucault's interrogation of the practices, logic, and technologies of governance, which form what he calls "governmentality" – this chapter argues that Luxembourg's banking-secrecy laws and political consensus have led to the dramatic growth of the country's offshore financial center since the 1960s. Secrecy and consensus – central aspects of what I formulate here as "offshore governmentality" – characterize the strategies of Luxembourg's state and finance elites as they develop new markets, navigate changing political circumstances, and mitigate risks posed to their niches. In the three chapters to come, I demonstrate how this *governmentality of secrecy and consensus* has enabled Luxembourg's offshore financial center to specialize in private banking (chapter three), investment funds (chapter four), and art finance (chapter five). As detailed in the introduction, the analysis of these three niches is based on empirical data collected from media and archival sources, as well as from 80-plus interviews and participant-observation carried out with state and finance elites in Luxembourg.

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[1] The Big Four refers to the behemoth, worldwide accounting-*cum*-consulting firms Deloitte, Ernst & Young (EY), KPMG, and PricewaterhouseCoopers (PwC). Known pejoratively as the "Fat Four," these firms have been active in Luxembourg since the 1980s and 90s, a period during which they bought out the practices of a number of the country's smaller domestic accountancies. These entities currently employ a staggering 7,700 people in Luxembourg, a country of some 600,000 people (Thomas, "Société de cour," 12/8/17).

[2] Brackets within the transcribed quotations of informants represent words or phrases changed or added by the author, either to protect their identity or to improve the sentence's syntax.

[3] Note that this figure includes limited social spending on the non-national, non-resident *frontalier* population. For instance, the children of *frontaliers* are eligible to receive scholarships to study at the University of Luxembourg. As a result, the spending per resident is a bit lower than this figure implies. The Luxembourgish state refers to the resident population who receives public aid to be its "social protection population." I thank the group of scholars at a February 2018 seminar at the University of Luxembourg for pointing out this distinction to me.

[4] Juncker is currently President of the European Commission, the executive branch of the EU bloc of 28 member states. Over the years, Juncker has referred to himself repeatedly as

"Europe's last communist" (Kmec In Press), a curious distinction given that he ruled 18 years as prime minister and minister of finance of an ultra-liberal offshore jurisdiction. Alas, in line with Juncker's logic, it seems that the super profits from offshore financial activities were necessary to build his version of "communism" at home.

[5] Two statistics reveal how unique Luxembourg's political economy is: half of the population living in the Grand Duchy are non-Luxembourgers and a startling 80 percent of the workforce is made up of non-nationals, be they residing within the country or *frontaliers* – that is, those who commute daily from France, Belgium, and Germany.

[6] A noteworthy exception to Luxembourg's system of progressive individual taxation involves the capital gains stemming from stock options controlled by foreigners working in the Grand Duchy. These are untaxed, in contrast to those offered to resident Luxembourgers. According to Thomas ("Phantom shares," 3/10/17), this act was passed in as quiet and undemocratic a manner as possible – via an administrative decree (*circulaire administrative*), not by a law debated publically by MPs – in order to achieve that most neoliberal of goals: to attract and retain foreign "talent" for the financial center.

[7] *Frontaliers* – who usually hold entry- or mid-level positions in private-sector or professional firms – can earn as much as 25 percent more in Luxembourg as they would for the same job (if it even exists) in France, Belgium, or Germany. They pay Luxembourgish taxes on income generated within the Grand Duchy, as well as make their social-security contributions in Luxembourg as resident workers would. However, they are not entitled to the same benefits as those living and working in Luxembourg, notably regarding child assistance. Luxembourg's trade unions have long protested the legal and fiscal discrimination facing the growing number of *frontaliers* within the workforce.

[8] Foreign executives (*cadres*) in Luxembourg's financial institutions hail overwhelmingly from the three surrounding countries: France, Belgium, and Germany – while there are smaller numbers of Italians, Portuguese, and Anglophones (from the United States and United Kingdom).

[9] What I mean here is banks and financial intuitions paying Luxembourg news outlets to run particular stories, which are almost always favorable.

[10] I would say that representatives from both financial institutions and the Big Four have a hand in the "legal innovation" that takes place in Luxembourg, though at different scales. At the risk of oversimplification, I would say that a division of labor exists between these two sets of actors vis-à-vis the drafting and implementation of national financial legislation. The Big Four, given their global reach, often advise governments such as Luxembourg's as to whether these states should adopt certain legal structures to encourage the growth of particular offshore niches. Representatives of Luxembourg's financial institutions, on the other hand, usually aid the implementation of the legislation in question in order to guarantee that it be as "flexible" and "business friendly" as possible. I provide a sample of this process in chapter five. The idea for the freeport-*cum*-art finance "cluster" was that of a sole consultant at a Big Four firm. This has been well documented in the press and was reflected in my interviews with art-finance

practitioners. The domestic legal basis for this cluster was formulated, however, by an ensemble of local actors (logistics professionals, financiers, art specialists, and others), Yves Bouvier *et cie*, and, of course, said consultant from the Big Four firm.

[11] To give an idea of who makes up the "state-finance complex" in Luxembourg, and so as not to reveal the identities of my specific informants, I instead list the titles of some of those featured in a curious publication I found while in the archives: *Key Decision Makers – Luxembourg Investment Funds* (Hickory Editions, 2016). Those featured in this publication are analogous in stature to my informants.

Their job titles are the following:

Senior Vice-President [of an international bank]
Partner [at an international law firm]
CEO [of the asset-management division of an international bank]
Managing Director [of a fund-administration firm]
Partner [at a local law firm]
COO [of an international bank]
Director [of a national regulator]
General Branch Manager [of an international bank]
Partner [at a Big Four firm]
President [of a fund-administration firm]
Supervisor [of a national regulator]

[12] At the EU level, as numerous informants of mine were keen to emphasize, many newer-generation directives have harmonized "start dates" as to when the legislation comes into effect. This is not a welcome development for the Luxembourg financial center. To quote a senior regulator I interviewed: "We lived for 30 years on this ability [that is, being the first member state to transpose EU directives into national law]. Our specialties are built on these regulatory gaps" (interview, March 2016).

CHAPTER THREE

From "Belgian Dentists" to "Russian Oligarchs": The Changing Logics of Secrecy in Luxembourg Private Banking

The heart of the Luxembourg financial center is located on the Kirchberg Plateau, a neighborhood of Luxembourg City that the country's banks and investment companies share with a number of European Union institutions. It is here that you find that the EU Court of Auditors – charged with the monitoring the finances of the bloc's 28 member states – is located directly next to Luxembourg's Chamber of Commerce and a short distance from the Swiss banks UBS and Pictet. Nearby are the EU Court of Justice, housed in two massive towers made of bronze-colored glass, and the Secretariat of the European Parliament,[1] whose façade consists of a reflective steel exterior punctuated by blood-red awnings. Soaring cranes and giant earthmovers are also common sights on this spacious plateau, having constructed a new concert hall and national library, in addition to museums and facilities for sport – all world-class *grands projets* financed by the meager taxes levied on the billions of dollars channeled here every day. Given that the topic of my research topic is offshore finance, I found myself making innumerable trips to this quarter of Luxembourg City during a recent year of fieldwork.

For those of you who have experienced a northern European winter, you will know that it is often not necessary to remove sweaters and jackets when indoors, for heaters are modest and a chill is never far away. And then there is the rain, which frequently comes in sheets so forceful it renders all but the sturdiest umbrellas useless. Be caught for too long in these showers and your shoes quickly become waterlogged, only to remain damp for the remainder of the day. In such conditions, I was forced to scurry alongside the country's legions of white-collar employees as we dashed from comfortable and well-heated public transport into the implanted edifices of the Kirchberg Plateau, enormous vessels seemingly built to defy the rain, wind, and cold.

Throughout the year, I traversed many times the quarter's fast-moving John F. Kennedy Avenue, an immense boulevard more accustomed to swift luxury cars than slow-moving pedestrians. It is along this artery where you find Luxembourg's bank offices, corporations, and limited-liability companies – the different configurations on offer here to protect foreign wealth from taxes, creditors, and lawsuits. From their letterboxes, you read the names of these myriad legal creations, an Anglo-Saxon patois of holdings, private banks, and finance corporations that are housed in this otherwise French- and German-speaking grand duchy (Marian 2016:290).

While the boosters of the financial center want you to believe that their letterboxes denote a real presence in Luxembourg, it is easy to see that the actual economic activity occurs somewhere else. As a frequent visitor to the Kirchberg Plateau, I found this "present absence" is deeply alienating, to say the least, evocative of the secrecy and placelessness that defines the specter of offshore finance. The plateau is a geographic location for sure, but more importantly it is a nexus of people and practices dedicated to minimizing the scrutiny and taxation of profits made *elsewhere*. The plateau thus stands firmly apart from the states and communities that might make claims on the monies that move so easily in and out of the confines of the Luxembourg financial center (Nuttall and Mbembe 2015:S321).

Escaping the rain and wind – stiff, cold, and painful in gusts – I would duck into the portals of Kirchberg's buildings, the majority of which have little architectural distinction so as not to attract undue attention to the puzzling work that takes place there. The few with any architectonic flair tend toward the bizarre. A large foreign bank, for example, features eight mini-cupolas that evoke to Thomas a "Tuareg village" ("Le tribut," 2/26/16), while other structures are reminiscent of chicken coop, a Rubik's cube, or a space ship. Every year new

blocks appear. Ever larger, ever stranger, yet the architecture all says the same thing: herein lie wealth and power.

Photo 9 – A "Tuareg village" for offshore finance; Luxembourg City (photo by the author)

Behind their lucid façades – supposedly a sign of the financial center's newfound penchant for "transparency," according to its boosters – one witnesses scores of employees sitting elbow to elbow in front of their screens. Their narrow rows of desks mean that there is often not enough space for two people to pass one another without first turning sideways. For these workers, "business development" is the ubiquitous goal – for which one must learn the subtleties of making sales, networking, building rapport, receiving and giving referrals, and providing services to colleagues. As such, workers in Luxembourg financial center come to

possess a range of dispositions: commercial savvy, attentiveness to client concerns, and technical knowledge of the ever-expanding suite of products and services (Spence and Carter 2014:955).

Awaiting those few employees who enter the elite ranks of the country's financial institutions is the opportunity to work directly with most sought-after clients: the mobile millionaires who appear each weekday morning around eleven o'clock, having arrived earlier by private jet or high-speed train. The security guard stationed at the entrance nods respectfully. The fiscal exiles proceed to a discrete office, where their Luxembourg banker awaits. They work together for a couple of hours, devising ways to hide money and considering the state of the world's stock markets (cf. Ziegler 1979:55).

What unites both the most humble and privileged actors in the financial center, however, is the unsettling knowledge that certain documents and practices best not leave the refuge of Luxembourg's sovereign legal jurisdiction. In the late 1990s, a leak of thousands of incriminating documents from a Belgian bank in Luxembourg led to the arrest of its CEO in Brussels and a short-yet-traumatic jail sentence (Thomas, "Wuppertal Calling," 10/28/16). More recently, in early 2015, a prosecutor in Cologne began an investigation of the Luxembourg subsidiary of a German financial giant by ordering early-morning police searches of the houses of employees living on the German side of the Moselle River (Thomas, "Bürolandschaft 2016," 1/15/16).

After submitting to the obligatory security measures, frequently including bag checks and ID verification, I would be spirited away by an administrative assistant and ascend via glass-and-steel elevator into the reaches of the financial center's white-collar factories of various shapes and sizes. Immediately apparent in these spaces is how most lack all affective traces, as neither posters nor family photos adorn their cubicles or offices. This must serve as an ominous

reminder to those who work here: no one has an assured place, nothing is fixed, and everything changes. It is necessary to adapt oneself constantly, to remain "flexible." Tentatively navigating the carpet-less corridors, I passed stark offices of just a few square meters, in which a lone employee sat hunched at work. Deposited in drafty conference rooms with a coffee in hand, I would wait for my interviewees to arrive – Luxembourg's bankers, fund administrators, lawyers, accountants, among others. It was here I realized the irony of my presence in these discrete spaces: I was following the footsteps of the very clients who have long sought the prized services of Luxembourg's private banks.

The "Belgian Dentists"

"Belgium is a poor country with rich people." – An adage in Luxembourg

Offshore private banking in Luxembourg began in earnest during the early 1960s. The reasons for the emergence of this niche activity are many, though they point to the conjuncture facing Western Europe at the height of the Fordist period on the continent. For the countries with an overseas empire, decolonization was the order of the day; Belgium, which had been in an economic and monetary union with Luxembourg since 1922, was reeling from the loss of the Congo and the "good lifestyle" – in the words of a senior Luxembourgish banker with whom I spoke (interview, March 2016) – that came from profiting from a colony rich in extractive and agricultural resources.

Faced with a serious financial crisis due to the loss of revenue from operations in the Congo, the Belgian government was forced to adopt a series of austerity measures, including a 25-percent tax on investment income (Moyse et al. 2014:19-20). Such measures prompted capital flight from the country. The Luxembourg banks – located in the same currency union as Belgium, yet which levied no withholding tax on clients' savings and investments and divulged

none of this information to foreign tax authorities – stood to profit handsomely from these developments. As a Belgian historian told me in frank terms, "the development of the [Luxembourg financial center] was predicated on this sort of fiscal evasion" (interview, February 2016).

From these early days of the Luxembourg financial center, we can see a pattern taking shape. Once any occurrence that was not to the *immediate* liking of finance capital took place in its larger neighboring countries – for instance, the introduction of a modest capital-gains tax in Belgium, the increase of reserve requirements to stem speculation in Germany, or the election of a socialist government in France – Luxembourg's banks saw their balance sheets increase at a healthy clip. It all seemed so easy; the clients would simply come by themselves. The Luxembourgish state could not believe its luck, and even went as far to forbid its banks from advertising abroad their offshore private-banking services – for the sake of decency.

So profitable did this banking activity become that its protagonist, the proverbial "Belgian dentist,"[2] entered into the consciousness of bankers in Luxembourg and elsewhere, soon to be followed by "French lawyer" and the "German butcher." This regional clientele reflects, in part, Luxembourg's central location in northwestern Europe, a few hours drive from major population centers in Belgium, Germany, and France. Yet it was undoubtedly the "Belgian dentist" – and not his French or German counterparts – who remained in the collective consciousness of my interviewees. From 1922 until the introduction of the euro in 2002, the Belgian and Luxembourg currencies, the franc, were set at a fixed parity, as was established by the Belgium-Luxembourg Economic Union. This interchangeability of the two currencies meant that the "Belgian dentists" could take their francs offshore, to banks in Luxembourg, and expect to receive any attendant interest and investment gains tax free and in the same currency.

Moreover, as a senior Belgian banker noted, with a touch of national pride, his “Belgian dentist” compatriots had much spare money to bring to Luxembourg due to the fact that they had the highest savings rate among Europeans, at around 15 percent of income (interview, February 2016).

Photo 10 – Kerr provides us a visual of the “Belgian Dentist” – who, he adds, “is not an entirely mythical figure” (1984:20).

Regardless of whether they were dentists, lawyers, or butchers, these initial clients of Luxembourg’s banks represented members of Northern Europe’s growing petty and professional bourgeoisies during a time of unparalleled prosperity on the continent, a 30-year period referred to in French as “*les Trente glorieuses*.” They were often self-employed, engaged in commerce or liberal professions, and dealt frequently in cash. During this period of unparalleled growth, the “Belgian dentists,” and their ilk within the ranks of Northern Europe’s “mass affluent,” made up

some 90 percent of the clientele of Luxembourg's banks, according to a senior Luxembourgish financial-industry official with whom I spoke (interview, January 2016).

The attraction of the offshore Luxembourg financial center to the "Belgian dentists" was obvious enough, namely that the Grand Duchy's fiscal authorities did not tax either the interest that accrued on savings or the capital gains from investments (*retenue à la source*), compared to a rate of 25 percent in Belgium at the time. The main reason, however, for the popularity of the Luxembourg banks was that the "Belgian dentists" did not have to report their banking activities to the domestic tax authorities, or – in the ironic formulation of a senior official of a Luxembourg financial-industry association – "they simply forgot" (interview, April 2016). Here, we see an eternal trope of offshore finance: moving money from a jurisdiction where it is earned to another where it is taxed lightly, or not at all (Palan et al. 2009:88). As a result, the "Belgian dentists" won many times over: they paid no tax on monies otherwise taxable in Belgium, they reduced their overall fiscal obligations, and they enjoyed tax-free access to savings accounts via the Luxembourg financial center. Additionally, they found an ever-increasing number of financial products, in particular investment funds (see chapter four), that had not yet been approved by regulators in Belgium.

Yet Luxembourg was only one of a number of jurisdictions where the "Belgian dentists," especially the wealthier and "savvier" ones, stashed their money; Switzerland was the other common destination in this regard. Thus, the "Belgian dentists" – who formed a "second class" among the worldwide clients of private banking (senior Luxembourgish banker, interview, April 2016) – were eager to mimic the practices that were long the domain of the international oligarchy, which had for decades (even centuries) channeled vast tax-free sums into the secret numbered accounts (*comptes numérotés*) offered by Swiss banks.

With new protagonists, of course, came a new *mise en scène*. As another senior Luxembourgish official in a trade organization recounted to me, and I paraphrase: the “Belgian dentists” would arrive *en masse* on the days when their investments, mostly bonds in European governments and large corporations purchased at banks in Belgium, could be redeemed. Their destination was more often than not the Luxembourg-based subsidiary of their home bank in Belgium. As is something of an urban legend now in Luxembourg, the “Belgian dentists” would either come alone on the 10:20 AM train from Brussels (a three-hour trip one way) – dubbed the “Coupon Express” – or in organized groups via charter busses (Gillis and Godard, eds. 1996:13).

Photo 11 – The cover of Cahiers marxistes *(April-May 1996); The caption reads “the train from Brussels pulls into Coupon-bourg.” (photo by the author)*

Those preferring to drive could enjoy the newly built highway connecting Wallonia, the French-speaking southern region of Belgium, to Luxembourg. Due to first the Benelux accords[3]

and later the liberalizing policies of the fledgling European Economic Community, the customs and passport controls at the Belgium-Luxembourg border had been removed, as a Belgian historian noted to me (interview, February 2016). Leaving nothing to chance, the Luxembourg authorities even lowered the country's fuel duty, to induce still further the "Belgian dentists" – a perk that remains to this day, what journalist Bernard Thomas has coined "gasoline tourism" (*tourisme à la pompe*) ("Mise à nu," 1/1/16).

Due to the ease of automobile travel, traffic jams of cars with foreign license plates became common in Luxembourg City. Denizens of the capital always knew when it was "Coupon Day," for the capital's banks, restaurants, and shops would teem with the "Belgian dentists" and their wives, or even mistresses. They would wait in long lines to redeem their investments in the anonymous "bearer security" format (explained later in this chapter), denominated in offshore Eurodollars and free of any deductions. This necessitated that the "Belgian dentists" take their bearer shares out "from under their mattresses" (senior foreign banker, interview, February 2016), pack them in suitcases, and literally cut with scissors the paper "coupons" for redemption at the bank – a cumbersome process that many of my interviewees recounted with a chuckle, especially when they compare it to the "dematerialized" nature of contemporary securities trading.

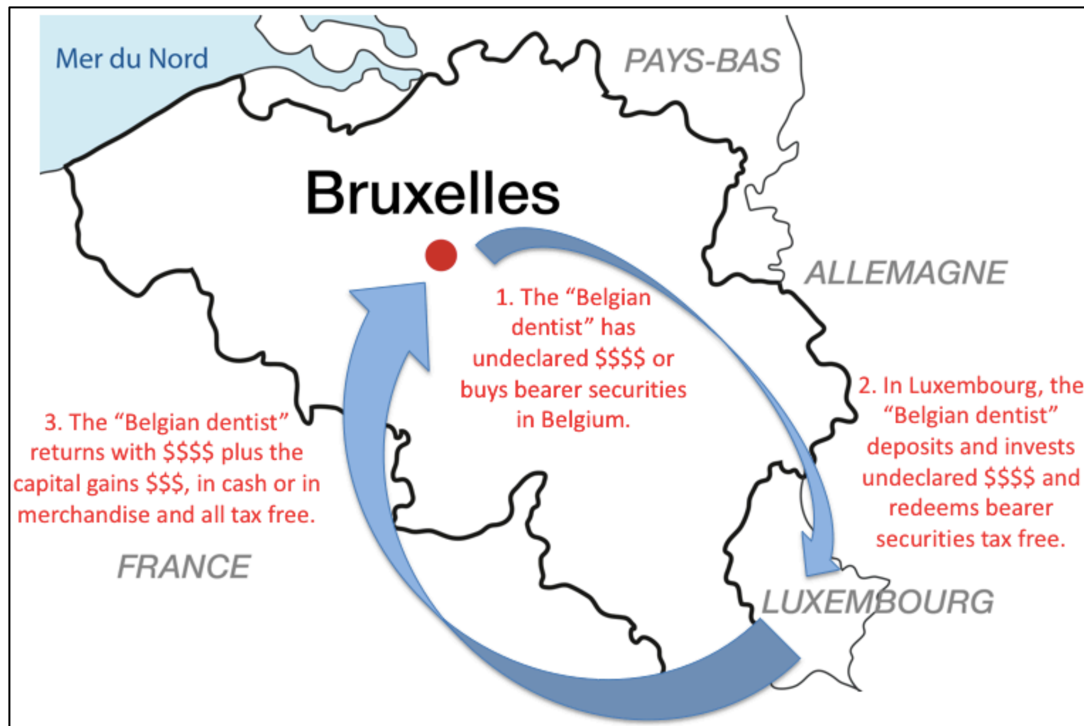

Figure 7 – A day in the life of a "Belgian Dentist"

Bank executives lauded "Coupon Day" for providing them a new and captive non-resident clientele. Happy to be spared having to pay any capital-gains taxes, the "Belgian dentists" rarely negotiated the fees and commissions charged by the Luxembourg banks. As such, they ended up paying a lot of them. Additionally, the "portfolio management" services to which the Luxembourg private bankers steered the "Belgian dentists" often consisted of the bank's in-house investment products. These "recommendations" would result in double commissions for the bank, a practice that a senior securities attorney (*avocat d'affaires*) considered today to be dubious in professional terms (interview, April 2016).

In contrast to the partiality of Luxembourg's bank executives for the "Belgian dentists," due to their central role in the bank's search for ever-increasing profits, the tellers and employees who actually dealt with this clientele dreaded its arrival. Many interviewees described "Coupon Days" as frenetic and tense, in which large numbers of temporary staff had to be brought in to attend to customers. As a long-time Luxembourg bank employee reported to Shaxson, "[the

"Belgian dentists"] entered the bank, rushed through the doors, getting worked up, brandishing their coupons, and getting in return their cheques" (2012:274).

To profit from the ever-increasing business of the "Belgian dentists," Luxembourg's banks built larger and larger facilities, causing many to leave the city center for the open spaces of the Kirchberg Plateau, which became linked to the downtown area by means of a bridge constructed in the mid-1960s. A large German bank was the first to move from the city center to Kirchberg, which took place in the late 1970s. In the words of journalist Bernard Thomas,

> [This bank] constructed a cathedral to itself, to finance and tax evasion. In 2014, the former head of the bank, reminded [the German newspaper] *Die Zeit* about "the gigantic entry halls of the European banks in Luxembourg": "There were so many chairs that I once asked: 'Are we a cinema here?' – 'No,' one person answered, 'Tomorrow is coupon day.'" The next morning, the chairs were filled by the dentists, engineers, butchers, and merchants who would come to cash out the interest on their bonds and the dividends on their stocks ("Le tribut," 2/26/16).

Not stopping at simply making larger waiting areas for the "Belgian dentists" (and their French and German counterparts), the designers of Luxembourg's banks also built secure and discrete spaces in which clients could cut and redeem their coupons – with no foreign tax authorities allowed, of course. According to an executive of a Luxembourg bank, "When the coupons were about to expire, we had long queues in the branches, with waiting times of up to four or five hours. We had to bring in tickets, like at the butcher's… Demand was so high that we had counters that were just for the opening of accounts" (cited in Moyse et al. 2014:91).

After battling the crowds to see their banker, the "Belgian dentists" would either place any surplus cash and bearer certificates in a safe-deposit box or depart immediately with their newly acquired and untraceable high-denomination francs in a suitcase or in the trunk of a car. Still others would treat themselves and their wives – or mistresses, as multiple informants quipped (see the conclusion) – to a leisurely meal and an afternoon of shopping in Luxembourg

City, peeling off the bills from their new wads of cash. These "financial tourists" would leave by car in the afternoon gridlock or board the late-afternoon return train to Brussels. Even as this "financial tourism" was very lucrative for Luxembourg's banks, it was "slightly unpleasant, I openly admit," recognized a senior banker to the authors of a book on the country's financial center: "we were not used to it; the banking hall was large, [yet] the building was constantly overflowing with people… many of whom wanted to cash their coupons free of charge" (Moyse et al. 2014:32-33).

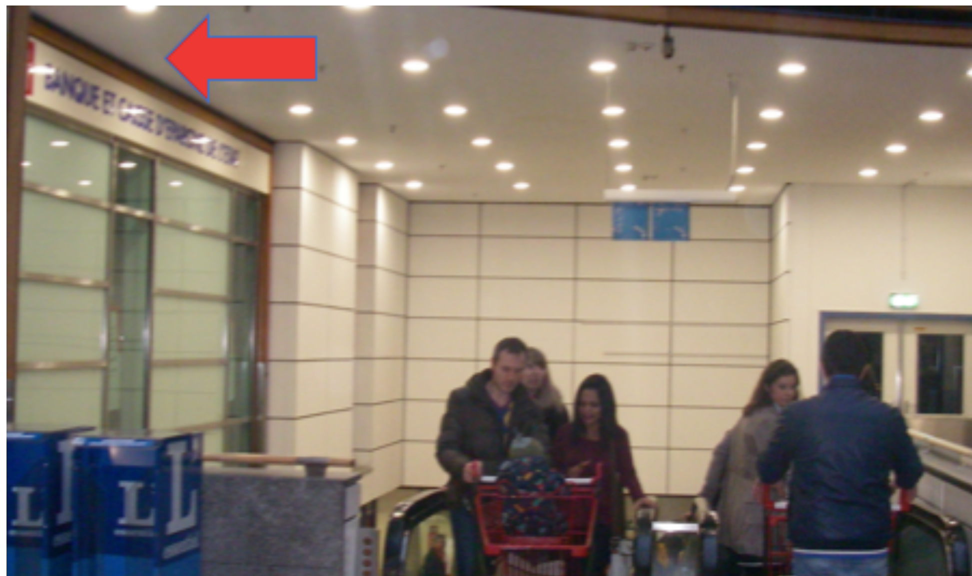

Photo 12 – A bank branch, strategically located inside the country's largest shopping center, by the exit to the underground parking garage. This was reportedly a preferred destination for the "Belgian dentists." (photo by the author)

From the 1970s onward, Luxembourg's banks used their clientele of "Belgian dentists" to develop an entire "private banking" industry, one that operated on the "borderline of laws," in the words of a senior foreign banker who worked in Luxembourg in the 1970s and 80s. To him, it was obvious that much of this activity was illegal in the clients' home countries, though it was rarely stated as such. Regardless, this banker and his colleagues were "effectively helping people to skirt laws" (interview, January 2016).

As Luxembourg private banking grew, the financial services on offer to the "Belgian dentists" and their ilk became increasingly more "sophisticated," to use a favored adjective of industry practitioners. In the Luxembourg financial center of this era, clients could build individualized stock-and-bond portfolios, invest in worldwide gold markets, open a checking account, receive detailed investment advice, and, most importantly, collect tax-free gains on dividends and interest payments (cf. Zucman 2015:23). In turn, their private banker "[would not] ask a lot of questions," to quote another foreign banker knowledgeable of the Luxembourg financial center (interview, January 2016), particularly in regards to whether clients were reporting this income to their home-country tax authorities. The working assumption was that they did not. As an official in a Luxembourg trade organization remarked with uncommon candor, "nowadays, this would imply criminal activity" (interview, January 2016).

Unsurprisingly, due to losses in taxable revenue, Luxembourg's neighbors began to take notice of these activities. Belgian customs officials began roaming the "Coupon Express" trains, performing spot checks for people potentially carrying undeclared assets and bearer certificates. They brought guard dogs trained to detect the crisp and distinct odor of newly minted cash. From time to time, there would be a sensationalist news story, as journalist Bernard Thomas has documented, of foreign bank clients caught at the border with wads of high-domination bills taped inside their underwear or suitcases weighed down with stacked gold ingots ("Les porteurs de valises," 11/4/14).

This sporadic enforcement, in turn, led many "Belgian dentists" to hide their cash and gold in a more thorough manner, often under car seats as they left the banks at rush hour to blend in amidst the mass of daily commuters who live in Belgium yet work in Luxembourg. The fiscal authorities were not the only parties in search of the undeclared income of the "Belgian dentists";

thieves were as well. A longtime Luxembourgish activist recalled a number of heists, well reported in the local media, in which thieves would usurp the suitcases or target the car trunks used by clients to store cash (interview, July 2016).

Photo 13 – The usual afternoon traffic, on the highway from Luxembourg City to the Belgian boarder. The "Belgian dentists" would often return home amid the mass of daily commuters. (photo by the author)

Notwithstanding a few high-profile interventions by the fiscal authorities, reaction from other factions of the Belgian state was more subdued, even tolerant of such practices. This era of private banking in Luxembourg was not only lucrative to the "Belgian dentists," but even more so to the Belgian banks operating within the Grand Duchy. As documented by Moyse et al. (2014) and Danescu and Muñoz, eds. (2015), there have long been proximate ties between top-level Luxembourgish and Belgian politicians, bankers, and regulators (discussed further in chapter four). When an elite foreign banker arrived during the mid-1960s to work in Luxembourg,

> [my wife and I] held a small cocktail party to celebrate our arrival. [Longtime Luxembourg Prime Minister and Minister of Finance] Pierre Werner, whom I didn't know, came, perhaps because of my father's reputation [as a former politician]… Luxembourg was something of a village, [but] who should arrive but a high-level international politician! (cited in Moyse et al. 2014:47).

Opting for a more *laissez-faire* approach were officials at the National Bank of Belgium (NBB), the country's monetary authority. According to some of my interviewees, the NBB was less worried about the growing scope of Luxembourg private banking because the "Belgian dentists" would often simply buy the bonds issued by the country's federal treasury, regions, and corporations. Additionally, because the two countries' francs were interchangeable, the investment returns redeemed by the "Belgian dentists" in Luxembourg were "recycled" back in the Belgian economy, thus having little adverse effect on Belgium's overall balance of payments.

I end this section with two observations. First, I must note that the purported reasons for the "indifference" of NBB authorities with regards to the "Belgian dentist" phenomenon were forwarded to me by a Luxembourgish banker, which supported conveniently his argument that "Luxembourg financial center was not built [to be] against anybody" (interview, March 2016). This comment, at best false and at worse misleading, reflects a common line of reasoning that I perceived during my fieldwork. The vast majority of my interviewees were unable to admit the fiscal opportunism routinely practiced by the Luxembourg financial center.

My second observation concerns what is ultimately an ethnographic oddity: descriptions not of a *real* Luxembourg private banking client, but rather those of an archetype. While never able to interview an *actual* "Belgian dentist," though certainly tempted to make some inquiries at dental offices in Brussels, I came to "know" this prototypical private banking client over many conversations I had in Luxembourg and elsewhere. Even as this activity became indispensable to the growth of the Luxembourg financial center, the country's bankers and regulators I interviewed were nevertheless dismissive of the "Belgian dentists," and their "French lawyer" and "German butcher" counterparts. Later in this chapter, I will discuss how these practitioners

have not mourned the loss of the “Belgian dentists,” but rather are lauding the more recent arrival of the so-called “Ultra-High Net-Worth Individuals” (UHNWI).

Banking Secrecy

“Words are silver, silence is golden.” – A nineteenth-century English proverb

As animosity vis-à-vis such tax evasion grew among neighboring countries and at the EEC level (later the EU), the main players within Luxembourg’s financial center sought to assure the “Belgian dentists” that their assets would be safe from all sorts of prying eyes. Central to this strategy was the government’s passing of Swiss-style banking-secrecy laws, which were enshrined in April 1981 – two weeks after the election of socialist François Mitterrand to the French presidency. These secrecy laws – which made it a criminal offense for bank employees to divulge clients’ information to creditors, family members, and tax authorities, including the ACD, the domestic revenue service in Luxembourg – not only gave the “Belgian dentists” additional “peace of mind” (senior Luxembourgish regulator, interview, March 2016) and but also became a powerful marketing tool for the financial center, alongside its tax-free banking and growing array of financial products on offer.

Ever since the Luxembourg financial center began its spectacular growth from the early 1960s, banking secrecy had existed as a *de facto* policy. The legal basis for this was Article 458 in the national Penal Code, dating from the late nineteenth century, that forbid professionals such as doctors, midwives, and pharmacists from making public any information pertaining to their patients. Furthermore, the article specifies that professionals from these fields may invoke secrecy laws if they do not wish to testify during commercial or civil actions or in criminal proceedings.

As a senior banker pointed out to me (interview, March 2016), this article should be seen in a larger historical and social context of the late 1800s – namely that the spirit behind it alludes to the Seal of the Confession, a twelfth-century addition to (Catholic) canonical law mandating that a priest not disclose anything he hears from a confessing parishioner (see conclusion for a further discussion). In this light, while Article 458 specifies only doctors, midwives, and pharmacists in its list of covered professions, priests would also be included under the article's invocation of the "necessary confidant" (Kaufmann 1991:12). Thus, this open-ended nature of Article 458 allowed for the interpretation that Luxembourg bankers, too, represented "necessary confidants."

Such an interpretation sufficed for many years, giving the "Belgian dentists" comfort that their Luxembourg banker would not disclose any of their tax-related information. However, as politicians and officials from neighboring states started to understand the amount of taxable money that was lost by being channeled into this growing and diversifying financial center, Luxembourg's *de facto* policy of banking secrecy – based on a capital-friendly *interpretation* of a mere article passed some 100 years earlier – began to look as if it were on shaky legal ground. Come the late 1970s, there emerged a consensus among the country's politicians, regulators, and bankers that the financial center's "tradition of confidentiality" was no longer sufficient in a context of growing international pressure. A new and specific banking-secrecy law would therefore be needed, above all to assure the "Belgian dentists" that their assets would be *legally* safe from all sorts of inquiries. Once again, the model for Luxembourg's state and financial elites was Switzerland, in particular its 1934 banking-secrecy act that came to form the basis of its powerful financial center.

Additional factors were also bearing on decision-makers with regards to the passage of banking secrecy, including longer-term changes within the financial industry, the election of a socialist government in France, and a concurrent global economic downturn. Over the course of the 1970s, the increasing "internationalization" of the financial center saw the introduction of complex new financial products in the markets for bonds and investment funds, as a local journalist emphasized to me (interview, July 2016). These instruments were no longer the sole ambit of the banker – a *de facto* "necessary confidant" in the spirit of Article 458 – but now also involved accountants, lawyers, fiduciaries, fund administrators, and others. Additionally, the election of socialist François Mitterrand to the French presidency in 1981, in coalition with the country's communist party, prompted considerable capital flight from France. Palan et al. write of "stories told of backpackers serving as couriers and carrying sacks of cash from Paris to Luxembourg" (2009:201).

The most important impetus that led to the banking-secrecy laws, however, was the global financial crisis of the early 1980s. During this time, a number of countries in Latin America and Eastern Europe had defaulted on their bond obligations, rattling international financial markets and even causing a number of bank runs in the United States and Western Europe. That this conjuncture would provide the motivation to Luxembourg's elites to pass banking-secrecy laws should not be a surprise. As Palan reminds us, "periods of capitalist crisis," such as – in this case – the so-called "Third-World Debt Crisis" of the early 1980s, "normally take the form of falling rates of profit. [They] are also periods of intense technological and political innovation as firms seek to raise their profit ratios. Such structural conditions serve to stimulate changes in the behavior of states and firms" (2006:73).

In Luxembourg, these global developments were felt acutely. In its initial reaction to mitigate the consequences of the crisis for the financial center, the Ministry of Finance pursued a three-track strategy: using public funds to underwrite bad loans on the banks' balance sheets (and thus avoid a run by depositors), lowering the tax rates for the subsidiaries of foreign banks, and abolishing the value-added tax on gold trading. These capital-friendly measures were nevertheless not sufficient. As the debt crisis persisted, several of the big foreign banks even pondered the unmentionable: leaving the Grand Duchy.

Yet providing remedies to calm the nerves of anxious financiers is something of a state imperative in tiny Luxembourg. "We scratched our heads and wondered what we could do," a longtime regulator admitted to the authors of a new book on the financial center (Moyse et al. 2014:62). The proper salve was not long in coming: banking secrecy. Given that there had been no specific mention of banking secrecy in Luxembourgish law, in April 1981 legislators simply and discretely added bankers to the list of "necessary confidants" already specified in Article 458 of the Penal Code. Thus, in joining the ranks of the country's doctors, midwives, and pharmacists, Luxembourg's bankers were now prohibited from divulging any information provided to them in confidence during the performance of their professional duties. Contraventions of this statute were punishable by criminal sanctions, including a stiff fine and possible jail sentence.

"It was through this side door that banking secrecy was introduced into Luxembourg legislation," noted the same longtime regulator to Moyse et al. (2014:62). Explicit banking-secrecy laws had long been the wish of Luxembourg's bankers; now, during a moment of crisis, they had finally been given the "provisions" (senior regulator, interview, February 2016) necessary to build in earnest new niches in private banking and asset management *à la suisse*,

that is, in the mold of the Swiss financial center. The law "gave the green light to the banks. This was a comfort, more than a stimulant," was the mixed metaphor a senior banker used to describe to me the predicament at that time (interview, March 2016).

What specifically was in the law? As mentioned, the 1981 addendum to Article 458 represented the first time in which banking secrecy was explicitly covered by Luxembourgish law. As such, it became a criminal offense for employees of the financial center to divulge the information of individual bank clients – both domestic and foreign – to creditors, family members, and tax authorities. From then on, Luxembourg's bankers were legally bound neither disclose the value or type of clients' assets nor could they identify the beneficiary owners of Luxembourg-domiciled holding companies or life-insurance policies (explained later in this chapter), even if the activities reflected in such information were in violation of another country's laws. Moreover, "tax evasion" joined "tax avoidance" in being removed from the country's list of fiscal offences. Additionally, building on the original text of Article 458, Luxembourg bankers could now follow doctors, midwives, and pharmacists by having the right to reply – or not – if a question posed to them in a civil or criminal court touches upon professional secrecy. "Whichever he chooses, he cannot incur a penalty for doing so," Steichen (1996:7-8) reminds us.

While the speedy passage of near-hermetic private banking rules no doubt piqued the interest of the "Belgian dentists," Luxembourg's bankers were nonetheless advised by others in the "state-finance complex" to keep their elation to themselves. A senior regulator put on guard the actors of the financial center: "it is very important that, in their advertisements, our banks don't allow themselves to provoke" (cited in Thomas, "Les renards," 1/2/15). The Luxembourgish state thus forbid its banks from publicizing banking secrecy abroad. Advertising,

ultimately, was not needed; more and more clients simply showed up, in droves, from surrounding France, Belgium, and Germany, but also now from further afield: the Netherlands, Italy, and the Scandinavian countries.

Via the practices of "offshore governmentality" (see chapter two), Luxembourg's "state-finance complex" had successfully pre-empted what would subsequently be a major development in international finance: a structural shift toward fee-generating wealth-management services. This period also marked the consolidation of a high financial bourgeoisie in the country, who brought to the Grand Duchy the decadent consumption habits long enjoyed by its Anglo-Saxon counterparts: ambitious holidays to exotic locales, the latest in luxury fashions and automobiles, organic foodstuffs, and designer-drug use. It was Luxembourg's "Gilded Age," pronounced a local journalist (interview, July 2016), an era that the "state-finance complex" glosses as the more egalitarian-sounding *Les Vingt splendides* ("The Splendid Twenty [Years]").

In the late 1980s, banking secrecy protections were further strengthened to fill the "holes," as Luxembourg's finance elites saw them, remaining in the existing legislation. Nevertheless, the limits to banking secrecy had begun to be apparent. In 1989, a domestic court pursued a well-publicized case condemning the Luxembourg subsidiary of the French bank Crédit lyonnais for the "indiscretion" of one of its employees, who had transmitted the information of a client to the French tax authorities (Thomas, "Les renards," 1/2/15). That very same year, the government passed a decree (*règlement*) forbidding any official to cooperate with foreign authorities on cases involving "stolen information," which is tax haven-speak – more often than not – for the leaks made by whistleblowers exposing the more nefarious activities of global finance. Furthermore, the same 1989 decree prohibited the ACD, Luxembourg's national

revenue service, to request any kind of client information from a bank: "the tax authorities are not authorized to solicit from financial institutions individual information on their customers" (cited in Zwick 2003:24). By means of this legislation, Luxembourg bankers could rest assured that the ACD would not be able to use its powers of inspection as a pretext for making inquiries on individual customers. If this were not draconian enough, the decree also specified that clients' tax information could not be given to credit institutions, fund and holding companies, or any "other professionals of the financial sector… It follows that the entire private savings sector, whatever the method of investment, is outside the ambit of revenue investigations" (Steichen 1996:15-16).

Backed by a growing corpus of legislation and legal precedent in favor of secrecy, Luxembourg's private-banking sector grew apace. Decisions by the German authorities, in 1989, to introduce a levy on interest from savings led many residents to deposit their money in foreign banks, primarily in Luxembourg. When the same authorities introduced a 30-percent withholding tax (*retenue à la source*) in January 1993, the Luxembourg financial center benefitted from influx of an estimated $50-62 billion in "flight capital" (Hampton 1996:11). None of my interviewees, however, expressed any sympathy for why the German authorities might want to raise public revenues or tax financial transactions; instead, their usual response to this – as well as to any other action taken by a neighboring government not to the immediate liking of finance capital – was one of "not our problem."

In light of this position, it should be no surprise that foreign criticism of Luxembourg's fiscal opportunism continued apace. Jacques Delors, the influential President of the European Commission in the late 1980s and early 90s, introduced legislation to ban the practice of banking secrecy in EU member states. In response, Luxembourg government representatives promptly

derailed the effort at the level of the European Council, due to its supposed "lack of harmonization" with four territories *outside* EU jurisdiction: Switzerland, Andorra, and the UK Crown Dependencies of Jersey and Guernsey. "[Delors] would have certainly abolished [banking secrecy] had there been harmonization," a former senior government representative asserted to me (interview, February 2016).

As before, Luxembourg's "state-finance complex" responded to attempts aiming to curtail banking secrecy by strengthening its very legal basis. A 1993 act – passed at the behest of a longtime financial professional, who coolly admitted to me to having formulated its statutes and lobbied for its passage (interview, December 2015) – expanded the list of professions subject to the requirements of secrecy "to include all professionals within the financial sector" (Moyse et al. 2014:32). The reason for increasing the scope of the secrecy laws reflected the growing "internationalization" of activities taking place in the Luxembourg financial center at that time, in particular the country's newfound niche in investment-fund administration (see chapter four) – a market that necessitates lawyers, accountants, administrators, and fiduciaries, as much as it does bankers. As Steichen writes, "the reason for extending the ambit of the [secrecy] provision was the authorities' wish to give equal protection for secrets to all customers of the financial sector, regardless of which professional secrets they use" (1996:4). The effect of this sweeping legislation was simple: banking secrecy had not only become the basis for a sector whose profitability seemed to know no bounds, but also a model for the continuous legal intervention that the government would subsequently take on behalf of the financial center.

Commercializing Sovereignty

"[Come the 1980s,] the wealth exploited was no longer [iron ore] but rather Luxembourgish sovereignty *that permitted the legislation and regulation of the profit from foreign investors, notably in the financial and fiscal realms." – A former steel executive (Allegrezza et al. 2007:64; emphasis added)*

"The strategy of sovereignty niches [is]… a giant with feet of clay." – A Luxembourgish politician (cited in Thomas, "Mise à nu," 1/1/16)

If Luxembourg had succeeded in becoming a regional (if not global) financial center by the mid-1990s, it accomplished this feat by commercializing its own sovereign ability to draft and pass legislation. This process, carried out over the decades by means of consensus within the "state-finance complex," "has opened its doors to multinational corporations that consider the nations in which they operate only useful conduits through which they can engage in the incredible gymnastics of financial engineering in order to pay as little in tax as possible" (Pinçon and Pinçon-Charlot 2015:194). In the case of Luxembourg, "the trade of sovereignty knows no limits," writes Zucman (2015:88), where everything has a price or can become the target of negotiation. The state's control over its laws and territory ceases to represent the supposed unity among citizens, but rather becomes a commodity that can be packaged and sold to anyone willing to pay the price.

To a degree almost unique among contemporary nation-states, Luxembourg's "state-finance complex" has mastered the practice of commercializing the country's sovereign power. In doing so, the financial center has attracted scores of private banks and thousands of holding companies and investment funds into Luxembourgish territory.[4] Employing functions that are supposed to be public for private ends – as in the case of the Luxembourg government passing secrecy laws to the benefit of the country's banks and their foreign clients – is in the vein of what Mbembe defines as "*indirect private government*," especially when such a process is

"institutionalized and becomes part of the form of government" (2001:80; italics in the original). In this regard, commercialized sovereignty constitutes a central aspect of what I define as "offshore governmentality" in contemporary Luxembourg, in which the state comes to apply its sovereign power in the manner most advantageous to the needs of finance capital, whether foreign or domestic in origin.

The efforts of the Luxembourgish state to commercialize its own sovereignty – a trend that began in the 1960s but intensified during the 1980s – presupposes a set of rights that continental European countries started to exercise in the nineteenth century: the ability to write legislation and pursue policies, including tax laws and regulations, within their territorial confines. During the twentieth century, European countries developed their own systems of taxation and regulation that reflected political dynamics and compromises between an array of domestic interests, including trade unions and socialist and communist parties. The outcome of this process, as Palan et al. assert, is that "the world contains as many variants of tax and regulatory regimes as there are states" (2009:18).

The rise of offshore finance in the late 1960s, however, changed the calculus surrounding the ability of states to self-govern, especially as the global economic situation began to look darker from the mid-1970s onward. As a result, sovereign countries, in particular smaller ones such as Luxembourg, started looking for ways to survive this more difficult economic climate. As a potential way out this "profitability crisis" (Brenner 2006:130), many states decided to use their sovereign right to draft legislation as a potential "competitive advantage."

With this, however, we also see an underlying contradiction of the economic activity predicated on offshore finance: governments employing their ability to write laws to enable individuals and firms escape the regulation and taxation formulated by other sovereign states.

Thus, countries use their sovereignty to extract rents – that is, the amount in fees and "taxes"[5] charged on foreign capital for using a particular legal jurisdiction – from income that should be taxed wherever the profit originated. Palan calls this phenomenon, a central strategy of public revenue collection in offshore jurisdictions such as Luxembourg, "the commercialization of state sovereignty" (2006:59).

In such a light, offshore finance's fundamental paradox – and many would say hypocrisy – becomes obvious: it is driven by individuals and companies wishing to escape taxation, regulation, and scrutiny, yet was implemented initially, and has been supported ever since, by the same state system it seeks to evade. Hampton and Abbot, eds. describe this irony of offshore finance as, "having your cake and eating it: maintaining the state system, as organizer and mediator of conflict and tension, and yet removing the threat of regulation and taxation associated with [other states] – all done in the name of and by the state system itself" (1999:20).

The financial center, it should be noted, was not the first of Luxembourg's industries to benefit from the commercialization of state sovereignty, as was explained to me in detail by a senior civil servant (interview, April 2016). In the post-WWII period, the Luxembourgish state used generous land and tax concessions to attract manufacturing operations of large U.S. corporations, including Goodyear, DuPont, and Monsanto. (The former two are still active in Luxembourg today.) These multinationals were eager to expand into an integrating continental economy that was registering high levels of growth at that time.

It was undoubtedly the financial center, however, that took Luxembourg's penchant to commercialize its sovereignty to extreme levels. Within the country, this aspect of "offshore governmentality" is unquestionably lauded: "it was capital and know-how [*savoir-faire*] brought by foreigners that enabled the exploitation of… the country's sovereignty, in the case of its tax

system and banking secrecy" (Allegrezza et al., eds. 2007:xiii). By the 1980s, commercialization of state sovereignty had become a *conscious* economic tactic. As early as 1983, a young economist, currently a senior economic official, spelled out in explicit terms the state's intention: given that the government has a

> vice grip over its legal and tax regimes, it can use its sovereignty to attract the foreign factors of production (capital…) by offering to them regulatory, concessionary, fiscal, and other advantages, that only the Luxembourgish state can grant, decide, and create. Sovereignty is therefore a capital from which we can take a rent (cited in Pinçon and Pinçon-Charlot 2015:194-195).

This same official calls such policies Luxembourg's "legislative-based comparative advantage" and advocates that these eventually transform into "'economically based comparative advantages,' after having completed a certain learning period" (cited in Thomas, "Les renards," 1/2/15). With the passage of banking-secrecy laws in 1981 (which were further strengthened in 1989 and 1993), we see a blatant example of the Luxembourgish state commercializing its sovereignty to the benefit of the financial center; subsequently, this sequence of laws came to form the basis for the rapid development of country's private-banking sector, "a sovereignty niche [built on both] liberal regulatory settings and favourable taxation policies" (Dörry 2014:228).

Defending Banking Secrecy

"The secret group pursues its own purposes with the same inconsiderateness for all purposes outside itself which, the case of the individual, is precisely called egoism" (Simmel 1950:367).

"A key feature of the public policy *nature of banking secrecy is that banking secrecy in Luxembourg protects a series of private interests. Its general 'public' benefit flows from the protection it offers to private interests" (Kremer and Lebbe 2009:458; emphasis added).*

"The master word [of Luxembourg private bankers is] 'privacy,' a term that should really be translated as 'opacity'" (Thomas, "Looking for UBO," 11/17/17).

Given the zero-sum nature of banking secrecy, and the political antipathy it provokes in other countries, it was necessary for the entire Luxembourg "state-finance complex" to formulate a robust defense of these laws. Given the formidable resources and personnel at the disposal of the complex, this effort should be seen as part of what I am calling "offshore governmentality," which includes mechanisms to formulate capital-friendly legislation and legal interpretations, as well as discursive strategies in favor of the activities taking place in the Luxembourg financial center.

As is documented the domestic literature in support of banking secrecy (e.g., Schmit and Dondelinger 1971), it is striking to see how intuitionally *fragmented* the fiscal authorities are in Luxembourg, almost as if "state-finance complex" consciously allowed this in order to enable the growth of offshore markets at the margins between the spheres of oversight of the country's regulators. Kaufmann calls this bureaucratic separation one of the "foundations of banking secrecy in Luxembourg law." He writes that bankers do not need to divulge professional secrets

> to the tax authorities unless the actions of their client constituted fraud within the meaning of common law and were pursued as such in the criminal courts. In other words, a clear distinction was drawn between the administrative and judicial aspects, only the latter being relevant (1991:7).

To quote Steichen:

> In Luxembourg, there is not just one, but three independent tax authorities which are structurally and geographically separate. Each of them has exclusive competence for one or more taxes. In addition, the principle of the legality of administrative acts, which is well known in Luxembourg public law, requires each tax authority to use the powers conferred upon it by law solely to perform its statutory task. Therefore even in the past the Registration Authority [AED, *Administration de l'enregistrement et des domaines*] could not use its power of investigation to inquire into matters of interest to other authorities (1996:16).

With regards to the H29 holding companies (described in the next section), the AED possessed the right of scrutiny and investigation regarding these structures, which were utilized primarily for their tax advantages, as opposed to the Luxembourg fiscal authority (ACD, *Administration des contributions directes*). Steichen reminds us of the stakes: "To confer even a limited right of inspection on the [ACD], particularly to verify the tax status of [H29] companies, might have enabled [it] *to obtain information on the personal situation of shareholders, the origin of the funds invested*, etc." (1996:16; emphasis added). As seen in this curious example, only in an offshore financial center is it *not* a good idea for the fiscal authorities to have the ability to investigate the tax status of companies domiciled in its jurisdiction.

In addition to this marked bureaucratic separation, which curtails artificially the enforcement capacity of the domestic fiscal authorities, the lawyers and policy makers of Luxembourg's "state-finance complex" perfected the art of what might be called "legal non-equivalence" (cf. Marian 2016:287). The aim of this tactic, simply put, is to pervert the correspondence of tax laws over multiple jurisdictions. "For a letter rogatory sent by a foreign authority to be the subject of further action," Kaufmann decrees, "the offenses to which in relates must be punishable both in Luxembourg and in the foreign country" (1991:32).

Adherents to legal non-equivalence in Luxembourg employ it in their refusal to assist the fiscal investigations of other countries,[6] thus upholding banking secrecy in the process. To give

an example: tax fraud is a crime in Germany, and the country's legal system will prosecute those who are caught not in accordance with the laws. In Luxembourg until recently, however, tax fraud was not a crime, but rather subject to a mere "administrative penalty." Here, we see the logic of "legal non-equivalence": how can the Luxembourgish state assist the German authorities in enforcing a law that it does not recognize to be crime? I quote Steichen again at length:

> In order to avoid unnecessary burdens on the Luxembourg authorities, whose staff is necessarily limited in number, the Luxembourg legislature has exercised various options left open by [Directive 77/799/EEC] in order to restrict its scope of application… Assistance will be provided only if the request for information conforms with the rules applicable in Luxembourg law for the purpose of the correct assessment of a similar Luxembourg tax… Consequently, the application of the Community directives concerning assistance in the assessment of taxes does not permit banking secrecy to be lifted in Luxembourg (1996:19).

One would think that Steichen might want to leave unaddressed the reason why foreign fiscal authorities are imploring Luxembourg tax officials for assistance in carrying out investigations. Yet he admits this much for us:

> The most important [example of tax fraud] with regard to frequency and amounts involved, is the investments by non-residents with banks established in Luxembourg of sums of money the income from which is not declared in the country of residence. On this point, I have no doubt: tax embezzlement in Germany will never amount to tax fraud [in the Grand Duchy]. There is no particular guile in taking advantage of the Luxembourg legal system in order to avoid tax in other countries (Steichen 1996:26).

In this peculiar world of legal non-equivalence, commonsense ethics become inverted. For example, the bad guy – male, of course (see the conclusion) – is never the tax cheat but rather the vindictive, meddlesome foreign fiscal authorities:

> The purpose of [reservation 2 to EU Protocol 99] is to… ensure that banking secrecy is lifted no more than is strictly necessary, from being circumvented by the skill of foreign fiscal services, which may be tempted to obtain, by means of letters of request, information which in principle is not accessible to them (Steichen 1996:26).

Likewise, even consensus as to what constitutes a "crime" remains elusive:

> The autonomy of countries in setting up their national legal framework involves the absence of a ubiquitous definition of "crime." Contrary to other European jurisdictions, tax evasion [in Luxembourg] is considered to be an administrative offence, but not a financial crime; suspicions of tax evasion do consequently not lead to a release of banking secrecy (Zwick 2003:27).

Lastly, Luxembourg banking laws curiously *assume* the "faulty judgment" of those whom they cover:

> Luxembourg has opted not to consider tax evasion in another country as a predicate money laundering offence. Under the coverage of banking secrecy, financial institutions potentially assist private clients in hiding undeclared assets from their national tax authorities. It has been demonstrated that *financial institutions are unable to distinguish between tax evasion and money laundering techniques*… Banking employees are obliged to do the utmost to verify that the funds are not associated with any money laundering offense, but [rather] only represent assets to be hidden from [another country's] tax administration (Zwick 2003:142-143; emphasis added).

Defense of banking secrecy is not just limited to legal, bureaucratic, and legislative maneuvers; it is also discursive. Again, patterns emerge when one analyzes the pronouncements of those in the "state-finance complex." As will be shown, the basis for these rhetorical strategies alternates between the liberal; the *sécuritaire*; the *laissez-faire*; and, of course, the hear-no-evil-see-no-evil. Of these four, discourse surrounding "rights" carries the greatest weight. In this regard, representatives of Luxembourg's "state-finance complex" frequently posit the activities of the financial center in terms of human rights: "the right of small states to determine their own laws; the right of individuals to place their savings where they wish; the right of corporations to avoid punitive taxation and regulation" (Palan 2006:14).

Examples of this liberal discourse on "rights" heard in the Luxembourg financial center are numerous. A trade organization posited for many years that banking secrecy protected people's rights to "the intimacy of private life" (Thomas, "Les renards," 1/2/15). Zwick tells us

that “banking secrecy aims at guaranteeing the investors’ – respectively taxpayers’ – *right to privacy*” (2003:31; emphasis added; cf. Ötsch 2016:332). A senior Luxembourgish trade official implied to me that the country’s financial center simply assists capital’s “right to move”: “Germans could take money to Luxembourg and not report the funds to the German tax authorities,” this official mentioned to me. That the opposite scenario was also true – “Luxembourgers could take their money to German banks without having to report the money to [this country’s] authorities” (interview, January 2016) – seemed, to him, to absolve the financial center from the frequent charge of abetting tax fraud. Another senior Luxembourgish industry official believed that banking secrecy covered clients’ rights not to be surveilled. To explain this, my interviewee used a house metaphor: “you don’t want the police snooping around your home. They should only be able to come in with a warrant, if there is the suspicion of impropriety” (interview, January 2016). In these examples, the “rights” to privacy, confidentiality, discretion, and capital mobility speaks to the “concern” among investors for protecting assets against the seemingly “hostile” environment surrounding them.

The second tendency that marks the discourse in support of banking secrecy in Luxembourg is the *sécuritaire*, that is, of or relating to regimes of security and safety. In their promotional materials and when making public statements, officials from the “state-finance complex” are keen to stress the “stability” of the country’s governance and political economy and “safety” of its regulatory processes. As a senior financial-center official proudly told me, “there is a correlation between the robustness of the finances of Luxembourg banks and the soundness of the [government’s] public finances” (interview, January 2016). Again, this emphasis on the *sécuritaire* should not be surprising. Because much of the capital in Luxembourg has been withdrawn from taxation in its countries of origin, the Grand Duchy is a

logical destination for its safe-keeping, because the “security” and “anonymity” afforded to foreign money are supposedly more assured there than elsewhere (cf. Ziegler 1979:40). What if France tries to tax inherited fortunes or Germany the capital gains on financial assets? According to *sécuritaire* logic, it is only “rational” that Luxembourg bankers do everything in their power to assist the world’s rentiers, oligarchs, and their heirs in evacuating this “threatened” money. Referring to the “protection of private life” and to the “security of families,” Luxembourg’s recent legislation establishing tax-free “family offices” for the hyper-rich attends to “the legitimate need of rich families to limit the visibility of their assets (*patrimoine*)” (cited in Thomas, “La persistance de l’Ancien Régime,” 5/27/16).

Another common reaction from members of the “state-finance complex” is that financial impropriety and tax evasion is “not our problem.” The lifeblood of the Luxembourg financial center is the uninhibited global movement of capital. For decades now, the country’s banks have not fretted about – but rather welcomed – any legislation elsewhere that implements new taxes or curtails the export of capital. Given that many financial scandals pass through Luxembourg in some form or another – including the Madoff Ponzi scheme, the Panama Papers, and the 1MDB scandal in Malaysia, among others – there is a widespread attitude of “we cannot be expected scrutinize all of this money.” In this regard, the Luxembourg financial center presents itself as the equivalent of a “parking lot proprietor: the owner of a parking lot who could not care less about the business of the customer and merely charges for the period vehicles are parked in the lot” (Palan 2006:60). A foreign trade representative made a similarly curious analogy to me. Banking, this person said, is a utility: “it’s a like a telephone; people can use telephones to commit crimes” (interview, April 2016).

The final rhetorical defense of banking secrecy is the hear-no-evil-see-no-evil narrative of "trusting taxpayers." Tiny Luxembourg, whose welfare state is funded in part by rents collected in the financial center, trusts that its citizens pay their taxes. Why cannot other countries do the same? Shaxson quotes the former head of a lobby organization: "There always exists banking secrecy, Luxembourg is not obliged to communicate the information of its clients… It's not our duty to determine if a taxpayer has been honest" (2012:361). Steichen deduces that since a taxpayer is "perfectly able" to file her taxes, "it follows that the [Luxembourg tax authorities should] approach a bank directly only in very exceptional cases" (1996:9). Kaufmann, too, seems to place the "right" of citizens (and non-nationals alike) to consult a private banker alongside those guaranteeing non-discrimination and the rule of law: "Luxembourg, a country in which *the discretion of persons entrusting secrets to third parties has always been protected*, has quite obviously been unwilling… to grant foreign tax authorities facilities which the national authorities are powerless to obtain for their own purposes" (1991:18; emphasis added). Again, the majority of senior bankers with whom I spoke did not recognize this fiscal opportunism. As cited previously, "the Luxembourg financial center was not built [to be] against anyone," a senior Luxembourgish banker mentioned to me (interview, March 2016), a comment that is as false as it is misleading.

Technologies of Secrecy #1 – Holding Companies

« Pour vivre heureux, vivons cachés. » – A French saying

Translation: "To be happy, live hidden."

In the following four "Technologies of Secrecy" sections, I detail the means and technologies by which Luxembourg bankers have sought to ensure secrecy for the "Belgian dentists" and other clients. Following Roitman, I use the concept of "technology" to be a means

of “intervention based on a set of presuppositions about the nature of economic life and economic objects… They are thus not simply instrumental methods for obtaining or assuring power; they are, rather, the very material form of power itself” (2005:3). Roitman’s (and my) working definition of “technology” mirrors that of Miller and Rose:

> We use the term “technologies” to suggest a particular approach to the analysis of the activity of ruling, one which pays great attention to the actual mechanisms through which authorities of various sorts have sought to shape, normalize and instrumentalize the conduct, thought, decisions and aspirations of others in order achieve the objectives they consider desirable (2008:32).

It is important to note in this discussion that the “technologies” I discuss – holding and shell companies, numbered bank accounts, bearer securities, and unit-linked life-insurance policies – are rarely deployed on their own but rather as a complex and interconnected *assemblage* routed through multiple secrecy jurisdictions – the links between which are near impossible to ascertain from the outside. As bankers in Luxembourg have long known, these technologies of secrecy are “flexible” and can be deployed *ad infinitum*. Their structures (*dispositifs*) enable clients to ensure the arrangement’s overall opacity and complexity; one can inject “debt” into fictitious businesses, construct a chain of entities allowing owners to obscure their majority ownership, conceal the identities of shareholders with different categories of shares, use one company to control another and hide its ultimate beneficiary via a shell company domiciled in a tax haven such as the British Virgin Islands.

While there are many schemes such as these globally, as the Panama Papers reveal to us, the Luxembourg financial center unquestionably plays a leading role in this convoluted theater of concealment and obfuscation. Global oligarchs often choose the Grand Duchy as the jurisdiction for their central holding companies (Shaxson 2012:377), which contain still other holding companies, which in turn control their interests scattered throughout the world. These tree-like

apparatuses have many limbs and branches, even twigs, yet are firmly rooted in a global offshore economy in which the centrality of the Luxembourg financial center cannot be overstated. In the sections that follow, I bring together the central technologies that have been used – are still are used, though in an altered form – by bankers, accountants, lawyers, and “financial engineers” at work in Luxembourg.

Two laws on companies – the first from 1915 and the second during 1929, less than two months before the “Black Tuesday” crash of the New York Stock Exchange – established the basis for foreign business activities to take place in Luxembourg, as was explained to me by a senior regulator (interview, February 2016). As an attorney practicing in Luxembourg repeatedly mentioned to me, the Luxembourg holding company (frequently referred to as “H29”) is not an economic structure *per se* but rather a legal concept; it cannot engage in commercial or industrial activity within Luxembourg, so as to not distort the overall dimensions of the domestic economy (interview, January 2016).

What attracted the capital of the international oligarchy to the Grand Duchy, however, was that the newly established H29 entity would be able to centralize in Luxembourg the earnings and dividends from the parent company’s interests worldwide and these would not be subject to taxation, save a miniscule 0.15 percent annual “subscription tax” (*taxe d’abonnement*) on the total equity held. As a foreign banker who worked many years in Luxembourg recounted to me, to secure Luxembourg as the domicile for an H29, the client merely needed to have a postal address – hence the accusation that the Grand Duchy is full of “letter-box companies” (*sociétés boîte aux lettres*). No annual meeting of the H29’s directors was required, but instead that it hire a local “agent” who could keep the company’s board informed of its transaction

history (interview, February 2016). This financial activity could, of course, be booked in secret numbered accounts opened in one of Luxembourg's many banks.[7]

With the dawn of offshore finance in the early 1960s, Luxembourg bankers rediscovered H29 holding companies as a way for large business interests to bring together and manage their increasingly internationalized financial affairs. As such, a Luxembourg H29 was often established as a sales-distribution company, an entity through which international companies could thus register in low-tax Luxembourg the sales carried out in jurisdictions with normal tax levels (e.g., France, Germany, or Italy). As demand for these structures grew, competition broke out between Luxembourg's bankers to create H29 holding companies for clients, eventually leading the banks to establish entire divisions dedicated to "financial engineering."

In the mid-1950s, the emerging "state-finance complex" rolled out the "financial H29," which gave multinational groups – starting with ones from the United States – the ability to finance the activities of their subsidiaries yet retain the advantages of being part of a legally diffuse network of companies (Moyse et al. 2014:11). In this way, via the financial H29, these groups could issue bonds in low-tax Luxembourg, collect the revenue from these operations, and then allocate the profits in a tax-free manner to their companies all over the world.

As is seen in other moments in the history of the Luxembourg financial center, the tools of the oligarchy – in this case, the H29 – are given a new life when they become available to middle classes, such as the "Belgian dentists." As documented by Thomas, Luxembourg bankers marketed the H29 to the "Belgian dentists" as the necessary "bulwark of secrecy" against the prying eyes of tax authorities in Europe and elsewhere ("Naissance d'un paradis fiscal," 8/5/16). For these clients, who wished to continue investing their undeclared income, bankers offered different levels of confidentiality, all of which had their price. Numbered accounts would shield

clients' data from tax officials, creditors, and estranged family members. A "hold mail" service prevented the neighbors of "Belgian dentists" from seeing a suspicious letter sent from a Luxembourg bank. If a bank needed to communicate with its foreign clients, an employee would often write the address by hand onto a plain white envelope.

Similar to what transpired with banking secrecy, Luxembourg's "state-finance complex" came together to ensure that the H29 companies would be safe from the inquires of foreign tax authorities. Once again, the Luxembourg legislator proved amenable to the wishes of the country's bankers – as we might expect from a system defined by "offshore governmentality." Into the decree (*règlement*) from 1989, described in the previous section on banking secrecy, came the assurance that "no information with regards to the… H29 contributor can be demanded." Some years later, at the 1995 meeting of the Saint Yves organization, made up of Catholic attorneys in Luxembourg, a local lawyer asserted, in a fine Christian spirit: "The identity of the economic beneficiaries of an H29 cannot be revealed. The law of Luxembourg companies offers all the necessary legal artifices to guarantee the anonymity of the investors" (cited in Thomas, "Naissance d'un paradis fiscal," 8/5/16).

By the 1980s, the creation and domiciliation of H29 holding companies became a major economic activity within the Luxembourg financial center. The process was standardized and became quite efficient, as should be the case in the production of any commodity. Thomas quotes a local accountant who made a tidy living as the "midwife" for H29 companies:

> The client would arrive in Luxembourg at 9 AM. At 10 AM, the board of trustees was completed and at 10:30 AM, the bylaws of the company were prepared. At noon, the client would open an account in a bank and in there would go the share capital… Then, after lunch, a visit to the notary's office. At 3 PM, the client had left ("Quest for Substance," 1/29/16).

Into these companies, the "Belgian dentists" and others could assemble their growing portfolio of investments and be charged no capital-gains taxes on any of the dividends issued. As the attorney also cited in the first paragraph of this section described to me, the "Belgian dentists," as the owners of an H29, could thus anonymously withdraw money from the company's account in a Luxembourg bank, or later on, from an ATM in Luxembourg with a bankcard in the name of the H29 (interview, January 2016).

Come the mid-2000s, the H29 became target for ire on the part of the OECD and the European Commission, which saw this structure as benefiting from "state aid" that is incompatible with the rules of the Common Market. My attorney interviewee agreed with this pronouncement, saying that the H29 largely deserved the dubious reputation it came to acquire; it was first and foremost a "tax-evasion tool," this informant admitted (interview, January 2016). In recent years, caught between the curbs on banking secrecy and the offensive against financial engineering, the holding company as a way to hide undeclared dividends is seen as a product approaching the end of its shelf life.

In 2006, when the European Union gave the Luxembourgish state a three-year timetable to phase out the H29, the "state-finance complex" responded by concocting the SPF, the "family wealth management company" (*société de gestion de patrimoine familial*), to be its replacement, starting in 2009. To a consultancy specializing in Luxembourg "investment vehicles," all is not lost with the death of the H29:

> Luxembourg has shown its commitment to remain one of the world's foremost tax planning jurisdictions by the introduction… of a new vehicle for personal investment. The new company, the SPF, will allow the private investor indirect investment in financial assets and tax-free accumulation of income. The SPF will be exempt from taxation on income and wealth in Luxembourg (cited in Palan et al. 2009:119).

While the SPF has not been as smashing a commercial success as the H29, my attorney interviewee nevertheless noted that today – even after the supposed arrival of "transparency" to the Luxembourg financial center – it is still possible to open a bank account for a SPF and have it be difficult to determine who exactly the "physical persons" are behind the structure (interview, January 2016).

Technologies of Secrecy #2 – Bearer Securities

The Luxembourg financial center, or more specifically the country's stock exchange (*Bourse de Luxembourg*), was an initial participant in the first transactions of the original offshore market: the one for so-called "Eurobonds." These were securities denominated in U.S. dollars, (German) Deutsche marks, or Swiss francs and syndicated by large banks, at first those based in London but soon thereafter from other European financial capitals as well. Unlike domestic bond issues in countries such as the United States and Germany, in which underwriting banks must meet reserve requirements and pay domestic taxes, in the international "Euromarket" they faced none of these constraints. Rather, the banks pooled together the dollars, marks, and francs that were in their possession and "offshore" at that time – for example, U.S. dollars held by banks outside the regulatory jurisdiction of the United States – and made loans for governments and companies using the Luxembourg Stock Exchange (LSE) as a "booking location."

Chavagneux gives us an example of this: a "bond of $15 million over 15 years at 5.5 percent [that] is governed by an English-law contract – the obligation is upheld in Luxembourg and the certificates are furnished by BiL [Banque internationale à Luxembourg]" (2015:184). International banks chose Luxembourg as the domicile in which to book these transactions due to the fact that the fiscal authorities did not collect withholding taxes on any interest or capital gains

derived from Eurobonds. Thus, by conducting Euromarket activity outside of the purview of regulators such as the Federal Reserve and the Bank of England, large U.S. and European banks were able to make much larger profits and, in theory at least, could pass along some of this surplus to their clients in the form of lower prices.

Because the LSE became the site of choice for international banking syndicates to book their Eurobond transactions, a secondary market for technical services grew rapidly within Luxembourg's banks. In the wake of new Euromarket listings on the stock exchange came a growing demand for a wide range of other activities. At first, these were limited to administrative functions such as acting as the paying agent, in addition to the printing and safekeeping of the physical bonds (as paper certificates). Yet as the Euromarket continued to experience dramatic growth, Luxembourg's banks began joining the larger bond-issuing syndicates as a result of their newfound placement power, which in part was the result of deposits made by the "Belgian dentists" (Moyse et al. 2014:61).

Indeed, the "Belgian dentists" took an immediate liking to the Euromarket and the ability to redeem the attendant "bearer securities" at Luxembourg banks, where they were not charged any withholding taxes. As mentioned previously, the "Belgian dentists" would travel to Luxembourg multiple times per year to present their coupons and collect the dividends, often buying merchandise with the newly minted cash on the same trip. Because few (if any) of these transactions were reported to the tax authorities, the "Belgian dentists" were always on the lookout for an additional "cloak of confidentiality" to throw over their Luxembourg banking activities (Hampton and Abbot, eds. 1999:53). Bearer bonds proved to be the ideal instrument to accomplish this.

These were certificates resembling large bank notes, which could be transported easily in a suitcase as well as provide an assurance of secrecy. Another advantage was that they were immediately transferrable, akin to paper money. Accordingly, the owner took possession of bearer bonds at the point of transaction – according to an interpretation of the relevant securities laws made by Luxembourg attorneys, as a senior policy advisor informed me (interview, December 2015). Unlike cash, however, securities such as stocks and bonds can hold enormous value, as much as millions of dollars. For this reason, the "Belgian dentists" would keep their bearer securities in a safe-deposit box and often bequeath them as gifts to heirs, as was mentioned by a foreign banker who worked for many years in the Luxembourg financial center (interview, February 2016).

Similar to cash, bearer securities did not include the names of their owners, but rather had the phrase "pay to bearer," that is, the person bringing them to the bank for redemption (Harrington 2016:184; Obermayer and Obermaier 2016:182-183). These differed from normal investments in that no records of ownership were kept. This meant that the banks did not register the names of shareholders and accordingly did not know who the owners or investors were (Palan et al. 2009:86). "This took away the ability [of the tax authorities] to track investment activity," stated a foreign banker who used to work in Luxembourg. Thus, as Zucman notes dryly, via bearer securities, "it was possible to hold a huge fortune anonymously" (2015:11).

In recent years, the bearer bond has met the same fate as the Luxembourg H29 holding company, as was explained to me by the senior policy advisor mentioned above (interview, December 2015). Possessors of "hot money," meaning currency of unknown or dubious provenance, have long used this type of instrument to move around, pay no taxes on, and re-invest their ill-gotten gains, often – as we will find out in the next chapter – in Luxembourg-

domiciled investment funds. However, due to pressure from the OECD and the Paris-based Financial Action Task Force, banks in Luxembourg and elsewhere ceased their issuance of bearer securities in the mid-2000,[8] as part of the global effort to combat tax evasion and money laundering.

Technologies of Secrecy #3 – Shell Companies

"Behind companies [enterprises] *hide people, it's evident. Behind some companies hide yet other companies. And behind them hide even more holding companies and other things; until the very end, no one has any idea who is behind all of this." – Minister of Finance Pierre Gramegna, to the Luxembourg Chamber of Deputies, 12/17/15 (cited in Thomas, "Mise à nu," 1/1/16)*

In the world of offshore finance, a common tactic to hide money is the creation of shell or offshore companies (*sociétés écrans*), whose ownership and activities are difficult, if near impossible, to establish. In Luxembourg until recently, the registration of H29 holdings was not a matter of public record, and the numbered bank accounts used by these companies could still further enhance the commercial secrecy already afforded to them. Add to this mix the "stacking" or "layering" of shell companies in multiple jurisdictions,[9] thus creating "schemes of almost diabolical complexity" (Maingot 1993:265). Baruch writes, "you could decide that the lone shareholder of one of your [shell] companies is another company, that it itself is owned by a third – each in a different tax haven (*paradis fiscal*), with their own regulations" (2016:5).

In this regard, Luxembourg financial center should not be seen as a lone operator, but rather a "node in a vast corporate archipelago" (Appel In Press). As such, Luxembourg – alongside Switzerland, the City of London, the British Virgin Islands, and other tax havens – behaves as part of an integrated global financial center (cf. Ong and Collier, eds. 2004:418). Individuals and firms wishing to hide money frequently maintain shell companies and bank accounts in multiple secrecy jurisdictions in order to take advantage of the specific laws that

each of them offers, as well as frustrate attempts by tax authorities and others to monitor the activity that takes place between these entities. If the "stacking" or "layering" of shell companies is done correctly, then any attempted investigation "will take years" (Baruch 2016:5). In the words of Thomas:

> Clearing a passage through the offshore jungle is not a pleasurable experience. In front of a civil court, the aggrieved litigant (an heir, a divorcée, or a business partner) finds herself in front of a labyrinth of trustees and settlors,[10] advisors and protectors, domiciliaries, and administrators. This adds to the difficulty of bringing together the dossiers from hermetic and hostile jurisdictions. Whoever wants to close out this offshore imbroglio constructed from the Grand Duchy must expect exorbitant lawyers' fees ("Pro mundi beneficio," 4/15/16).

For a long time, the H29 holding filled this secrecy niche for clients of the Luxembourg financial center, though it – and the Soparfi (*Société de participations financières*), the current Luxembourg shell-company product on offer – attracted too much scrutiny from the European Union and OECD for it to remain "competitive," which is tax haven-speak for offering the most capital-friendly regulations and the lowest (or zero) tax rates. Moreover, a shell company established in the British Virgin Islands is easier and less expensive to create and maintain than a Luxembourg Soparfi, for which clients must pay notary costs and an annual account deposit, as well as organize in the Grand Duchy an annual meeting of the company's board of directors. Even these minimal formalities are deemed too onerous to those wishing to place their money in the black box of offshore finance.

In response to this ironic predicament – an offshore jurisdiction not far enough offshore – Luxembourg's bankers, lawyers, and accountants began establishing in the 1980s internal "financial engineering" divisions in their firms, specializing in the creation of shell companies in other tax havens. The attention the banks paid to this sector was in response to the robust market initiated by the country's corporate attorneys (*avocats d'affaires*), who would resell BVI and

other jurisdictions' shell companies for multiple times their initial price (Thomas, "Wuppertal Calling," 10/28/16).

Come 2002, however, as concern grew abroad as to the size and scope of this activity, industry-leader BiL (Banque internationale à Luxembourg, then owned by the now-defunct Belgian bank Dexia) responded with a classic offshore move: it spun off this riskier business – in this case, one for "financial engineering" – into yet another subsidiary, called Experta (Thomas, "Pro mundi beneficio," 4/15/16). As seen in the Panama Papers, Experta (set up by BiL-*cum*-Dexia, now owned solely by BiL) was the leading client of the now-disgraced Panamanian law firm Mossack Fonseca, from which it bought 1,659 shell companies over the years (Cravina de Sousa 2016:3). With this arrangement – Panama by way of Luxembourg – BiL/Experta could guarantee clients anonymity by naming three of its employees, and always the same three, to the "dummy" boards of directors of the shell companies. This technique meant that the names of the companies' ultimate beneficiaries would not end up in the records of a law firm in Panama (Harrington 2016:13-14, 180; Obermayer and Obermaier 2016:172).

Given that banks such as BiL/Experta have commodified the shell company, what exactly is this product they are selling? Here is an example of how it is used. A successful (male) "French lawyer" – the Gallic equivalent of the "Belgian dentist" – wants to send money outside of France and the authority of "Bercy," the moniker of the French tax authorities. He approaches a Luxembourg firm – let us call it "Value Offshore Luxembourg" (VOL) – specializing in the creation of offshore structures. Via a Panamanian domiciliation agent (akin to Mossack Fonseca), VOL opens for our "French lawyer" an IBC or equivalent shell company in the British Virgin Islands (BVI) – let us call this Metz Enterprise Consulting (MEC). Thus, it is the Panamanian agent who opens MEC in the BVI at the behest of VOL, which is working on behalf

of the "French lawyer."[11] Lastly, VOL opens a Luxembourg bank account under the name of MEC and nominates some of its employees to be MEC's public "directors" (cf. Hampton and Abbot, eds. 1999:148). In this light, the shell company, such as the BVI IBC, does not compete with the services of the Luxembourg bank, but rather these two entities' methods of obfuscation have become intertwined.

To send his money out of the country, the "French lawyer" buys fictitious consulting services from the BVI-registered MEC and pays for them via transfer to the company's bank, in Luxembourg. By means of his arrangement with VOL, our "French lawyer" has accomplished two feats. First, he artificially reduces the profit of his law firm and, as a result, the amount of corporate tax that he would have to pay in France. Second, his money in Luxembourg can be invested by a private banker in global markets and thus generate dividends (Hampton 1996:20). Bercy will be able to tax these capital gains only if the "French lawyer" bothers to report them. By setting up MEC in the British Virgin Islands, however, he has all but guaranteed that his Luxembourg bank will not inform the French tax authorities, meaning that he can evade the national income tax as well.

2005 EU Savings Directive

The passage of the 2005 EU Savings Directive (*Directive épargne*) – which Luxembourgish officials tried for years to scupper – established a system to exchange the tax information of EU citizens who do their banking in other member states. This population, of course, would include the "Belgian dentists," who had long been enthusiastic patrons of Luxembourg financial center. If this were to become EU law – they must have thought – then it would spell the end of banking-secrecy laws for individuals, and possibly also the country's private-banking sector, a former senior executive and regulator told me in a somber tone

(interview, July 2016). Moyse et al. write, "in Luxembourg, lifting of banking secrecy would be particularly damaging to the financial centre's development as the European centre for private banking, a directional shift that *the government has encouraged since the 1980s*" (2014:127; emphasis added) – in line with the strategies of "offshore governmentality," we might add.

With the help of homologues from Belgium and Austria, two additional banking-friendly EU jurisdictions, Luxembourgish negotiators were able to secure an exemption from the information exchange,[12] in the form of a withholding tax (*retenue à la source*), which began at 10 percent and eventually rose to 35 percent. The idea was that the "French lawyer" (and his ilk from other EU countries) bringing his pre-tax income for a Luxembourg private banker to invest would have to pay a 10-35 percent withholding duty on any dividends or interest he earned. While such a measure was hailed (prematurely) by European politicians as the marking the end of tax evasion, Zucman notes the irony that even the higher rate of "35 percent is less than the top marginal income tax rate in force in France: oddly enough, the holders of hidden accounts thus find themselves having the 'right' to pay less tax than honest taxpayers" (2015:70). Moreover, in making the concession of a 10-35 percent withholding tax, the Luxembourgish government was able to continue ensuring secrecy for the clients of the country's financial center, including the beneficial owners of private-bank accounts and shell companies domiciled in Luxembourg.

Yet even this "sweetheart deal" cut by Luxembourgish officials was lost on the many hard-liners within the financial center. These "sovereigntists" (*souverainistes*), as Thomas calls them ("Fuites et débats," 1/22/16), believed that Luxembourg's sovereignty gives it the ability to write the most capital-friendly legislation possible, even if this means poaching revenue that should be taxed in another EU member states. A *souverainiste* representative of the financial

center boldly told me that its 35 percent withholding tax collected from foreign clients in Luxembourg amounted to “easy work” for the tax authorities of other countries (interview, April 2016). Officials at the Central Bank of Luxembourg, for example, would thus write a cheque of the withholding taxes collected from French nationals and send this amount to their counterparts at the Banque de France.

Yet writing cheques of “easy money” to the central banks of other countries proved irksome; Luxembourg’s bankers and attorneys were, in fact, quite keen to help French and other European clients avoid the newly implemented 10-35 percent withholding tax. To this end, they could count upon a significant loophole written into the Savings Directive: that the information exchange or withholding tax only applies to “physical persons” – as individual clients are known in private-banking parlance – but *not* to intermediary “legal entities,” which would include common offshore structures such as the BVI IBC, the Luxembourg Soparfi, the Anglo-Saxon trust, and the Liechtenstein foundation (Henning 2016:19). In other words, the Savings Directive did not oblige our “French lawyer” owner of MEC (see the previous section), nor the other beneficiaries of offshore legal entities, to reveal their identity – meaning that they did not have pay any of the new withholding taxes, let alone the income and capital-gains taxes mandated in their countries of origin. An irked Zucman writes, “owners of… Luxembourg accounts have only to transfer their assets to any shell structure to escape the fixed tax of 35 percent. Creating shell companies costs a few hundred dollars and is done in just a few minutes” (2015:71; cf. Obermayer and Obermaier 2016:39-40).

Even as Luxembourg banks worked quickly to meet the augmented demand for shell companies, the calculus had nevertheless changed for the infamous “Belgian dentists.” When that multiple offshore structures became necessary to hide clients’ wealth from the gaze of the

tax authorities, much of the money they “gained” from their continued evasion had to be spent on the creation and upkeep of still more shell companies (Thomas, “Pro mundi beneficio,” 4/15/16). Generous “amnesty” initiatives in the major European countries to repatriate offshore assets, featuring *ex post facto* tax rates of as little as five percent, sped up this process. Additionally, the risk of being caught was steadily mounting, with the increase in cooperation between the tax authorities of EU member states, and the attendant penalties stiffened. That the “Belgian dentists” were already creatures of the “cost-benefit” sort, were the strategies being peddled by the banks to prolong secrecy actually worth it?

2008 Global Financial Crisis

„Die Letzten beißen die Hunde.“ – A German saying

Translation: “The last one gets bitten by the hound.”

Given that only three countries – Austria and Luxembourg,[13] in addition to Switzerland, which is not an EU member state – chose to apply the 10-35 percent withholding tax instead of adopting the exchange of taxpayer information, come 2009, when the global financial crisis started to be felt acutely in Europe, this position became increasingly untenable. In the formulation of a senior regulator, the country’s financial center could no longer look the other way that much of the money coming into Luxembourg represents revenue that should be taxed elsewhere. In a rare candid moment, this regulator asserted to me, “Our wealth is built on their grounds. Not paying taxes in France has a direct impact on French society. We lived well [for many years] but with a bad reputation” (interview, March 2016).

Adding to this pressure was an act of “gunboat diplomacy” on the part of the Obama administration: the 2010 passage of the Foreign Account Tax Compliance Act (FATCA), which

requires that global financial institutions transmit to the IRS the tax information of all their U.S.-origin clients, that is, both citizens and permanent residents (Haag 2015:238). Irrespective of this changing political context, Luxembourg's bankers remained "hard line" in their approach, which was overwhelmingly *souverainiste* at the time. A senior Luxembourgish official recalled to me that even Luc Frieden, the then-Minister of Finance and lead negotiator in the Savings Directive talks, was consulting the bankers' association (ABBL) for talking points that he could use to "buy time" (so to speak) during the EU and OECD negotiations (interview, July 2016).

The moment of reckoning came in April 2009 when Luxembourg and Switzerland were placed on an OECD "gray list" of non-cooperative tax havens. Pushed into a corner, the actors from Luxembourg's "state-finance complex" decided to follow a two-track strategy, in order to delay the implementation of information exchange. First, they insisted that the Savings Directive be applied to other European offshore financial centers that were nevertheless not within the European Union, many from the laundry list of global tax havens: Liechtenstein, Andorra, Monaco, Isle of Man, Jersey and Guernsey, among others. Second, Luxembourgish authorities insisted that the financial center be given ample time to be able to change its business model. Thus, the "Belgian dentists" and their ilk needed to be informed that tax information from Luxembourg bank accounts would in the future be shared via request with their home-countries' revenue services. Account holders who did not respond to these changes in policy would see their accounts closed.

By mid-2009, the Luxembourg financial center – followed by that of its sometime rival, sometime partner Switzerland – had agreed to exchange the tax information of clients upon receiving a "reasonable" request from foreign fiscal authorities. As was recounted to me by a local journalist, Luxembourg's bankers felt confident that this system of limited information

exchange, only by request, would be enough to quiet the growing number of critics of the country's opportunistic fiscal policies (interview, July 2016).

On this front, they miscalculated. Due to public outrage over austerity measures implemented by European governments in the aftermath of the crisis, as well as damaging leaks from major institutions in Luxembourg and Switzerland, the financial center's ostensible commitment to sharing tax information by request, and not to the more robust system of *automatic* exchange, became increasingly unacceptable. Immense pressure from the OECD and from the U.S. Treasury (via the 2010 FATCA legislation) all but obliged a newly elected government in Luxembourg to agree in 2013 to adopt the automatic exchange of tax information by 2017. Thus, as nearly all my informants quipped, the obituary of "Belgian dentist" was being written.

Technologies of Secrecy #4 – Life Insurance

"New situations require new magic." – E. E. Evans-Pritchard (1937:513)

Tax evaders, as would seem obvious, are an opportunistic bunch. Given the changes described above – namely, the introduction of the automatic exchange of information, as well as the restrictions on banking secrecy for foreigners in Luxembourg – conditions were ripe for the fruition of a new "technology of secrecy." As it turns out, one was already in the rapid stages of growth. By the end of the 1990s, the market for life insurance in Luxembourg overtook that for re-insurance,[14] yet another niche of the financial center that dates from the early 1980s. In the mid-2000s, Luxembourg life insurance received a further boost when these products were exempt from the EU Savings Directive. Today, the market for life insurance has grown to some $30 billion in premium revenue per year.

Why, you might ask, would anyone want to buy a life-insurance policy domiciled in tiny Luxembourg? To quote journalist Nicholas Shaxson: "The sector of [life] insurance hides an entire industry of tax evasion" (2012:361). To a potential defrauder, however, the utility of a life-insurance policy – specifically the "unit linked" variety – is, on the surface, less than that of a shell company or a numbered bank account: "Unlike what happens in private banks, all the money entrusted to insurers is accounted for in their books. In particular, stocks and bonds held in unit-linked life insurance contracts… are legally owned by the insurers [and] hence appear as assets in the balance sheets of insurance companies" (Zucman 2015:44).

Unit-linked life insurance, nevertheless, can add layers of opacity between assets and their beneficiary owners, a reason why such products are currently in high demand among the clients of Luxembourg's private banks. Until recently, the contents of a Luxembourg life-insurance policy were subject to the country's strict banking-secrecy laws. A senior regulator explained to me how this process works: a rich person looking for "tax freedom" or "family freedom" can place their wealth – in, for example, stocks and bonds, shares in investment funds, or collectable assets such as fine art, vintage wine, or classic automobiles (see chapter five) – into a Luxembourg unit-linked life insurance policy. Once in the policy, these assets become its collateral, even as they remain duly invested in their respective markets (interview, March 2016).

This regulator asserted to me that the advantage of owning a Luxembourg unit-linked life insurance policy is three fold. First, the collateral of the policy is not subject to capital-gains taxes because, on paper at least, it is the insurance company that "owns" the underlying assets. While this "layering" of ownership does not guarantee anonymity to policyholders, it nevertheless represents an impediment to those trying to determine the beneficiary owner(s) of particular financial assets. Second, the premiums that policyholders pay for their life insurance

are not taxed in many countries, which – in theory, at least – is to encourage people to insure themselves against an unexpected death. In Luxembourg, however, clients can direct these tax-free "premiums" not to merely sit in a policy but rather to be invested in funds of their (or their banker's) choosing, so long as there remains an ostensible link with a life-insurance product.

The last advantage of Luxembourg unit-linked life insurance, according to the senior regulator, is that policyholders have the ability to organize their estates in ways not predicated by the "heritage reserves" found in most civil-law countries. In continental Europe and South America, unlike in Anglo-Saxon common-law countries, it is impossible to disinherit your immediate kin by writing them out of your will. This is to say, these heirs must receive a share of your estate, even in cases of divorce, estrangement, or family rupture. However, with Luxembourg unit-linked life-insurance policies, holders can "re-arrange" their estates to include, say, a lover or "illegitimate children" (an emic term) – in contrast to the official "heritage reserve" that is only open to "legitimate" heirs (cf. Harrington 2016:12). Furthermore, these structures forbid the application of any foreign heirship rules to the assets contained within. My senior regulator interviewee admitted that this activity raised a series of ethical questions, yet ultimately brushed them aside: "You may have reservations, but business is not always moral" (interview, March 2016).

In recent years, Luxembourg unit-linked life insurance has not been immune to the OECD restrictions also affecting the country's H29 holding companies and use of bearer securities. Financial assets held in these policies are now subject to the OECD-organized automatic information exchange.[15] Even as they could technically arouse the suspicion of a tax official, these policies are still sought by those wishing to conceal their beneficiary ownership of financial assets. Given that the market for Luxembourg life-insurance products in booming, we

might follow Zucman as he predicts "in 2020, the insurers of the Grand Duchy [might] perhaps serve the same functions as Panamanian shell corporations do today in the great world network of wealth management" (2015:44).

The "Russian Oligarchs"

While the OECD and the European Union went about implementing the automatic exchange information, Luxembourg's private banks scurried to reformulate their business models. Given that legal changes elsewhere were at the root of the exponential growth of Luxembourg's financial center over the years, it was not inconceivable that the private banks – via "offshore governmentality" – would be able re-invent themselves yet again. Fortunately, for Luxembourg's "state-finance complex," some tailwinds were about, filling its sails. In this post-crisis context, there had been an explosive increase in the wealth of the ultra-rich – as well as the flipside of this phenomenon: an alarming rise in socio-economic inequality, a growing worldwide concern that was nevertheless not mentioned by a single figure from the Luxembourg financial center whom I interviewed.

Such circumstances – that is, the ostensible end of banking secrecy for foreigners *and* robust growth for the wealth of the very rich – have brought about the demise of one type of private-banking client, the "Belgian dentists," yet the rise of another: the so-called Ultra High-Net-Worth Individuals (UHNWI) – typified by the "Russian oligarch," as well as the "Gulf petro-monarch" and the "French fiscal exile." Given such esteemed company, few from Luxembourg's "state-finance complex" lamented the loss of the "Belgian dentists." As formulated by Thomas,

> it is a bit as if the financial center were shameful of its old clients, these misers of the middle class, these vulgar fraudsters. The cleaning of the Augean stables of

> banking secrecy has chased them out of paradise… Luxembourg has now passed to the side of white money ("Pro mundi beneficio," 4/15/16).

In recent years, the Luxembourg financial center has been trying to attract the business of the fabled UHNWI, the beneficiaries of the very growing income inequality described by Thomas Piketty in *Capital in the Twenty-First Century* (2014). "In this sense, Luxembourg has captured well the zeitgeist," writes Thomas ("Pro mundi beneficio," 4/15/16).

Tempting these ultra-rich foreigners is not only domestic banking secrecy but also a new legal structure: the family office. On its part, Luxembourg's "state-finance complex" took advantage of the collective panic stemming from the end of banking secrecy for foreign individuals to compel the passage of the family office, which promotional materials quickly billed as the "panacea for the post-fiscal-fraud era" (Thomas, "La persistance de l'Ancien Régime," 5/27/16). Yet again, we see the "state-finance complex" going to great lengths to oblige the "the International of grand families" (Pinçon and Pinçon-Charlot 2015:211). To quote Thomas:

> In the financial center, the identity of the ghostwriter of the legislation on family offices was not a mystery. It was [a local] securities lawyer… who has a "boutique law firm" at the service of some ultra-rich clients… On the firm's site, marketing obliged, [this attorney] says it proudly: "[having] been extensively involved in the drafting of the private-wealth foundation legislation"… [this person also] counts the domiciliation of companies (letter boxes) among "preferential activities," and it is therefore logical that [the attorney] would make an appearance in the Panama Papers as a shareholder of a BVI company created in 2012 [and] from December 2014 sits also on the council of the Central Bank of Luxembourg ("La persistance de l'Ancien Régime," 5/27/16).

As noted ironically by Pinçon and Pinçon-Charlot, making sure that such laws are passed is difficult work: the UHNWI "must ensure its nobility by intense strategies of lobbying and *ad hoc* legislation in order to overcome all the obstacles linked to the protests against austerity and the debts that owe much to tax evasion" (2011:211).

In the jargon of private banking, the “family office” is the means by which financial institutions typically provide an array of services to the UHNWI. First and foremost, these “offices” house the asset portfolios of families with large fortunes, none of which are subject to capital-gains or inheritance taxes in Luxembourg. Quoting Steichen yet again, the UHNWI will bring their fortunes to Luxembourg only “in the presence of a non-imposition of direct-line successions” (cited in Thomas, “Rentiers et héritiers,” 11/25/16). The asset classes found in the family offices of the UHNWI include investments in funds, stocks and bonds, real estate, precious metals, and works of art (see chapter five).

The family office should be seen as Luxembourg’s attempt to replicate the Anglo-Saxon trust of common-law countries such as the United States and United Kingdom. In this regard, the hyper-rich can place all their assets (*patrimoine*) into a Luxembourg family-office structure and choose by whom and how the assets will be managed, as well as to whom they will be directed. Note the rupture between the heirs’ economic ownership of assets and the trustees’ power to administer them; “this is notably useful because the founder [of a family office] believes that certain of his heirs will not be apt,” quips a recent explanatory memorandum (*exposé des motifs*) furnished by the industry (cited in Thomas, “La persistance de l’Ancien Régime,” 5/27/16).

In addition to investing in the global financial markets on behalf of clients, the “family office” can offer “tax advisory” services, legal counsel, and logistical assistance to make the daily lives of the ultra-rich a bit easier (Harrington 2016:7). This latter aspect might include, as a senior financial-center official mentioned to me, summoning private jets, paying tuitions at elite schools, collecting rents from real-estate holdings or intellectual property, transporting artworks to the latest auction event or gallery opening, among other pressing tasks (interview, April 2016). As one might guess, the “family office” has no employees or stockholders in the traditional sense

and is not registered in any official ledgers or subject to normal company regulations. Most importantly to UHNWI clients, neither the identity of the founder of the family office, its beneficiaries, nor the amounts invested are made public.

My assets

Managed by my private bank in Luxembourg

- *My real-estate project in Brussels*
- *My daughter's MBA in London*
- *My second home in Cannes*
- *My son's start-up in Munich*
- *My yacht in Monaco*

European network.

Luxembourg headquarters.

Photo 14 – Capital concerns; Luxembourg City (photo by the author)

From 1 January 2015, banking secrecy in theory no longer exists for individual U.S. and EU citizens in Luxembourg, due to the automatic exchange of clients' tax information. While none of my interviewees mentioned growing global inequality, let alone their role in exacerbating this worrying trend, almost everyone was keen to emphasize the supposed "transparent" nature of the contemporary Luxembourg financial center, given that the automatic exchange of clients' tax information came into effect in 2016.

Less publicized, however, is that banking secrecy is still in effect for those citizens and foreigners residing in Luxembourg, as well as for nationals of countries outside of Europe and the United States. To cite Pinçon and Pinçon-Charlot: "Luxembourg's oligarchy, always very mobilized to profit from rich foreigners, invites them to become simply… residents of Luxembourg. The authorities are courting HNWI individuals – who have at least one million dollars in financial assets and the UHNWI, those superrich with assets of 30 million dollars or more – to establish their residency in the country" (2015:206). The offer of residency in Luxembourg for the transnational UHNWI is merely one means by which this population can make its exit from meeting the societal obligations in its countries of origin (Harrington 2016:128).

Who are exactly the UHNWI? Hints abound. A new consultancy in Luxembourg City provides legal, financial, and logistical services to UHNWI Russians in search of a base in the Grand Duchy. According to Thomas, this consultancy "provides concierge services that include establishing internet connections to shopping addresses and, of course, the names of Russian doctors" ("Le Grand Bond," 8/7/15). Among the UHNWI newcomers, however, most are French. "'French elites,' remarks an official from the financial center, 'have no confidence in the French state. France will be the next Greece, and the people with money know it. They prefer a second pied-à-terre'" (cited in Thomas, "Le Grand Bond," 8/7/15). While the UHNWI – regardless of their nationality – cannot make use of their helicopters as often as they might in Monaco or Dubai, they will be able to take advantage of Luxaviation's new fleet of 90 luxury private jets.

ZIFFER wealth preservation services

Our services About us Luxembourg Contacts

We speak the same language with our customers

Ziffer is a dynamic team of professionals in the areas of international law and finances focused on working with Russian-speaking clients.

Russian Emperor Alexander II played an important role in strengthening Luxembourg sovereignty.

Photo 15 – A very Luxembourgish welcome (source: ziffer.lu)

New consultancies and businesses are not the only ones helping the UHNWI; the Luxembourgish state has done all it can to welcome these self-imposed fiscal exiles. As a senior industry official informed me, the Ministry of Finance, the bankers' association, the "Luxembourg for Finance" industry group, even members from the Grand-Ducal family – all hailing from the "state-finance complex," of course – go on junkets throughout the world (to China, Switzerland, the Middle East, and Latin America, among other destinations) in search of the nomadic, opportunistic UHNWI (interview, April 2016).

These representatives of the financial center come bearing a formidable new incentive: the UHNWI residency permit (*titre de séjour*). To qualify, an applicant UHNWI must choose one of the four following options: "One: invest a half-million euros in a commercial, artisanal, or industrial enterprise. Two: create a business and employ at least five people. Three: invest three million euros in an 'investment and management structure… akin to the family office.' Four: deposit 20 million euros in a Luxembourg bank account" (Thomas, "Titre de séjour HNWI,"

11/11/16). Moreover, UHNWI applicants must reside in Luxembourg at least six months per year, a sojourn that can open for them the doors to the biggest prize of them all: tax residency.

What "return" do UHNWI get on their "investment" (to use emic terms, I am sure)? First, a Luxembourg residency permit allows its holder access to visa-free travel in Europe, which includes many of the locales on the annual UHNWI circuit: London, Paris, Monaco, Cannes, Gstaad, among others. Such access would no doubt be as attractive to the "Latin American latifundista" and the "Chinese tycoon," as it would be to our "Russian oligarch." Second, Luxembourg represents the "safe (tax) haven" many UHNWI seek. There is little risk of kidnappings, and few pesky journalists or paparazzi. Paradoxically, as a (pesky) local journalist retorted to me, a move to the Grand Duchy also means that these new fiscal residents can be closer to their myriad Luxembourg-domiciled investment funds and holding companies (interview, April 2016). Third, "tax residency" in Luxembourg places the UHNWI under the country's famed banking-secrecy laws – which continue to be in effect for residents – and gives them access to an ultra-light tax regime on the revenues from their financial assets. Additionally, "tax residency" for UHNWI means that their direct inheritors will pay no estate taxes, though it is necessary that these heirs also reside in Luxembourg.[16]

As with most of the initiatives originating in the Luxembourg "state-finance complex," the UHNWI residency permit is hardly a new idea (see chapter four for a discussion of "financial mimicry"). Many fiscal exiles of the better-known offshore jurisdictions – London, Monaco, and Switzerland – enjoy tax advantages that these states do not extend to their own populations, such as the lack of taxation on income earned globally. Since the UHNWI have the resources to reside and conduct their affairs in multiple countries, "they understandably went 'shopping' for those localities that offered them what they considered to be the best arrangements" (Palan 2006:108).

As a result, the relationship between these governments and the UHNWI amounts to a business proposition, and nothing more; the UHNWI choose jurisdictions such as Luxembourg (or Switzerland, London, or Monaco) because of their attractive laws and low tax rates, just as these states come to see their role as one of attracting the high-spending UHNWI into their territory.

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As our conversations came to a close in all those imposing glass edifices on the Kirchberg Plateau, my interviewees would rise from behind the conference table and – more frequently than not – follow me to the exit. I initially thought this to be a courteous gesture, typical of white-collar milieus in the country. I quickly realized, however, that it was also very likely a security precaution – to make sure that I would not, heaven forbid, recognize any clients or be witness to activities heavily clothed in discretion. (This never happened.) On my way out, I would catch another glance of the interior layouts of Luxembourg's private banks: large rooms with desks for administrative staff and cubicles for associates, surrounded by a ring of small offices for managers. The entire space was bathed in a sharp, intense, fluorescent light.

En route to the exit, my interviewee and I would proceed into the hallway, whose walls were often tall gray panels made of a shiny, metallic-looking material. There were never any chairs or places to linger. We entered one of a series of elevators, making small talk the entire time. A whooshing sound meant that we were descending quickly. Having reached the front entrance, my interviewee would bring me to the attention of a security guard and see me to a protected turnstile separating the public from the private, and the known from the secret. I would bid adieu to my hosts and push through the boundary, only to return to the wind, rain, and chill of another wintertime nightfall in Luxembourg.

[1] Architectural unsightliness aside, being host to the Secretariat of the European Parliament brings a number of considerable advantages to tiny Luxembourg. In addition to the few thousand jobs it provides to those living in and around the capital, the Parliament itself is constituted according to a regressive proportionality that favors small countries like Luxembourg. Thus, an MEP from Luxembourg represents in 2014 approximately 86,800 inhabitants, while in Germany an MEP is the spokesperson for 821,200 (Pinçon and Pinçon-Charlot 2015:190-191).

[2] I realize that the number of times I mention the "Belgian dentist" in this section can come off as being hackneyed – or worse, detract from my main argument of how the Luxembourg financial center routinized the tax evasion of its clientele. I use the technique of repetition, however, in order to bring attention to the frequency with which I heard about the "Belgian dentist" during interviews.

[3] Benelux was a post-WWII political and economic union between Belgium, the Netherlands, and Luxembourg. This bloc developed prior to, and is seen by many as a template for, the European Economic Community, the predecessor to the European Union.

[4] While exact numbers are difficult to obtain, as of 2017 the Luxembourg financial center boasts approximately 60 private banks (source: KPMG/ABBL); 4,100 investment funds (ALFI); and around 50,000 holding companies, or Soparfi (Bonn Steichen and Partners). While Luxembourg trails world leaders Switzerland in private banks (112 versus ~60; source: KPMG) and the British Virgin Islands in company domiciliation (~600,000 versus ~60,000; Government of the BVI), it counts twice as many funds in operation as second-place Ireland (4,100 versus 2,085; Irish Funds). It is worth noting, however, that Switzerland is not known for being a fund or shell-company domicile, while the British Virgin Islands has few banking or fund activities. Ireland specializes in funds and corporate taxation, but not holding companies or banking. Thus, in contrast to its counterparts in Switzerland, the BVI, and Ireland, the Luxembourg financial center specializes in all three activities: fund administration, company domiciliation, and private banking.

[5] In Luxembourg and other jurisdictions specializing in offshore finance, tax rates for foreign persons or firms wishing to channel money into the country's legal space are rarely higher than 1 percent and are often as low as a miniscule 0.1 percent (or even completely free), hence my use of scare quotation marks around the word "tax."

[6] The Luxembourgish state, understandably, is loath to extradite tax evaders to their home countries. In this light, Luxembourg's extradition treaty with the United States notably does not cover tax-related offenses (Zagaris 2015:59).

[7] Regarding the numbered bank accounts offered by Luxembourg banks, Palan writes, "whereas the Swiss invented the numbered account, insisting that at least two bank officials know the identity of an account holder, Luxembourg took the idea a step further by providing that only one bank official should know the account holder's identity" (2006:104).

[8] The last day to cash in outstanding bearer shares in Luxembourg was 18 February 2016.

[9] The word in French for these arrangements of structures is a *montage*.

[10] In the realm of trusts, a settlor plays a role similar to that of a trustee. While the ambit of the former pertains only to property, the latter can be responsible for all types of assets within a trust: financial, physical, real estate, et cetera.

[11] According to Baruch (2016:5), a new BVI company costs $650 to establish, plus another $765 in annual "management fees."

[12] Luxembourg negotiators would eventually come to adopt the information exchange, on a per-request basis in 2009 and as the more robust automatic system in 2015. These steps were taken *only after* Luxembourg was put on alert by the OECD, either as included on its "gray list" (2009) or deemed to be in "non-compliance" (2015) with the organization's standards vis-à-vis the sharing of fiscal information.

[13] Belgium as well initially chose a withholding tax instead of the information exchange, but its government switched positions in 2010, thus leaving only Austria and Luxembourg as the lone EU countries opting for the 10-35 percent withholding tax.

[14] Re-insurance is a market in which insurance companies buy policies to cover their activities, thus minimizing the risk that they would have to assume large monetary losses in the wake of a major disaster. Luxembourg's niche in "captive re-insurance" dates from the early 1980s, when the Swedish government obliged the re-insurer of a large Sweden-based multinational to relocate from Bermuda back into the European Economic Community, as my regulator interviewee recounted (interview, March 2016). Sure enough, they chose low-tax Luxembourg to be the domicile of these re-insurance activities. Soon other re-insurers joined this Swedish company and now – as "offshore governmentality" would have it – constitute a basis for Luxembourg's growing niche in offshore insurance products.

[15] This sharing of information, it should be noted, takes place solely among the world's tax authorities. Any findings resulting from this process are not made public. For all other parties, banking secrecy remains in place. In this case, Luxembourg private bankers cannot reveal that they have sold a unit-linked life-insurance policy, or any financial product for that matter, to the family members of a client.

[16] The average estate tax among OECD countries is 15 percent, though this can be as high as 45 percent in France and 30 percent in Belgium and Germany.

CHAPTER FOUR

Consensus and a Chasm: The Luxembourg Funds Industry and the Shifting Geographies of Secrecy

Starting in the 1980s, Luxembourg began to shed its self-image as a socially cohesive, egalitarian democracy enshrined in a post-WWII economic consensus (cf. Anderson 2009:21). The country's booming offshore financial center was at the forefront of the profound societal changes entailed by this shift. Within the financial center, the traditional restraints on the accumulation and display of wealth became increasingly less significant, as offshore capital arrived *en masse* and U.S. practices of executive pay based on "performance" were normalized. These economic developments formed a feedback loop with the Grand Duchy's normally low-key political scene.

The person who oversaw the rise of this *enrichissez-vous* spirit was none other than Jean-Claude Juncker, the country's longtime Prime Minister and concurrent Minister of Finance whose 18-year tenure spanned the 1990s and 2000s. Chosen to be President of the European (Union) Commission in 2014, Juncker had previously slashed taxes on financial transactions and enabled sweetheart "tax rulings" as low as 1 percent to be given to hundreds of foreign multinational corporations, which later came to light as part of the Lux Leaks revelations.[1] The social consequences of this "offshore governmentality" should not come as a surprise: "in the past 30 years, the richest five percent [of earners] have almost doubled the gap with the poorest five percent. If in 1985, a person in the upper five percent earned 5.9 times more than someone at the bottom… by 2010, the multiplication factor was 11.3" (Thomas, "Good old boys," 3/14/14).

A telling indication of these growing social and economic cleavages came in 1984. Built for Luxembourg's new generation of bankers and executives was a staple of elite Anglo-American business life: the private, members-only social club (Dörry 2014:236). The Cercle

Munster, to occupy a historic building in the Grund neighborhood of Luxembourg City, was the brainchild of a leading member of the domestic high bourgeoisie and an executive of a foreign bank. In early 1984, the Cercle opened its doors to "the industrial bosses, the many securities lawyers [*avocats d'affaires*] and wealth managers from the financial center, and the dominant Luxembourgish families" (Thomas, "Good old boys," 3/14/14).

At the Cercle, exclusivity is marked by tradition, or at least the pastiche of one. I saw this for myself as a lunchtime invitee. Upon entry into the club's premises, through a door covered by patterned metalwork allowing those on the inside to see outside but not vice-versa, one is encouraged to sign the thick guest registry. On the inside, the tropes of stodgy Anglo-American social clubs abound: the roaring fireplace, the clusters of sitting chairs, polished-wood desks and card tables, the taxidermied head of a stag, stacks of identical leather-bound books on shelves in the "library," oil paintings of unknown bourgeois, et cetera. On the Cercle's webpage is a list of the clubs worldwide at which members can enjoy the privileges of reciprocity. To be become a member, a candidate must first secure two local sponsors and then "avoid being blackballed in a secret five-man ballot" (club handbook, p. 18), upon which the final decision hinges. According to an informant of mine, who is also member of the club, the Cercle is for "those who want to meet in discretion" (interview, February 2016), while its director admitted to Thomas that "private banking needs structures like ours" ("Good old boys," 3/14/14).

The club kitsch found at the Cercle – "an Englishman would describe the decor as cosy"[2] (club handbook, p. 20) – stands in contrast to the sleek minimalism of rival "House 17," a new private club that opened in 2014 in the capital's city center. In completing interviews with executives of Luxembourg's multitrillion-dollar funds industry, I found myself dining or meeting for drinks in this alternative and competitor to the Cercle Munster. Gone are the oil paintings,

book-lined shelves, and leather armchairs; here, the walls are black and white and covered with mirrors and abstract art, and the furnishings are contemporary and set in bold colors. The aesthetic of this club is not the British Empire but rather London's postmodern Canary Wharf.

Photo 16 – The entrance to House 17, where the funds elite meets to eat; Luxembourg City (photo by the author)

We could say that these clubs symbolize the quarrel between the financial center's old and new guard; bankers make up the ranks of Cercle Munster's membership, while the patrons of House 17 are primarily those working for fund companies or the Big Four.[3] The former club beckons its members to enjoy a brandy and cigar in a private sitting room, while the latter offers spaces for dining, drinking, and working to the country's younger set, for whom the boundaries between professional and private life are supposedly ever-more ill defined – what the club's

opening press release coined the "interactivity between business and leisure" (cited in Thomas, "Good old boys," 3/14/14).

The amenities at House 17 reflect recent trends among those running smaller companies and consultancies, who are neither looking to rent dedicated office space nor do they want the loneliness of working from home (Agnew 2015). A number of my informants became members of House 17 to have at their disposal a space to work, meet colleagues, and entertain clients. As such, trendy House 17 presents itself as the foil to the staid Cercle Munster; it is more "relaxed" and "exclusive without being elitist," according to its founder. Casual, of course, has its limits: "Sneakers, why not?" says a director at House 17. "What is the problem if one wears *real designer sneakers*"? (cited in Thomas, "Good old boys," 3/14/14; emphasis added).

Significant in this discussion, however, is not the purported "differences" between Cercle Munster and House 17, but rather what they collectively denote: the social segregation of those in elite positions within Luxembourg's financial center. Unsurprisingly, this population tends to share similar lifestyles, particularly with regards to higher education (increasingly at Global North business schools) and the consumption of luxury goods and services. Integral to this process are private clubs such as Cercle Munster and House 17, as well as the residential exclusivity of Luxembourg's very rich in *cités* secured by armed guards and electronic surveillance (cf. Carrier and Miller, eds. 1998:139). Financial elites, we could say, express a siege mentality to some extent, which explains why they are keen to protect themselves within the confines of securitized offices, members-only clubs, and luxury real estate.

A New Legal Structure

This chapter focuses on the role that secrecy and consensus have played in the development of Luxembourg's investment-funds industry, which counts at present nearly four

trillion dollars in assets under administration. This eye-popping figure makes tiny Luxembourg the world's second-leading domicile jurisdiction for fund assets after the United States – a country that is 550 times more populous than the Grand Duchy.[4] In this chapter, I detail how the general process by which the Luxembourgish state gives finance professionals *carte blanche* to draft the laws creating the country's offshore niches. This occurred when Luxembourg became the first jurisdiction to write into law the 1985 EU directive on mutual funds. While the country's fund professionals believe that this EU provenance points to the industry's supposedly "transparent" character, they rarely mention a loophole in the legislation: the ability of funds to accept money from secrecy jurisdictions, notably Switzerland.

Before I place the Luxembourg investment-funds industry into a historical context, and argue how its rapid growth was due to banking-secrecy laws and the country's political consensus, I will briefly outline how the "investment fund" came to be such a significant instrument and how the financial activity predicated on it has transformed the global economic order since the 1970s, ushering in a tendency that Dörry has called "securities capitalism" (2016:22). This section will discuss these far-reaching structural changes that have occurred within global financial markets, then point to their significance for the growing industry in Luxembourg for investment-fund administration.

In this trajectory, a number of historical moments are noteworthy. The late 1970s saw the consolidation of the post-Bretton Woods global financial architecture, one characterized by floating exchange rates, free capital movements, and market deregulation. By the 1990s and 2000s, the breakneck growth of India and China, technologies such as the internet, and the surging concentrations of income and wealth among the top percentiles in the advanced capitalist countries had raised the demand for complex financial instruments. Investment funds – an

umbrella term that includes mutual and hedge funds, and funds investing in real estate and private-equity schemes – became the preferred means by which individuals and institutional investors could store and grow these accumulating assets. As was detailed to me by a former senior regulator, the "investment fund" became such an economic success because the idea behind this financial product is simple and compelling: to increase and diversify the assets in which one can invest (interview, March 2016). The result is that one investor can spread an investment, even a small one, across many companies, sectors, and jurisdictions, as opposed to the riskier strategy of buying entire shares in a single company on a national stock exchange.

Growing financialization among companies and individuals on a global scale has also entailed a shift in the form and practice of elite power, notably the rise of what I call "legal entrepreneurialism" (see chapter two). In particular, the rapid growth and complexity of "securities capitalism" works in the favor of politically active financial and legal professionals who exploit the tensions and gaps among the laws of individual nation-states (Harrington 2016:272). It is in Luxembourg where these two tendencies have evolved alongside one another: on the one hand, the emergence of behemoth investment-fund companies – on the other, the new organizational power of an internationally connected financial and policy-making elite. This union of interests began in the late 1980s and intensified throughout the 1990s and 2000s. During these 20 years, foreign fund companies and depository and private banks arrived in Luxembourg and quickly began to reshape permanently the country's offshore financial center.

To tell the full story of investment funds in Luxembourg, however, we must begin in the 1950s. During this time, key players in the country had begun to recognize the vast and untapped market for investment funds, a financial instrument that traces its origins to nineteenth-century Scotland, but which became popular in the 1920s in the United States. Because Continental

Europe long had a different tradition of finance capitalism than what existed in the Anglo-Saxon world, foreign investment companies had to bring the growth potential of this industry to the attention of politicians and government officials in Luxembourg, as a senior securities lawyer (*avocat d'affaires*) recounted to me one afternoon (interview, April 2016). Dörry believes that this moment represents "a unique conjuncture of local conditions and intentional decision making [when] a small group of influential individuals in Luxembourg embraced and exploited the new opportunities of the internationalizing financial markets" (2016:21). Three entities stand out during this early stage: the U.S. Trust Company, the Capital Group (based in Los Angeles), and Investors Overseas Services, the outfit founded by the soon-to-be-disgraced U.S. fund entrepreneur Bernie Cornfeld. The ensuing cooperation between Luxembourg's policymakers and foreign executives with regards to investment funds was not without precedent; let us remember that the Grand Duchy had prior experience dealing with foreign finance capital after the passage of its permissive holding-company law in 1929, the so-called H29.

Representatives from these growing investment companies came looking for a European domicile in which their products – funds largely consisting of U.S. stocks and bonds – would not be subject to tax by the IRS.[5] Additionally, "American [companies] were looking for a way to get into Europe, as [U.S.] fund legislation did not allow non-s to invest in their funds. As a result of this highly protective legislation, fund managers were trying to find other ways to go global. They quickly appreciated the advantages that Luxembourg products, and the choice of Luxembourg as a gateway into Europe and the rest of the world, could offer," mentioned a Big Four executive to the authors of a recent book on the country's financial center (Moyse et al. 2014:100).

Driven by the increasingly integrated economic architecture of post-WWII Europe, key politicians in Luxembourg sought to attract large Euro-American finance-related institutions into the country. The first step to this end was the legislature's 1956 amendment to the 1929 law on holdings, an act that allowed foreign fund-management companies to begin operations in Luxembourg (Baehring 1973:582). In this regard, a senior lawyer informant of mine noted that the 1929 law only became important some 30 years after its original passage, when several Luxembourgish attorneys realized that the holding-company structure could also be used as the basis for administering investment funds (interview, April 2016). However, the lightly taxed H29 holding company – a structure designed to bring together, and avoid double taxation on, the sprawling assets of large foreign economic groups – would not work on its own as the administrative vehicle for an investment fund, meaning that some "legal entrepreneurialism" would be necessary before the "Luxembourg fund" could take off.

Inspired by the U.S. mutual fund, the British unit trust, and the Franco-Swiss SICAV collective investment scheme, a select group of local attorneys began to alter in piecemeal fashion the H29 holding company with the intention of creating a legal structure for funds whose administrative domicile would be in Luxembourg. "The creativity shown by legal and financial practitioners made a remarkable contribution to the development of sound and viable structures, in the absence of suitable legislation," asserted a Luxembourgish banker to Moyse et al. (2014:88). The fund they envisioned was an "undivided entity," meaning that investors had to buy *intact* shares and not simply pick and choose from among the companies in which the fund had investments. Furthermore, an individual investor needed to be able to withdraw from a fund but not close it entirely, thus allowing the other shareholders to remain.

The key innovations to the H29 structure were provisions for raising the fund's capital and for the redemption and repurchase of its shares, including a stipulation that the management company could issue its own securities but not purchase or trade them. Because fund companies are banned from buying their own shares, a mechanism was created to allow these companies to have money on hand in the case of a redemption by an investor. As a senior securities lawyer recounted to me, and I paraphrase: Luxembourg fund companies were allowed to establish a subsidiary, to which the parent company could lend money, that could manage the fund's surplus – also known as the "share premium," amounting to 1/9th of its total capital. This extra money on hand gave the fund flexibility to pay out those who wished to leave it. "When a subscriber wanted to sell its shares, they were bought back by the subsidiary, as a company could not buy back its own securities," asserted a Luxembourgish banker to Moyse et al. (2014:88). As another senior banker specified to me, the driving idea behind these changes was liquidity, which would enable investors to earn their dividends smoothly as well as buy or sell their shares whenever they wished (interview, March 2016). This ability to have variable capital levels – calculated via the changing net value of the fund's assets – further separated the investment fund from a regular company structure, in which any changes in the level of capital would require a cost-prohibitive and extraordinary shareholders' meeting.

As was recounted by the senior securities attorney cited at the beginning of this section, these legal innovations – the result of cooperation between law firms, fund companies, and the national fiscal authorities – came about by "sheer practice." The tax authorities set limits for the amount of nominal and surplus capital that the funds needed to have, in addition to applying the same tax treatment used for the H29s: a one-time start-up fee plus a nominal annual "subscription tax" (*taxe d'abonnement*) on the value of the net assets. "These initial innovations

[for investment funds] were not organized and developed in an informal fashion. One of us would have an idea; it would be copied, which would set a precedent and then other firms would compete," recalled this attorney (interview, April 2016).

Practices of Consensus #1 – State-Finance Proximity

"It is difficult to sanction your close friends." – A senior regulator (interview, March 2016)

In this chapter, I repeat a technique that I employed in the previous one. I present a rough historical timeline highlighting the development of the investment-funds industry in Luxembourg. I intersperse this trajectory with technical descriptions of four "practices of consensus" that I argue have resulted in the country attaining its position of dominance in the global market for fund administrative services. Whereas I discuss the "technologies of secrecy" in the previous chapter, I focus on the "practices of consensus" in this one. As I explain in chapter two, these two phenomena – the "technologies of secrecy" and the "practices of consensus" – are integral aspects to the "offshore governmentality" that has resulted in the dramatic growth of the Luxembourg financial center since the 1960s.

Up to the 1950s, the financial center did not occupy a particularly important role within the country's political economy, a place that was reserved for the once-mighty steel industry. Financial services were something of an afterthought until the mid-1960s; instead, "the [foreign] banks used their branches in Luxembourg to take advantage of situations created by laws passed elsewhere, abroad. The [Luxembourg] politicians were not actively involved in the financial center. There was no need to tailor the regulatory framework of Luxembourg's financial market, with the exception of a few minor details. It was essentially *a collaboration between the public and private sectors*," a senior technocrat explained to Moyse et al. (2014:64; emphasis added).

The last observation here – “a collaboration between the public and private sectors” – is telling and will be the focus of this section.

In our current historical moment, in which financial capital has become hegemonic throughout the globe, Luxembourg is nonetheless unique in just *how much* access representatives from the financial center have to the country’s politicians, government officials, and policymakers – a set of relations that I have coined the “state-finance complex” (see chapter two). This proximity surprises even foreign bankers from normally finance-friendly countries such as the United States, United Kingdom, and Switzerland. In the words of Thomas, in an article tellingly entitled “The Bank State,” “Luxembourg’s banks benefit from privileged access to the political spheres. Foreign bankers questioned by Moyse [2014] mentioned often their stupor with regards to this proximity. Some days after their arrival, the directors of [foreign] bank subsidiaries would find themselves in front of the prime minister” (“De Bankestat,” 3/28/14).

How do those in the “state-finance complex” explain this proximity? As I heard (and read) on countless occasions, the Luxembourg financial center is an enclosed world where “everyone knows everyone,” in particular key politicians, civil servants in the Ministries of Finance and Economy, and lobbyists from the various industry associations (cf. Hampton and Abbot, eds. 1999:184). Playing a central role in this “complex,” it should be noted, is the state apparatus, which coordinates the many processes that make up financial-center activity in Luxembourg. As was recalled by a senior foreign banker to Walther and Schultz: “I see all these chairmen of the private banks… they have a lot of experience and if you really have a problem, also on the government side, pick up the phone and call him [*sic*]. So, it’s the most important thing: informal contact and networking” (2012:89-90).

Often paired alongside “everyone knows everyone” as a boon to the financial center is the fact that Luxembourg is a *tiny* jurisdiction, verging on a microstate. Reitel states, “[Luxembourg’s] small size has more advantages than disadvantages. This makes it more likely that private and public actors who know each other will be in close proximity and establish informal relationships, which encourages rapid decision-making and allows rapid reactions to change” (2012:281). “Small is beautiful,” a foreign trade representative asserted to me, in referring to the size of Luxembourg’s territory and population; “often decisions are made at cocktail parties, thus avoiding the bureaucracy” (interview, April 2016).

That Luxembourg is a tiny country *and* has an offshore financial center is perhaps not incidental (Urry 2014:52). Indeed, the country’s diminutive size may even increase its attractiveness to finance capital: “that so many offshore financial centers are small and insular is no simple coincidence. Insularity increases the potential for internal confidentiality and the endogenous control of information in a setting resembling a ‘self-contained universe’” (Hampton and Abbot, eds. 1999:142). This connection between the size of a country and its amenability to finance capital is also noted in the educational materials of the Society for Estate and Trust Professionals: “Being small and tightly focused on finance allows jurisdictions [such as Luxembourg] to amend laws and rules quickly, taking advantage of changes in the financial industry. Large diversified economies must consider and negotiate with many varied interests in order to make any changes” (cited in Harrington 2016:263).

The proximity that exists in Luxembourg also points to the importance of having informal contacts, due to the *administrative personalization* that occurs within the country’s “state-finance complex.” Shaxson writes, “Luxembourg is a place where… one can get a fiscal ruling after a nice dinner with the tax collector: the informal networks of trust are at once

inseparable from this famous ‘flexibility’ [*souplesse*] that characterizes tax havens when it comes to the rule of law” (2012:377). Mbembe might categorize this tendency as part of what he calls “*private indirect government*”: “where real powers exist and are used, this happens… often on the basis of informal, contingent arrangements” (2001:79-80; italics in the original). A senior civil servant detailed for me the “private circles,” receptions, conferences, and cocktail parties where informal discussions take place: “these are not officially part of a government job and thus are not public… yet they create an important culture of *consensus* with regards to decision-making” (interview, July 2016; emphasis added).

While it appears that the situation has changed somewhat in this regard – many of my interviewees lament the current loss in importance of these informal contacts, due to the 2008-09 financial crisis and heightened EU regulation – there was a time in the 1980s and 90s when good contacts in the administration and government constituted a comparative advantage for a firm doing business in the financial center. According to the senior civil servant cited above, turnover within the decision-making posts of the Luxembourgish state is much lower than it is in the United States, meaning that long-term working relationships of rapport can develop (interview, July 2016). Furthermore, foreign and domestic executives also appreciate that public officials in Luxembourg are accessible and responsive to their inquiries.

In this regard, my informants were often keen to boast about the ease and level of their access to important figures in the “state-finance complex.” The head of a lobbying organization acknowledged speaking with the country’s Minister of Finance at a meeting or cocktail party at least once a week (interview, April 2016). In this light, my informants’ near unanimous choice for the distinction of the “ultimate insider” within the “state-finance complex” is Luc Frieden, a former Minister of Finance and Deutsche Bank executive. On numerous occasions, Frieden has

been explicit in saying that it is on the basis of informal contacts that decisions are made: "in the 15 years when I have been minister in charge of the financial center, I have had many conversations with the directors of banks, almost on a daily basis. It is this method that explains our success" (cited in Thomas, "De Bankestat," 3/28/14).

In the 80-plus interviews I conducted for this project, it was striking to learn how so few people mentioned any of the possible downsides to this level of proximity between the Luxembourgish state and the country's financial center: the "group-think," ineffective regulation, insider trading, or corruption that can stem from relations among the powerful that lack any meaningful oversight. However, two telling examples along these lines come to mind. First, a senior regulator described hosting weekly cocktail parties with market participants in order to "keep abreast of industry developments." Over the course of attending multiple decades of these events, this person inevitably became close friends with a number of people working for the companies under regulation. While strenuously trying to avoid any conflicts of interest, the regulator told me frankly: "it is difficult to sanction your close friends" (interview, March 2016).

One of the country's few heterodox politicians provided me with a second example of when state-finance proximity can become a liability. This person recalled attending an international conference at a professional-services firm as an "ethnographer" to document some of the "social pathologies" that offshore finance engenders in Luxembourg. At this conference, my informant watched with amusement as a local politician – who not only works in the funds sector but is also a member of Luxembourg's finance *haute bourgeoisie* – took flak about a recent law that my informant believed to be "very accommodating," yet was nevertheless judged to not go far enough in its support for the industry. "These people [from the financial center

expecting a totally pliant government] are *crazy*. They go too far," this politician bemoaned, albeit with a mischievous smile on his face (interview, July 2016).

An Industry Is Born

The Luxembourg investment-funds industry, according to many of its protagonists, was almost "over before it began." In the Grand Duchy as in other countries, the sector grew modestly throughout the 1960s. The first investment fund to be listed on the Luxembourg Stock Exchange dates to 1962, after the country's regulator approved the marketing of collective investment funds (*fonds de placement*) in 1959. The driving force behind the growth of this market, however, was not a Luxembourger but rather an American. As has happened on numerous other occasions in the history of the country's financial center, it was a foreign entrepreneur who found a way to use Luxembourg to develop and market a new financial product – in this case, the mutual fund.

In the 1960s, fund entrepreneur Bernie Cornfeld had made a fortune selling mutual funds to the tens of thousands of U.S. military personnel stationed in post-WWII Europe. As a local securities attorney explained to me, Cornfeld's operation, the Luxembourg-domiciled Investors Overseas Services (IOS), sent thousands of agents door-to-door in various European countries in an effort to convince small-scale savers to place their money in funds marketed by the company. As my attorney informant quipped, "[His] aggressive sales force would often wait in doctors' offices until they sold a product to the doctor" (interview, April 2016). As mentioned, many of Cornfeld's funds used Luxembourg as an administrative domicile, meaning that the Grand Duchy was where their net asset values were calculated and where redemptions took place.

As Cornfeld's operation grew and grew over the course of the 1960s, increased scrutiny from regulators and journalists eventually revealed widespread accounting malfeasance within

IOS operations and a pyramid-like marketing structure (Cantor 1970). It was the late-1960s rise in interest rates, however, that brought down the firm for good. These moves by the U.S. Federal Reserve and other central banks put pressure on the cost of borrowing, dealing a significant blow to the man who had quickly become the world's leading mutual-funds promoter. Moyse et al. write,

> short on money, in September of that year, [IOS] issued shares of $56[6] million to replenish its capital, and succeeded in convincing many of its savers to buy these securities. The issue price of those shares, set at ten dollars, then climbed before tumbling inexorably to less than one dollar at the end of 1970 (2014:36-37).

The eventual bankruptcy of IOS was a traumatic experience for those working in the Luxembourg financial center at the time, given the firm's extensive usage of the country as a domicile for its funds. In 1972, IOS went into liquidation and all its Luxembourg operations were terminated in 1975. As was recalled by a number of my informants, the IOS debacle exposed the limits of the ultra-*laissez-faire* attitude held by the country's emerging "state-finance complex"; some kind of legal and regulatory structure for funds was needed, as a senior banker made clear to me over lunch one afternoon (interview, March 2016). In the wake of the IOS collapse, the Luxembourg authorities introduced legislation specific to the funds sector, which until that time had been regulated on the basis of the more general 1929 law on holding companies (H29). By 1972, investment funds, which at that time numbered around 60, became subject to the supervision of the country's then-financial regulator, the Banking Control Commission (*Commissariat au contrôle des banques*).

By the mid-1970s, Cornfeld and IOS were finished, but it was obvious that "securities capitalism" and its signature product – the investment fund – were here to stay. Rather than abandon the funds industry entirely, the "state-finance complex" in Luxembourg resorted to "offshore governmentality," redoubling their efforts and waiting for more advantageous market

conditions to present themselves. Dörry notes, “together with the banks’ top executives and their widespread international networks, [the country’s] politicians formed a viable growth coalition of institutional entrepreneurs for Luxembourg’s financial centre, ready to seize upon the chances of the internationalization of financial markets” (2016:32).

The right conjuncture for investment funds turned out to be not far off. Against the background of Europe’s deepening market integration via the European Economic Community, the “state-finance complex” organized a working group of politicians, regulators, and attorneys charged with formulating a new legal framework for investment funds, a task that began in 1980 and was completed three years later. In this legislation, the group resolved to address the important issues of fund liquidity, asset diversification, and risk management. A longtime regulator recalled this effort to Moyse et al.: “We, the regulatory authority, had to push [the banks] to do it, explaining that it was worth trying. No one suspected that investment funds would become a booming market” (2014:28). By the time this process concluded, Luxembourg’s fellow EEC member states France and Italy had ended their strict domestic exchange controls and resistance to the free circulation of financial products such as investment funds within the emerging Single Market then under construction in Western Europe.

This new legal framework dating from 1983 marked the take-off of the investment-funds industry in Luxembourg. Another senior regulator crowed about the funds working group’s seeming prescience to Moyse et al.: “This legal framework for the market put us five years ahead of other countries, and that was immediately reflected in the figures” (2014:63). In March of 1988, the Luxembourg government swiftly implemented the first EEC directive for investment funds – given the cumbersome name of “Undertakings for Collective Investment in Transferable Securities” (UCITS)[7] – into its national law. Being the first country to offer administrative

services for these EU-wide funds gave the Luxembourg financial center a decisive competitive edge in relation to other countries in the bloc (Dörry 2016:30). The subsequent rapid growth of Luxembourg's low-margin, yet high-volume funds-administration industry follows the "agglomeration effect" theory cited by Palan et al. with respect to the development of offshore financial niches. They write,

> those governments that were able to… provide modern infrastructure began to attract serious business into their territory. As additional banks and financial institutions enter the local market, competition intensifies, raising the reputation of the center for efficiency and competitiveness. In time, agglomeration economies generate pockets of expertise, and a tax haven develops a reputation in certain specialized markets (2009:182-183).

The robust growth and consolidation of Luxembourg's funds-administration sector, along with a raft of new legal requirements at the national and EU levels, prompted the industry's practitioners to organize politically and professionalize their operations. The Association of the Luxembourg Fund Industry (known by its acronym in French, ALFI – *Association luxembourgeoise des fonds d'investissement*), joined the older Luxembourg Bankers' Association (ABBL) to form a new power bloc within the country's domestic political scene. Dörry states, "these new forms of organizational power, dominated by key figures of the financial industry, allowed the associations' members to direct their influence and pursue their own commercial interests, often in close alliance with Luxembourg's ruling political decision makers" (2016:30). Their immediate objective: to internationalize the Luxembourg investment fund.

An EU "Passport"

"It is pompous to say this, but the world is [Luxembourg's] market." – A senior securities lawyer (interview, April 2016)

The market for UCITS investment funds was initiated during a time when the Luxembourgish economy was still reeling from aftermath of the 1970s "steel crisis" (*crise sidérurgique*). "UCITS found fertile ground in Luxembourg, given that the Grand Duchy was already recognized for its private-banking services," mentioned a senior industry representative to me one afternoon (interview, December 2015). The symbiosis between private banking and investment funds was obvious enough: "UCITS was a ready-made product that Luxembourg private bankers could sell to their 'Belgian dentist' clients," dryly noted an academic who studies the country's financial center (interview, March 2016).[8]

Building on its 1983 domestic law on investment funds, Luxembourg became the first jurisdiction to implement the EU directive concerning UCITS in 1988, "beating even the UK government and the City of London," as a senior regulator boasted (interview, March 2016). As the financial center's many boosters will tell you, that the Luxembourg government was able to pass the UCITS I directive before other countries did is a shining example of what they call the "first-mover advantage." This amounts to the ability of the Luxembourg "state-finance complex" to do the bidding of foreign finance capital as quickly and skillfully as is possible (cf. Dörry 2015:806). Here is a flavor of this most widespread of sentiments in the country:

> Our results also confirm the importance granted to the adaptability of its legislative and regulatory framework. Luxembourg distinguishes itself by a *first-mover advantage* where European directives are rapidly transposed into national law. This allowed Luxembourg to become the first country of the European Union to apply the regulation on the Undertakings for Collective Investment in Transferable Securities (UCITS I), encouraging the domiciliation of investment funds as early as 1988 (Walther and Schultz 2012:79; emphasis added).

With the UCITS I legislation in place, the “state-finance complex” scurried to accomplish two challenging and pressing tasks, no small feat for tiny Luxembourg. First, in order to develop the funds industry, it would be necessary to mobilize thousands of qualified accounting, legal, and financial personnel – many of whom became resident expatriates in Luxembourg, while others joined the ranks of the *frontalier* population, working in the financial center by day yet commuting to homes in France, Belgium, or Germany by night. Because the UCITS I directive also ruled that non-EU funds were not allowed to be sold within this bloc of 28 nations, the result was a rush of fund managers relocating their offshore EU-market funds from Jersey and Switzerland to Luxembourg. Second, the “state-finance complex” set out to market the UCITS structure abroad, in the hopes that banks and investment companies from inside (German and French) and outside of the European Union (Swiss and U.S.) would begin offering fund products whose domicile and administrative center would be in Luxembourg (Dörry 2015:806). A key advantage in this regard, according to a senior industry representative with whom I spoke, is that a Luxembourg UCITS product has no tax liability when distributing dividends from its different sub-funds (interview, December 2015). For an offshore financial center such as Luxembourg’s, the sum of these developments – a captive and largely foreign workforce, the expansion of its “internal” market to a continent-wide bloc of nations, and a new financial product of EU provenance – amounted to an enormous boon:

> When the EU formulated at the end of the 1980s a European financial “passport” permitting whichever fund manager based in the bloc to market his services within the now-28 nations, Luxembourg stepped into the void to become the world’s leading center of mutual funds (Chavagneux 2015:184).

The incentives attracting these fund companies and financial professionals to Luxembourg were many: “offshore governmentality,” low taxes, a multilingual workforce, and the EU “passport.” I place this latter word in scare quotes because this metaphor conjures up a

timeworn permit that serves as a record of one's travel. The so-called "passport" for financial services within the European Union is very different. As a senior industry representative explained to me, the EU "passport" allows a financial company established in one EU country to market and distribute its products in the bloc's 28 other member states, as part of the Single Market (*Marché unique*) regulatory space that dates from the late 1980s. With this "passport," French and German asset managers in Paris and Frankfurt could now market Luxembourg-domiciled financial products in each other's countries. Yet the metaphor is ultimately a faulty one; whereas a passport is for temporary travel outside of one's home country, the EU "passport" implies the indefinite outsourcing of funds administration to Luxembourg. Likewise, while a passport is an unalterable physical record of the countries one has visited, Luxembourg financial services have largely distinguished themselves for being secret, untraceable, and unaccountable in other jurisdictions – as will be explained later in this chapter.

Given that Luxembourg's tiny internal market of some 600,000 residents would be of little interest to large foreign capital, the "state-finance complex" implemented the first UCITS directive in as liberal a fashion as possible, with an eye to the rapid internationalization of the "Luxembourg fund" (Dörry 2015:806). As was explained to me by a senior industry representative, the funds sectors in the United States, France, and Germany are oriented respectively to their large domestic markets, not international ones. As such, these three countries have nation-specific systems in terms of the tax laws, administration structures, and distribution mechanisms needed for funds (interview, December 2015). Companies selling Luxembourg funds, in contrast, are able to adapt to the specificities of the countries in which their products are sold, which all have different laws, currencies, tax structures, and regulatory frameworks. The example of this flexibility and scope the above industry representative

mentioned to me was a U.S.-equities fund listed in Singapore dollars, for distribution in Singapore. In this instance, we can see the depth and breadth of the market for Luxembourg UCITS products: they are recognized and can be distributed in 50 countries and have investors hailing from over 80.

Finance legislation is usually convoluted, but UCITS is truly mind bending in its complexity. There have been no fewer than six revisions to the original directive since 1988, which come in French-, English-, and German-language versions. For example, UCITS in French is OPCVM: *organismes de placement collectif en valeurs mobilières*. I mention this because a funds professional in Luxembourg often needs to be conversant in (or at least recognize) the UCITS vocabulary and acronyms in two or even three languages. In what follows is a brief summary of UCITS II-IV,[9] a timeline I sketch in order to outline the changing contours of financialization in the European Union since the 1980s.

Curiously, the UCITS II directive, which dates from the early 1990s, was never implemented. This act foresaw the creation of many "feeder funds" that would funnel money into larger "master funds," a financing trajectory that was pioneered in the United States starting in the 1970s. This initiative was taken at the behest of French EU negotiators, who wished to see the funds-administration industry that had developed in Luxembourg since the mid-1980s decamp for the Greater Paris region. A banker informant of mine took pleasure in describing how a group from the Luxembourg "state-finance complex" successfully lobbied in Brussels against the passage of UCITS II. As this informant saw it, pitting a larger country such as France against the emerging funds industry in Luxembourg at this early stage would have spelled disaster. The country's financial center would become a mere conduit and the employment from the funds business would go elsewhere. "The Luxembourg funds industry had to be protected for

a while," this banker informant divulged to me, a revealing admission from a self-described economic liberal (interview, February 2016).

UCITS III was a compromise from the failure of UCITS II. Incidentally, this new directive incorporated many of the aspects of UCITS II, but at this time, people in Luxembourg – including an informant of mine who is also a senior securities attorney – believed that in the 10 previous years, the financial center had been able to develop a comparative advantage in funds administration (interview, April 2016). UCITS III allowed for fund management to take place from London, Paris, or Frankfort, yet the tendency to locate all the functions of fund administration in Luxembourg remained. According to my informants, this trend to concentrate *all* fund administrative tasks in Luxembourg was key to the success of the industry. UCITS III also catalyzed the internationalization of the "Luxembourg fund" – that is, its marketing and sale outside of the European Union, to jurisdictions such as Switzerland, Hong Kong, Singapore, South Korea, and in a number of South American and Arab Gulf countries. This effort has been an unqualified success. At present, companies from two non-EU jurisdictions, Switzerland and the United States, are among the top three for the number of Luxembourg-domiciled funds under their management.

In the eyes of the senior securities attorney cited above, UCITS IV marked yet another improvement on its antecedent (interview, April 2016). This act expanded the kinds of funds that could be developed, such as real-estate and hedge funds, and their target market. Certain funds covered under UCITS IV are not offered to retail customers, only "sophisticated" institutional investors, and thus became exempt from certain regulations. A foreign finance consultant explained to me how many of the original requirements for UCITS I were relaxed, including its

mandatory blend of investments and balanced risk pool. These were sacrificed in the name of "flexibility" (interview, March 2016).

Practices of Consensus #2 – Legislative Outsourcing

"It's the law firms that write the laws." – A senior regulator (interview, April 2016)

Via ALFI, ABBL, and other industry organizations, the Luxembourg financial center is heavily engaged in lobbying efforts, both at the national and EU levels. Dörry writes, "the changing conditions of globalization have brought a new type of elite to the fore, in particular the organized power of large banks, which continue to reshape Luxembourg's institutional environment in different ways" (2016:21). "Lobbying," however, in its traditional sense does not seem to be the most accurate term for describing certain actions of the "state-finance complex," especially with regards to the development of finance-specific legislation. "Lobbying" implies that its practitioners make their case among legislators, who are then left to write and vote on the law in question (Simonelli 2016). Finance-specific lobbying in Luxembourg, in contrast, is frequently more direct than this, taking the shape of what I call "legislative outsourcing."

In this regard, the Luxembourg "state-finance complex" operates in ways akin to other offshore jurisdictions and tax havens: "a political economy in which sophisticated legal and tax accounting professionals are able to persuade the key players within the state to introduce a variety of devices which serve their special interests" (Hampton and Abbot, eds. 1999:168). Yet it is not just professionals who convince the government to pass offshore legislation. Because jurisdictions such as Luxembourg, the British Virgin Islands, and the Cayman Islands have become so adept in developing their various financial niches, it is often state officials *themselves* who approach particular lawyers, accountants, or consultants to collaborate in creating new offshore legislation (Harrington 2016:222).

"Legislative outsourcing," as a general process, dates to the early days of offshore finance in the late nineteenth century, when a group of New York corporate attorneys wrote Delaware's ultra-liberal company laws in order to lure businesses to this tiny state, which now counts as one of a number of "internal tax havens" within the U.S. (Palan 2003:100).[10] Maurer discusses a similar process at work in the British Virgin Islands:

> When the Report was written into law, the Legislative Council effectively deferred authorship to Coopers and Lybrand [now part of the behemoth PricewaterhouseCoopers]. This action, for the members of the Legislative Council at least, represented a tragic abrogation of authority to another power. In effect, the BVI Legislative Council created a precedent allowing external agencies to draft laws for them. In contrast, the situation for Coopers and Lybrand could not have been better: the consultants were able to design laws to benefit their investor clients (1995:427).

In Luxembourg, employing this strategy – allowing lawyers and consultants to devise and write offshore legislation themselves – has been a common occurrence since the rapid growth of the financial center began in the 1970s. Indeed, what connects the family office, the UHNWI residency permit, UCITS, and the Luxembourg Freeport (see next chapter) is that they were all devised by enterprising lawyers and accountants who were able to persuade government officials and legislators to enact the necessary provisions to attract different forms of capital (cf. Hampton and Abbot, eds. 1999:53). Thomas notes, "the laws concerning the financial center are regularly co-authored by local interests; it was a [local] law firm… that has contributed notoriously to the elaboration of banking legislation ("Strange Fruit," 4/8/16). A senior fund administrator was equally blunt: "[these law firms] see an opportunity and they take advantage of it" (interview, October 2015).

This "legislative outsourcing" is as common in Luxembourg as it is non-problematic. Among my informants, only a few mentioned that such a process could lead to influence peddling, corruption, or insider deals – even fewer uttered that it might not *always* be

advantageous for a state to immediately do the bidding of foreign finance capital. “The ethics are sometimes tricky,” muttered a senior civil servant after some prodding on my part (interview, April 2016). Rather, my informants believe that these “public-private partnerships” are “the key strategy for the Luxembourg financial center,” and they use all sorts of biological metaphors to press their case: “symbiosis” between the public and private sectors leads to an “optimal ecosystem,” a “healthy environment,” and “positive evolution.” A senior Luxembourgish securities lawyer asserted what I found to be a typical answer: “the state works with people who have ideas… Investment companies can draft a position paper and *even formulate the corresponding law*” (interview, April 2016; emphasis added).

With regards to investment funds, we have seen “legislative outsourcing” at work on numerous occasions. Remember that a team of local lawyers starting in the late 1950s was responsible for formulating the new legal structure for investment funds, whose basis was the 1929 holding-company law. From the late 1980s until the present, it has always been a gold-plated commission of lawyers and consultants who assist the Luxembourgish state in implementing the latest EU directives pertaining to UCITS.[11] A 2016 example of “legislative outsourcing” concerns the new fund structure RAIF: the reserve alternative investment fund. It was no secret among my informants that partners at a local law firm wrote this legislation. A politician candidly told me that very few MPs “actually understood what the law mandates, but they voted on it nonetheless” (interview, July 2016). This should come as no surprise, however; none other than a senior regulator let it slip that the Luxembourg MPs who usher through any financial-center legislation are the “[law firms’] guys in parliament” (interview, April 2016).

Aggregation and Diversification

Counting on the near-complete support of the country's "state-finance complex," the Luxembourg investment-funds industry has expanded and matured over time. Since the late 1980s, the number of investment funds domiciled in Luxembourg has increased to a scale unprecedented at the global level, to the point whereby the tiny Grand Duchy trails only the United States in the amount of assets under administration – which at present totals nearly four trillion dollars (Dörry 2014:228). "Assets under administration" implies that activities such as domiciliation and registration take place in Luxembourg, though this distinction does not mean that the fund *managers* operate from the Grand Duchy. These masters of finance capital are likely to be at work in the world's principal financial centers such as London, New York, or Tokyo. Luxembourg, by contrast, specializes not in "front office" fund management, but rather in the "back office" tasks of administration and distribution.

Because registration and domiciliation take place in the Grand Duchy, all issued funds are eligible for the so-called EU "passport," meaning that they can be for sale anywhere within this bloc of 28 member states. The EU-wide distribution of Luxembourg funds thus necessitates a detailed understanding of the legal and regulatory environments for each target country. As such, the technical knowledge provided by specialized and multilingual attorneys, auditors, and accountants is in high demand. It is perhaps not surprising then that Luxembourg City is teeming with administrative and white-collar employees. A senior politician put this into perspective for me: in 1961, there were 90 lawyers in the capital city; now there are over 2,000. Likewise, the behemoth Big Four firm PricewaterhouseCoopers alone currently employs some 2,000 people in Luxembourg (interview, February 2016).

What do all these employees of the Luxembourg funds industry do exactly? Even as fund management usually takes place elsewhere, tiny Luxembourg nevertheless specializes in many of the administrative tasks associated with funds – including distribution, legal and transfer services, custodianship, auditing, accountancy, oversight, compliance, and price reporting. These functions mean that the funds industry employs thousands of people in Luxembourg, even as outsourcing to Eastern Europe and technological change have meant that this number has dipped slightly in recent years. I mention the statistics above to point out a central strategy of the Luxembourg "state-finance complex," particularly with regards to the administration-heavy investment-funds industry: global offshore financial services have become a robust source of *local employment*. We have seen this tendency at work when the Luxembourg "state-finance complex" lobbied against the passage of UCITS II, which would have seen a withdrawal of the funds administration industry, and the jobs it creates, to larger European cities such as Paris (Moyse et al. 2014:105).

Since the Luxembourgish state has long been keener to tax labor than capital, it needed to attract large foreign fund companies that could, in turn, provide employment to Luxembourg residents and the *frontaliers*, those workers who live in France, Belgium, or Germany yet commute daily to jobs in the Grand Duchy. According to a senior securities lawyer, "as soon as the ink was dry" on the UCITS directive in 1988, the "state-finance complex" had set out to convince foreign fund companies to establish their EU operations in Luxembourg (interview, March 2016). The first of these, the U.S. custodian bank Brown Brothers Harriman (BBH), arrived in 1989 and developed a brisk business providing services to large U.S. fund companies selling products in the French, German, and Italian markets. Following BBH to Luxembourg

were other big names in the U.S. funds industry, including Franklin Templeton, State Street, and BlackRock.

The first entities from the Luxembourg financial center to offer services to foreign fund companies were the local banks. These foreign companies would set up funds in Luxembourg, and the local banks would be responsible for completing the less glamorous administrative tasks: legal work, accounting, and the calculation of net asset values. The local banks' modest capacity, however, was quickly overwhelmed, according to a senior fund administrator (interview, January 2016). As the industry matured and diversified during the 1990s and the 2000s, new apparatuses were needed to administer the rapidly growing and fragmenting global market for investment funds. The industry's new fund platforms sought to create a joint administrative "back office," which could be shared by all the banks and companies offering Luxembourg funds for distribution. These entities became responsible for drafting prospectuses and generating data on the funds' net asset values and amount they have paid in dividends.

Practices of Consensus #3 – The Decision-Making Apparatus

"Mir sin eng Nueselängt viraus." – A Luxembourgish saying

Translation: "We have our nose ahead of the others."

As financial-center activity began to fill state coffers and have a significant impact in the workforce, the *laissez-fare* attitude that marked the period 1960-70 gave way to the creation of an active and organized "state-finance complex" (see chapter two). From this moment, contacts between state officials and representatives from the financial center became more frequent, as might be expected of "offshore governmentality." A senior technocrat described this trajectory to Moyse et al.: "These contacts, which had been in place since the 1970s, shifted to become a *structural dialogue*. It was also in the latter half of the decade that a *targeted policy* was

conducted" (2014:64-65; emphasis added). By the 1980s, the "structural dialogue" referenced above morphed into a series of advisory committees at the financial regulatory authority, which "allowed for the development of an astute legislative arsenal and thus fertile ground for the development of business activities" (Moyse et al. 2014:170).

In emic terms, the ensuing "close collaboration" between the financial center's various "stakeholders" was central to it developing and maintaining "competitiveness" (*compétitivité*) and a "comparative advantage" (*avantage comparatif*). Keeping attuned to the whims and trends of global financial markets required an entire apparatus of vigilance – which came to fill an important regulatory void, "seeing as the complexity of financial products had increased so much," in the words of a senior foreign banker (interview, February 2016). Haag writes, "there was a constant need to adopt new developments designed to encourage the successful evolution of the financial center. The government's key financial and fiscal advisors had to remain continuously alert to the ever-changing conditions" (2015:230). A senior foreign consultant concurred with this position, and I paraphrase: there are constantly meetings and conferences [in Luxembourg] as to how the financial center can maintain its competitiveness and exploit new niches (interview, October 2015).

This tendency toward a "state-finance complex" has increased still further in recent years, especially since the global economic crisis of 2008-09. A senior securities attorney boasted that because "the funds industry accounts for some 20 percent of Luxembourg's GDP, there is a lot of interest on the part of the state. The 'funds machine' has the state's attention. *We get a piece of the pie*" (interview, March 2016; emphasis added). Two new institutions have been key in this process. The first is "Luxembourg for Finance," a public-private partnership that seeks to "develop and diversify Luxembourg's financial services industry, position the financial centre

abroad and identify new business opportunities," as states its website. This entity has been run since 2013, akin to the current Ministry of Finance, by a former senior civil servant from Luxembourg's diplomatic corps. "It's interesting how diplomats have become more important than technocrats," muttered a Luxembourgish banker to me, noting that the "message" surrounding new initiatives seems to be as important nowadays as is its technical content (interview, March 2016).

The second post-2008 institution of particular importance is a consultative body, the High Committee for the Financial Center (*Haut comité de la place financière*), whose objective is to coordinate the various efforts made to govern and promote the financial center. Chaired by the Minister of Finance, the High Committee is a veritable "who's who" of the Luxembourg "state-finance complex": senior civil servants responsible for financial policy, representatives from the regulatory bodies and Central Bank, lobbyists from the banking and funds-industry associations, and the attorneys and accountants from the large law firms and the Big Four.

What are institutional and administrative mechanisms that make up what I call the "decision-making apparatus" of the Luxembourg financial center? I see this as a five-step process (see figure one below). First, ideas for legislation usually originate in the "working groups" of the trade and lobbying organizations ABBL, ALFI, Luxembourg for Finance, and others. ABBL alone counts 80 of these under its purview. The task of these working groups is twofold: to encourage collaboration between financial-center participants who would otherwise be competitors and to come to a consensus position regarding a product or regulation before it is brought to the attention of regulators and government officials. According to a senior industry representative, these working groups are easier to join in Luxembourg than in other countries (interview, December 2015). The lobbying organizations listed above also commonly undertake

international marketing “missions” in the lands of Big Capital (e.g., London, Switzerland, Hong Kong, Singapore, and countries in Latin America and the Arab Gulf), often with the hereditary Grand Duke and Duchess of Luxembourg in tow, to order to give the country’s financial center a royal luster. An example of a financial-center “mission” would be to convince the South Korean financial authority to recognize, and allow the distribution of, UCITS products domiciled in Luxembourg.

Second, legislative proposals are brought before the regulators CSSF and CAA, and the legislation is drafted in their “working groups” (*groupes de travail*). A senior foreign banker described this process as the following, and I paraphrase: there are at least 20 committees at the CSSF, each with 15 participants. Everyone gathers around a big table. Committee members who are invited are *never absent*. When the consultations end, the CSSF thanks everyone and then makes its decision (interview, February 2016; emphasis added). The third step occurs when state officials, regulators, and representatives from the financial center present their proposals to the Ministry of Finance as part of the High Committee for the Financial Center (described above). At meetings of this consultative body, per a senior industry representative, “informative conversations between experts” take place about “best practices.” The details of impending legislation or regulation are gone over and debated. “The regulator learns a lot,” this person asserted (interview, January 2016). It is at this level, that of the High Committee, where the Ministry of Finance assumes political responsibility for the proposed legislation and presents it to parliament and the public: “[the High Committee] is the venue when the Ministry of Finance determines what needs political attention, such as new legislation or initiatives,” emphasized a senior regulator (interview, March 2016).

Photo 17 – The bucks often start here; Ministry of Finance, Luxembourg City (photo by the author)

Fourth, with Ministry of Finance support, the State Council (*Conseil d'Etat*) and the Chamber of Deputies usually pass finance-related legislation with little debate. This process hardly represents the "age-old culture of dialogue," per the formulation of a senior industry official (interview, January 2016), but is more akin to a "rubber stamping" of financial center's legislative priorities. Partaking of this "culture of consensus" – or might we say "non-debate" – are the local news media, which often fail to report on the passage, or possible consequences, of new legislation for the financial center. The fifth step involves implementation of the new law, in which industry-friendly civil servants are often given maximum leeway to be as accommodating as possible to the concerns of the financial center.[12]

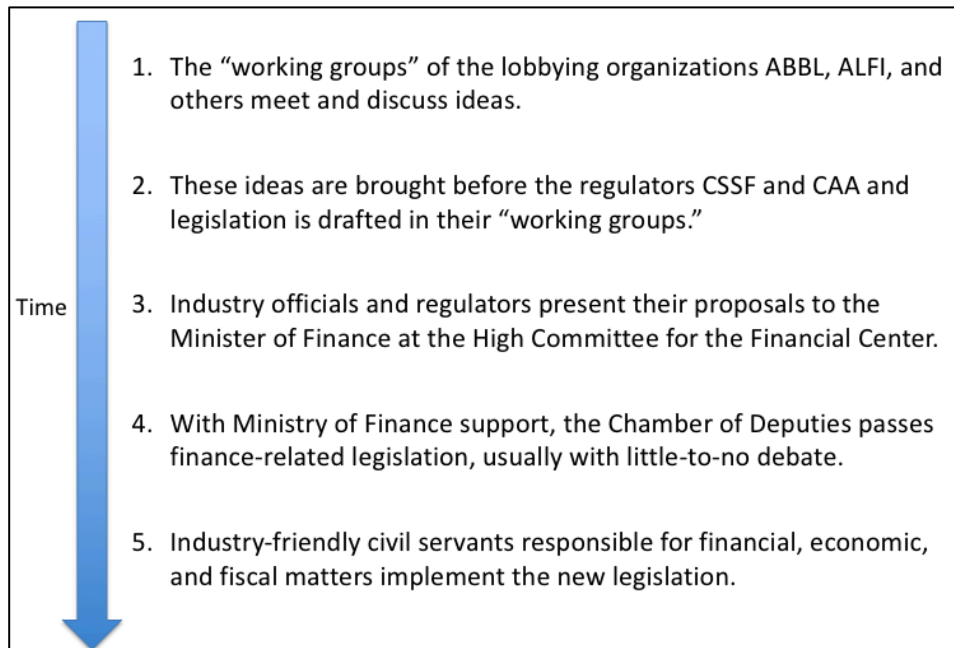

Figure 8 – The financial center's "decision-making apparatus"

In collecting data on the "decision-making apparatus" of the Luxembourg financial center, I was struck by the contradictory ways in which my informants described this process. Two interviewees, both senior regulators, swore to me that "it is the regulator who holds the pen" (interviews, March 2016), meaning that financial-center representatives can propose ideas, yet it is regulator who ultimately decides. However, another senior regulator offhandedly quipped that "it is the law firms that write the laws" (interview, April 2016). Whom should we believe? A median stance is most likely the case, which was voiced to me by a senior civil servant when noting the tension that exists between those decisions made via informal contacts and those taken in an institutional capacity (interview, April 2016). Such self-criticism, even as slight and indirect as it usually is, nevertheless represents a minority position in Luxembourg. The hegemonic narrative is something akin to the following:

> Criticism of the close ties between the [state and the financial center] has already been voiced *abroad*, on the grounds that this runs counter to the principles of good governance and means there can be no clear division between the actions of public stakeholders and private operators on the markets. In an article written for an international ALFI conference, [a senior securities attorney] responds that

> “these concerns are not justified. They are not as long as the regulator is inflexible on values and on integrity” (Moyse et al. 2014:170; emphasis added).

Funds and Secrecy

“Tax havens are like a good music system: the more expensive the system, the more likely it limits the distortion of the original sound” (Palan et al. 2009:160).

“Like a timid horse, money prefers it where there is no noise.” – A former president of financial-center lobby (cited in Thomas, “Naissance d’un paradis fiscal,” 8/5/16)

How can one invest in low-tax Luxembourg funds *and* keep secret one’s ownership of their shares? To answer this question, we must return to chapter three and our discussion of private banking and the “technologies of secrecy.” Remember the services that the Luxembourg private banker long provided to the “Belgian dentist” and more recently to the “Russian oligarch.” Regardless, Luxembourg private banking necessitates that clients come *in person* to the Grand Duchy, in some form or another. As regards investment funds, however, this dynamic is different. With the so-called EU “passport” covering the bloc’s 28 member states, in addition to UCITS being accepted for distribution in an additional 45 countries, Luxembourg funds have an unparalleled global reach. Yet while the “state-finance complex” believes that the EU provenance of UCITS points to the supposed “transparent” character of the industry, its members rarely mention a significant loophole written into the legislation: the ability of funds to accept money from jurisdictions with banking secrecy. To clarify this point, we must travel to the southeast of Luxembourg, to Switzerland and its famed financial centers in Geneva, Zurich, and Lugano.

Before we proceed, let us recall what private bankers do exactly. According to a foreign financier who worked sporadically in the Grand Duchy in the 1970s and 80s, private bankers’ tasks do not differ greatly regardless of whether they are working from Switzerland, Luxembourg, or the City of London (interview, January 2016). Zucman explains, “[private

bankers] hold stocks and bonds for their foreign customers, collect dividends and interest, provide investment advice… they offer the *same* service that is in high demand: the possibility of not paying any taxes on dividends, interest, capital gains, wealth, or inheritances" (2015:42; emphasis added). These undertakings are sometimes called "portfolio management" – that is, "capital which is deposited by a client in… different financial products which can then be *re-invested* in a number of international financial centres" (Donaghy and Clarke 2003:10; emphasis added). In this regard, the technologies of secrecy I discussed in the last chapter – holding and shell companies, unit-linked life insurance, the "family office," bearer securities, and the numbered bank account – do not constitute wealth in themselves. Rather, they are merely the legal structures that are used to disconnect assets from their beneficial owners. The utility and value of these structures thus derives from the financial securities that are linked to them.

What investments do private-banking clients make with their hidden money? The fund may very well be their preferred form of investment. As mentioned in chapter two, the shell company – domiciled in the British Virgin Islands or in a handful of other jurisdictions – provides a Swiss or Luxembourg private-banking client with as much secrecy as existed during the time of the numbered account. Using money housed discretely in a shell company, these clients can invest in funds that, in turn, buy a bit of capital the world over: Asian stocks, U.S. bonds, London real estate, and global commodities. Zucman gives us some data: "in the spring of 2015, out of the total $2.3 trillion held in Switzerland, scarcely $250 billion takes the form of term deposits in Swiss banks. The rest is invested in financial securities: stocks, bonds, and above all mutual funds. Among these funds, Luxembourg holds the lion's share, with around $750 billion." Zucman goes on to say that among the world's private-banking clients, "their favorite investment is in Luxembourg funds, on which they pay absolutely no tax" (2015:33).

The Swiss Connection

"The Swiss banks are [in Luxembourg] not because of our blue eyes." – A senior Luxembourgish regulator (interview, March 2016)

As long as offshore finance has existed, Switzerland has played a central role in its activities, to the extent that Zucman labels the Swiss Confederation the head of the world's "sinister trio" (2015:34) of tax havens, alongside the British Virgin Islands and Luxembourg. Thus, to analyze then the Grand Duchy's financial center without including a discussion of its Swiss counterpart would make for an incomplete picture. To quote a senior Luxembourgish politician: "We [have] to operate in a complementary fashion to the Swiss financial center" (interview, February 2016). Switzerland, the world's leading private banking center – with an astonishing $2.3 trillion in foreign deposits, multiple times more than its peers Singapore, the Cayman Islands, and Luxembourg – has long acted as a funnel through which offshore capital can (re)enter international financial markets anonymously.

As I mentioned earlier in this chapter, a common means to scrub money of its offshore Swiss provenance is by means of making an investment in a Luxembourg fund: "Swiss funds have migrated to the Grand Duchy, and from their accounts in Geneva investors now essentially buy Luxembourg funds" (Zucman 2015:27). In this regard, "Luxembourg is merely a conduit for fund managers located elsewhere" [in, for example, Brussels, Zurich, Geneva, London, Singapore, Hong Kong, and other financial centers], as asserted British tax-justice campaigner Richard Murphy to an April 2016 colloquium I attended in Luxembourg City; "The Luxembourg authorities 'regulate' these transactions, yes, but they really take place in another jurisdiction," he concluded.

In the 1990s, the Luxembourg funds industry gained a significant edge over its Swiss rival-*cum*-partner for two reasons. First, in a 1992 referendum at the federal level, the Swiss

electorate narrowly rejected membership in the EU-dominated European Economic Area, which meant that banks in Switzerland could neither offer UCITS products nor could their financial services qualify for the EU "passport." Second, the Swiss government adopted a series of restrictive laws regulating investment funds, in particular a stamp duty that increased the cost of stock-market transactions. By the millennium, these developments taken together resulted in the Luxembourg financial center overtaking Switzerland in the market for investment funds (Palan 2003:138). "For sure, we'd prefer to have the funds business here in Switzerland. But Luxembourg is the leader in this domain; it's plain and clear. The large Swiss banks such as UBS and Crédit suisse must therefore send a part of their banking activities to Luxembourg," asserts a spokesperson for the Swiss Secretariat of State (cited in Thomas, "Liaison fiscale," 11/22/13).

This "edge" of the Luxembourg funds industry over its Swiss equivalent is almost a null point, however, given that Swiss banks had been well ensconced in the Grand Duchy since the late 1960s. As a senior fund-industry consultant detailed to me, the large Swiss banks such as UBS and Pictet gained a foothold in the EEC starting during the 1960s and 70s via the Luxembourg financial center (interview, December 2015). We might even assume that Swiss bank directors had predicted back then that their country would be unlikely to join the EEC, which would explain their readiness to establish from Luxembourg an EU base of operations.

Other market forces have also driven the Swiss banks to the Grand Duchy. Because Swiss banking clients want their offshore assets invested, not simply sitting in savings accounts, bankers in Switzerland have for years created funds domiciled in low-tax jurisdictions with banking secrecy, such as Jersey and Luxembourg. Investors holding shares in these offshore funds can often defer or even avoid certain taxes, particularly those on capital gains and transfers (Les décodeurs 2016). Likewise, before recent adoption of the fiscal-information exchange, the

administrators of offshore funds were under no obligation to report interest or capital gains to the home-country tax authorities of their clients, as a senior fund administrator mentioned to me when describing the case of Germans investing heavily in Luxembourg funds beginning in the 1990s (interview, April 2016).

The offshore funds industry experienced massive growth in the 1960s, but then saw a crisis in investor confidence after the scandal and collapse of Bernie Cornfeld's IOS operations in the early 1970s (Hampton 1996:22). According to a senior securities attorney, and I paraphrase: fund activity picked up again for the Swiss banks in the 1990s with the implementation of the UCITS directive and the concurrent trends towards "securities capitalism" [an etic term] throughout the Global North (interview, April 2016). As a senior foreign banker told me, "the Swiss banks steer a lot of assets to Luxembourg funds because they have the wealth and the clients. *Swiss banking clients were in Luxembourg UCITS products from the first day*" (interview, February 2016; emphasis added). At present, the Swiss financial center manages some 15 percent of the investment funds domiciled in the Grand Duchy, which makes it the fourth largest promoter of Luxembourg funds worldwide after the United States, the United Kingdom, and Germany (Thomas, "Liaison fiscale," 11/22/13).

The "Luxembourg Chasm"

Because it began in the 1960s and underwent spectacular growth during the period 1988-2008, the Luxembourg funds industry profited from the strict banking-secrecy laws that existed on a *de facto* basis until the early 1980s then were written into law in 1981. Writing in 2003, Zwick asserted, "banking secrecy fully applies to the central administration of investment funds, asset management, and fund distribution" (2003:32). Recall from chapter two that the 1981 banking-secrecy laws were reinforced in 1989 and 1993, the latter "to include all professionals

within the financial sector" (Moyse et al. 2014:32). According to an executive of an accountancy firm whom I interviewed, the 1993 act sought to cover the activities of lawyers, accountants, administrators, and fiduciaries – precisely the professionals working in Luxembourg's emerging niche for investment-fund administration (interview, December 2015).

Yet it is not just Luxembourg banking secrecy that applied until recently to the funds industry but *also* the secrecy laws of other jurisdictions. I paraphrase an example given to me by a local senior securities attorney: a Mainland China-based client of a Hong Kong bank can own a Luxembourg UCITS fund and be protected under Hong Kong's banking-secrecy laws. These clients can thus buy into Luxembourg funds under the secrecy laws of other jurisdictions (interview, March 2016). Of course, this informant added, the "due diligence" to determine whether a client's money has not been obtained via illegal means – also known as the "Know Your Client" (KYC) and anti-money laundering (AML) directives – is applied at the bank of origin and not in Luxembourg. According to an academic who studies Luxembourg tax policy, "someone in Luxembourg could easily know who a fund's beneficial owner is" (interview, September 2016) – yet the funds industry adopts a position of "don't ask, don't tell," one of near-total discretion. It is this distinction between the "secrecy jurisdiction" where the money is readied – say, Switzerland or Hong Kong – and the country administering the target fund, in this case Luxembourg, that allows many fund investors to remain unknown to the world's tax authorities. In short, as this tax scholar summarized, it matters little to the Luxembourg "state-finance complex" who the beneficial owners of their funds are; "[they] don't know because they don't care."

How much undeclared money is invested in the Luxembourg financial center? Again, I refer to the data of Zucman:

> Let's ask the Luxembourg statisticians how much in shares of mutual funds domiciled in the Grand Duchy are in circulation throughout the world. Their response at the beginning of 2015: $3.5 trillion. Now let's look at the shares of Luxembourg funds that are recorded as assets in all countries. In principle, this should be exactly $3.5 trillion,[13] but in fact we find barely $2 trillion recorded. In other words, $1.5 trillion have no identifiable owners in global statistics. This is the big problem… The funds incorporated in [Luxembourg] manage trillions. But we don't know who owns them (2015:38).

Zucman proceeds to call this staggering $1.5 trillion gap the "Luxembourg chasm" (2015:38). How is it that such a massive "chasm" has developed between the identifiable assets and liabilities registered in Luxembourg investment funds?

Even though the opacity defining the "Luxembourg chasm" could easily lead to the development of very large risks or even financial crises, these arrangements are rarely challenged due to the astonishing amounts implicated, and their centrality to the world's political economy. Swiss and Luxembourg banks, after all, transfer billions of dollars in hidden money to the United States, at the same time that U.S. individuals and firms send back a lot of this money in some form or another to the Swiss and Luxembourg financial centers.

As regards the "Luxembourg chasm," we can see an acute case of "voluntary blindness" to the mass tax evasion it implicates (Deneault 2016). Because Luxembourg is a plentiful source of the capital housed in its funds (nearly four trillion dollars in 2018), countries throughout the world – even those that lose tax revenue to offshore activities – are keen to sign double-tax treaties with the Grand Duchy, so as to increase investment opportunities by attracting this hidden money. We can see this in the relationship of the United States to Luxembourg, or to be more specific, the many Luxembourg funds that invest in U.S. securities and corporations. By virtue of the double-tax treaty signed between the two countries, the U.S. fiscal authorities cannot collect any tax on the capital gains that accrue into Luxembourg funds, while in the

Grand Duchy, neither the dividends that its funds earn nor those that they distribute are subject to any tax (Zucman 2015:25).

How do those in the "state-finance complex" respond to the "Luxembourg chasm"? Among the justifications I encountered, three stand out. The first I would call "head in the sand." Not a *single* interviewee mentioned the "chasm" without first being questioned about it. The second response is of the "not my problem" variety – that is, they simply pin the blame on someone else. In responding to my question about the "Luxembourg chasm," a senior industry representative said, and I paraphrase, it is not the fault of our fund companies because the guidelines state that the banks [outside the Grand Duchy] distributing these products are responsible for vetting the origin of their investors' money. Thus, it is the banks elsewhere that are responsible for these procedures (interview, April 2016). A senior Luxembourgish banker cited a typical offshore-finance trajectory (see figure two below) to make the same point: "If a BVI vehicle sends money to a Swiss distributor and finally to a Luxembourg-domiciled UCITS, then the 'due diligence' must be done at the level of the Swiss bank" (interview, April 2016). The final strategy in response to uncomfortable questions about "Luxembourg chasm" is a crude appeal to nationalism. After admitting that the "chasm" does pose a risk of "reputational damage," a senior securities attorney pronounced that the Luxembourg funds industry is the subject of undue scrutiny due to "biases in the *foreign* media such as the *Financial Times* and *Wall Street Journal*" (interview, April 2016; emphasis added).

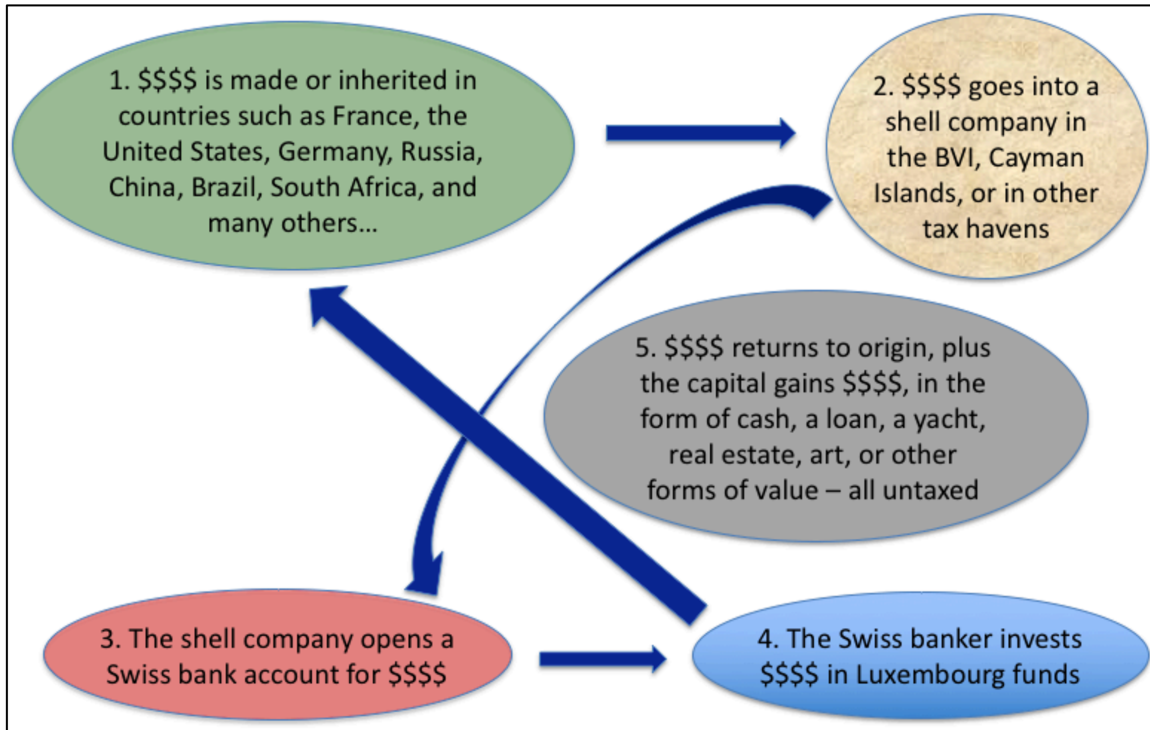

Figure 9 – A simplified, yet common offshore trajectory (cf. Zucman 2015:10-11)

Still other discursive patterns emerge as the "state-finance complex" tries to explain away the fact that banking secrecy remains a central reason for the rapid development of the Luxembourg funds industry. Even as the contours of domestic banking secrecy have shifted in recent years, funds domiciled in the Grand Duchy still receive billions of dollars in investment originating – or more accurately, channeled through – secrecy jurisdictions further afield such as Singapore and Hong Kong. You would not know this, however, by talking to those in the Luxembourg "state-finance complex." What follows is a flavor of their responses.

A senior industry representative told me the falsehood that the growth of the Luxembourg investment-funds industry was not premised on tax advantages or secrecy (interview, January 2016). The same goes for a senior civil servant who stated that the funds sector somehow marks a shift from banking activities protected by secrecy (interview, July 2016). After declaring, "secrecy is often given too much relevance in analyses of the Luxembourg financial center," this

senior regulator cited the slightly more accurate claim that "secrecy was important for private banking, but less so for funds" (interview, April 2016). In a similar fashion, a senior securities lawyer mentioned that "at the national level, [secrecy] doesn't matter [for the funds industry] and is even an annoyance and distraction" (interview, March 2016). What the lawyer fails to mention is the role of secrecy at the *international* level, which is to say that it has been fundamental to the rapid growth of the Luxembourg funds industry. Even researchers fall prey to this sort of thinking. Haag writes, "The end of banking secrecy has, of course, not affected the flagship 'fund industry'… for which the issue of tax secrecy has always been largely irrelevant" (2015:239). Likewise, Dörry mistakenly believes that "the *transparent* UCITS funds segment… has developed historically more by exploiting distinct regulatory advantages than by tax arbitrage opportunities" (2015:806; emphasis added).

The views of boosters notwithstanding, the future nevertheless remains uncertain for the global funds industry that is protected by the banking-secrecy laws of key jurisdictions – a reality acknowledged even by those in the Luxembourg "state-finance complex." What is at stake here is the ever-important question of distribution: who are the ultimate beneficiaries of Luxembourg-domiciled funds? I would add, however, that the Luxembourg "state-finance complex" posing this question in a rhetorical sense is much different than them *actually* working to create a more transparent system to identify the beneficial owners of securities worldwide. In this vein, in the remainder of this section, I first summarize the current measures in place to vet the investments of clients owning Luxembourg funds, then I discuss the measures currently being debated that seek to increase the transparency surrounding the beneficial ownership of Luxembourg investment funds.

A senior banker detailed for me the "Know Your Client" (KYC) procedures as they regard Luxembourg funds. When money goes into a fund, the manager must be able to know who the ultimate beneficiary is: "is it reasonable for client X to have this money?" While this may seem a simple enough question, the answer is rarely straightforward; "KYC is more difficult nowadays," the banker admitted, especially in light of the mind-numbingly complex arrangements of trusts and shell companies that tax evaders frequently set up to hide their assets (see chapter three). In such a context, Luxembourg KYC guidelines vary depending on the "risk profile" of the clients' bank and its jurisdiction of origin. This process will be different depending on whether the country in question is, say, France or Russia, which respectively would be subject to "light" and "profound" due-diligence vetting. While Luxembourg KYC procedures have no doubt deterred criminals and tax cheats in the past, many counter examples exist. For instance, Bernie Madoff used a Luxembourg domicile for a number of feeder funds into his multibillion-dollar Ponzi scheme. To quote the banker cited above: "This [part of the Madoff scandal] was correctly blamed on Luxembourg because people were silly and greedy" (interview, April 2016).

In a March 2016 interview, a senior securities attorney let slip that IMF representatives had recently been in the Grand Duchy to investigate (among other things) the "Luxembourg chasm," though it should be noted neither my interviewee nor the visiting IMF officials described it in such terms. The IMF's concluding report, this lawyer mentioned, cited the need for stronger KYC/AML controls for Luxembourg funds. "They're asking for belt and suspenders," the attorney quipped. What shape might these reinforced procedures take? According to my informants, they range from the labor intensive to the technologically complex. Regarding the former, a senior foreign banker mentioned that many Luxembourg investment

companies are currently undergoing the incredibly laborious task of trying to account for *all* the money invested in their funds, regardless of its country of origin (interview, February 2016). Regarding the latter, a senior securities attorney described two emerging technologies that could make easier and more transparent the process of determining a fund's ultimate beneficiary: establishing a "blockchain" that can record the transactions of a particular security and a database that can store the electronic signature or visual likeness of the shareholder of a fund (interview, April 2016). Whether these initiatives – regardless of how well intentioned they may be – will actually achieve their intended result of greater transparency is an open question.

Practices of Consensus #4 – The "Revolving Door"

"It takes a thief to catch one." – The joke of a senior trade unionist, on former Luxembourg Prime Minister and Minister of Finance Jean-Claude Juncker becoming President of the European Commission in 2014 (interview, February 2016)

The "revolving door" – that is, the movement of personnel between roles as legislators or regulators and the industries affected by the very same legislation or regulation – is by no means a phenomenon distinct to contemporary Luxembourg. Examples of this peculiar characteristic of late-capitalist governance abound from many jurisdictions. José Manuel Durão Barroso was President of the European Commission during the 2010-13 Eurozone Crisis, only to join Goldman Sachs after his term ended in 2014. As U.S. Treasury Secretary during the Obama administration, Timothy Geithner boasted that he had "never actually been in banking. I have only been in public service" – yet upon resigning, he did not continue to be a public servant, but rather became head of a New York private-equity firm. Former Governor of the Bank of England Mervyn King's criticism of bankers as "incompetent and greedy" did not stop him from taking a position as a "senior advisor" with the behemoth U.S. bank Citigroup.

Akin to the European Union, United States, and United Kingdom, Luxembourg too has its "revolving door" (*pantouflage*). Critics often portray the Washington-Wall Street and the Westminster-City of London axes as insular and secretive, yet the "state-finance complex" in tiny Luxembourg seems even *more* close and unified. This proximity is rarely contested within the Grand Duchy, but rather seen as "an asset," "an advantage," and "an opportunity," in the words of my informants. The figure who most embodies this consensus – or *connivence* in French – is undoubtedly former Minister of Finance Luc Frieden. In 2014, nine months after leaving his post in the final Juncker government, Frieden moved to London to become a vice chairman of beleaguered Deutsche Bank. After a year and a half in this position, Frieden returned to Luxembourg as the chairman of Banque internationale à Luxembourg.

Another element that makes Luxembourg's "revolving door" different than the countries cited above is the near absence of public criticism of the "state-finance complex" or its "revolving door." While there are a handful of excellent journalists, heterodox politicians, and emerging civil-society organizations (e.g., Collectif Tax Justice Lëtzebuerg) monitoring the activities of the financial center, these voices have yet to form a sustained, significant, and organized force within the domestic political sphere. The reach of the "state-finance complex," in contrast, is staggering; MPs from four of the six political parties currently represented in the Chamber of Deputies concurrently work in some way or another within the financial center, for being an MP in Luxembourg represents a part-time position. Only the marginal *Déi Lénk* party ("The Left" in English), which at present counts two MPs in the 60-person Chamber, is openly critical of the "revolving door" within the country's "state-finance complex."

What are the characteristics of the "revolving door" between the state apparatus and financial entities in Luxembourg? For starters, it is a network consisting of "senior civil servants,

tax attorneys, bankers, expert economists [*économistes à la langue experte*], the heads of businesses, and a part of the press" (Pinçon and Pinçon-Charlot 2016), in which the members of one group move with ease to take up positions in another of these elite factions. Mbembe refers to similar formations as

> a process in which international networks of… middlemen and businessmen are linking with, and becoming entwined with, local businessmen [and] "technocrats"… causing whole areas of… international economic relations to be swept underground, making it possible to consolidate methods of government that rest on indiscriminate and high-level [collusion] (2001:86).

In this regard, we might note a parallel with the Swiss case, whose "revolving door" between the state and the country's financial center guarantees campaign support, even employment, to any neophyte MPs, "provided [they are] elected on a bourgeois ticket and [evince] enough docility combined with discretion and efficiency" (Ziegler 1979:109).

It is uncommon for Luxembourg MPs to abuse their powers so brazenly so as to benefit the banks or financial institutions that will employ them full time after their political career has ended. Instead, and following Ziegler, we note a "natural reflex" among those moving through the "revolving door": "such promotions merely illustrate the profound logic inherent to it, the ontological harmony between the interests of the state and the strategy of accumulating private capital" (1979:111). Under such circumstances, the financial center's "best practices" replace equitable practices, its "common sense" replaces good sense, and "offshore governmentality" *à la luxembourgeoise* shows its true colors.

Examples exposing the "revolving door" within the Luxembourg "state-finance complex" are almost too numerous to cite in a thorough manner, so I will limit myself to four. First, the current Minister of Finance has moved seamlessly in recent years from the Luxembourgish diplomatic corps, to the national Chamber of Commerce, and finally into leading the all-

important Ministry of Finance. Second, a corporate lawyer who acted as the ghostwriter for the recent legislation on family offices (see chapter two) and who made an appearance in the Panama Papers as a shareholder in a BVI shell company also sits on the administrative council of the Central Bank of Luxembourg. Third, the current director of the CSSF, Luxembourg's financial regulator, also graced the Panama Papers, in his previous role creating offshore companies and family offices for clients of a large foreign bank. Fourth, a senior partner at a Big Four accountancy did not hesitate, in 2013, to "change hats to become the consultant to the Ministry of Finance and represent Luxembourg at the OECD. A year into the negotiations, Luxembourg sent to Paris a former representative of the Big Four charged with discussing how to contain aggressive tax optimization… organized by the Big Four" (Bernard Thomas, "Les associés," 12/5/14).

Flush Present, Uncertain Future?

In the meantime, in a global conjuncture in which "securities capitalism" has become hegemonic, *tout va bien* for the Grand Duchy's investment-funds industry. The process of launching and administering a Luxembourg fund has become as streamlined nowadays as it was to open an H29 holding company in the 1990s (see chapter three). After receiving "light touch" regulatory approval from the CSSF, a fund-management company (usually located outside of Luxembourg) and its administrative proxies (in the Grand Duchy) can assume their roles for organizing, marketing, and attending to the daily operations of the fund, including its distribution, necessary legal and transfer services, custodianship, auditing, accountancy, oversight, compliance, and price reporting. Due to a fragmented and increasingly specialized market for UCITS and other products, including the minimally regulated money-market and

hedge funds, the Luxembourg funds-administration apparatus has shown that it can handle both volume, in terms of the trillions of dollars under its purview, and also specialization, in accordance with a fund's type, investment strategy, and legal structure.

And so the Luxembourg investment-funds industry continues to grow, as it has for three decades, save a brief period during 2008-09. Its assets under administration have long exceeded levels from before the global financial crisis (Dörry 2014:798), to the previously inconceivable figure of four trillion dollars – which is nearly equal to a fifth of the GDP of the United States. From its beginning as a specialist in the administration of UCITS, the Luxembourg financial center has diversified into bond funds, mixed funds, money-market funds, funds-of-funds, and alternative-investment vehicles such as hedge funds. Dörry writes, "the tightly interwoven, durable architectures of these professional networks make finance – as *The Economist* points out – 'not quite as mobile as some of its practitioners like to pretend'" (2015:802-803). In this light, we might say that the Luxembourg "state-finance complex" will help to shape the next phase of global capitalism, complete with both the promise and the misery it will no doubt engender.

And yet, my informants were quick to sound notes of caution about the future of the Luxembourg investment-funds industry. Three risks stood out to them. First, whereas the European Union used to give member states latitude with regards to how its directives were passed into national law, current EU protocols have altered this process and made it far more regimented, both in terms of the directive's timeline of implementation and the margin to maneuver of individual countries. With this change in practice at the EU level, the Luxembourg financial center seems to be on the verge of losing two of its long-standing competitive advantages: its ability as a "first mover" and as a regulatory arbitrageur. A senior industry official told me that these recent changes in regulation are 90 percent the initiative of European

Commission in Brussels, meaning that there is only 10 percent "flexibility" remaining to interpret the law in as advantageous and profitable a way for the Luxembourg financial center (interview, January 2016). To quote a senior securities attorney: "this [shift] has led to harmonization at the EU level and to a loss of power at the national level" (interview, April 2016).

The second risk is that the Luxembourg financial center could become the target of the incessant cost-cutting strategies of the large investment-fund companies. Dörry writes, "Luxembourg is a fund domicile centre, where the functional logic of fund administration activities essentially follows cost-driven scale economies" (2015:801). With Europe's highest GNP per capita, an economy that grows over 4 percent annually, and a robust labor market in an otherwise economically peripheral part of Western Europe, Luxembourg is cursed – or blessed, depending on your vantage point – with housing and commercial real-estate prices that are on par with those in prime areas of London (Zucman 2015:90-91). Could the high costs of living and doing business drive fund administrators out of the Grand Duchy? Some of my informants fear so.

Within the investment-funds industry, fund managers are awarded the largest revenue margins, while smaller shares go to the mainly middle- and back-office activities that take place in administrative jurisdictions such as Luxembourg and Ireland. Given that these countries' specialties are "organizational commodities" (Sassen 2010:155), fund administration in Luxembourg (and Ireland) is prone to fierce cost-competition. Of all things, the reduction of banking secrecy in recent years has been a catalyst for some of these fragmentary pressures within the industry. During the years of the "Belgian dentists," fund administration *had* to take place within the Grand Duchy in order to keep in line with the secrecy laws of 1982 and 1993,

which required that Luxembourg-based personnel subject to the country's banking-secrecy statutes carry out *all* fund-support activities. Given that banking secrecy has morphed significantly in recent years, even been curtailed for some foreign customers, there has been continuing pressure for fund administrators to forego the high costs of doing business in Luxembourg and outsource tasks to less-expensive locales such as Poland or India. In an interview, an executive and regulator pointed out to me, and I paraphrase: because banking secrecy does not exist in the same form as before, fund-support services can now be outsourced to other jurisdictions (interview, July 2016). Dörry asserts, "[fund] operations like those of transfer agents, administration agents and depository banks in Luxembourg have become leaner and leaner" (2015:803).

The final risk is that the Luxembourg investment-funds industry will become a victim of its own success. As discussed previously, the Luxembourg "state-finance complex" has made it exceedingly easy to set up an offshore investment fund. However, it is an open question whether the national regulators have the resources and expertise to perform due diligence on what are ever-more sophisticated financial vehicles. In the words of Palan et al.: "it seems obvious to ask whether such small jurisdictions can allocate sufficient resources to monitor and regulate such colossal sums of money" (2009:163). Jérôme Turquey, a business consultant and one of the rare critics of finance in Luxembourg, believes that the country's regulatory authority, the CSSF, neither holds the financial center accountable nor can it escape the many conflicts of interests generated via its system of "working groups": "They don't admit that they can't regulate everything," Turquey says, "These are the people… who decide that what the regulation should be. If you look at their financial reports, they say every time: 'Everything is perfect. We are the best regulated country on the planet'" (cited in Shaxson 2012:362).

More ominously, the regulators in Luxembourg seem to be lauded *not* for being credible and truly independent overseers keeping watch over and regulating offshore finance, but rather for their role in promoting the very financial center they are supposed to regulate. In this regard, regulatory developments in Luxembourg mirror those taking place in other offshore financial centers (OFCs): "in recent years many OFCs have gone to considerable length to create an aura of regulatory sophistication by enacting a variety of legislative measures. Demand for such measures is largely driven by the financial sector itself, principally in order to create a veneer of respectability" (Hampton and Abbot, eds. 1999:168).

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It was late, almost midnight, when I exited a private members' club after a lively and nearly four-hour dinner with an executive from the multi-trillion-dollar Luxembourg funds industry. I left behind the squat bridge that spans the bubbling Alzette river and entered a long and well-lit tunnel cut into the mass of rock upon which the Luxembourg City center was built. On the rough-hewn walls hung the decorative art of local schoolchildren. I could also sense a faint stench of urine, which one just might perceive in all urban tunnels, even those in the best kempt of cities. My destination was an elevator that would shoot me up the nearly 30 meters of rock to a plaza of government buildings in the city center. A small crowd of late-night revelers and I awkwardly stood next to each other in the elevator, without talking, only to spill out into the night after arriving.

With time to kill before my train – the last one of the day to the south of the country, where an unappealing new campus had been built for the country's lone university, aside a lifeless shopping center – I rambled around the city center. By day, there would be the familiar faces of shopkeepers, the vendors in the Place Guillaume market, the waiters on cigarette breaks,

and the armed and festooned palace guards – but now the entire city center was eerily empty. I hustled across the cobblestones.

En route back to the train station, I witnessed an amusing architectural palimpsest of financial entities past and present. The first of these was "the North Pole," a building which formerly housed a Scandinavian bank, whose "façade and the interior with its cutting edges reflect a bizarre ice world," as states the website of the building's architects (cited in Thomas, "Le tribut," 2/26/16). Nowadays, a Chinese bank occupies "the North Pole," as its previous Scandinavian occupant has been renamed and has decamped to a nearby suburb. The polar reference, we could say, has now become all the more absurd.

Still closer to the train station, I took in the handsome edifice that houses the headquarters of global steel giant ArcelorMittal. Built in the 1920s in the style of a Baroque French château, the building is so impressive and stately that tourists often take it to be the Grand-Ducal palace. We could say that the size and grandeur of this construction are a manifestation of what ArcelorMittal represent in tiny Luxembourg: a real and substantive company, with extensive activity, employing thousands of people.

Yet nearby the ArcelorMittal headquarters I saw another pillar of the country's political economy: the letterbox, as in a "letterbox company" (*société boite aux lettres*). This one is an ordinary letterbox stuck onto an exterior wall, with nothing noteworthy save one detail: a small white card with the name "iTunes." Mere steps from the massive ArcelorMittal, I had stumbled upon the discrete European "headquarters" of Apple's iTunes service, which until the office's closing in June 2016[14] employed a mere 24 personnel yet counted a startling three billion dollars in revenue (Sorlut 2016). The contrast between the stately ArcelorMittal headquarters and its secretive iTunes counterpart could not be more apparent.

The departure of my train was imminent. I passed a nightclub, thumping music within but no one without. A bar here, a fountain there, along with an overpriced restaurant and a queue of idling taxis. I turned a corner, toward the train station, into another empty plaza. Where are the denizens of this European capital? In recent years, with housing prices having tripled since 1980, non-elite Luxembourgers and resident foreigners have been pushed into bedroom communities (*villes-dortoirs*) throughout the southern part of the country, and even further into the French, Belgian, and German border regions (Zucman 2015:90-91). That Luxembourg City teems with workers by day but is near empty at night reflects a country cut in two: bankers, lawyers, and accountants live in opulence – while the rest of the population suffers stagnation, even decline.

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[1] As the former President of the Eurogroup – the unelected, informal body of finance ministers of countries using the Euro currency – Juncker presided over the punishing post-2008 austerity programs for a number of Eurozone member countries, including Greece and Portugal, the effects of which continue to resonate some 10 years after their initial implementation (Weeks In Press).

[2] The reference to the proverbial "English*man*" is significant as Nelissen (2014) reports that only 11 percent of the Cercle Munster's members are women.

[3] The "Big Four" represent the world's largest "professional services" firms – PricewaterhouseCoopers, Deloitte, KPMG, and Ernst & Young – which specialize in auditing, taxation, management consulting, and corporate finance. The Big Four are frequently criticized for their role in being the chief architects of tax-avoidance schemes for individuals and corporations that cost governments and taxpayers billions of dollars each year (Rostain and Regan, Jr. 2014). Curiously, even as these firms counsel their clients on how to avoid taxes, they also advise governments on fiscal and regulatory "reforms." All the Big Four firms have a significant presence in Luxembourg, occupying architecturally conspicuous buildings and employing thousands of people, including numerous MPs in the Chamber of Deputies.

[4] To put Luxembourg's four trillion dollars in fund assets into some context, the 2017 GDP of the United States is $19 trillion. Other than the United States, which counts approximately $20 trillion in fund assets, and Luxembourg, with its four trillion, Ireland is in third place, at $1.5 trillion.

[5] When Bernie Cornfield sold IOS funds to U.S. service personnel in Germany and other countries – even those invested in U.S. securities – these products were domiciled in jurisdictions

such as Switzerland, Luxembourg, and Panama. This meant that any capital gains were not reported to the IRS.

[6] This value would be the equivalent to $410 million in 2018.

[7] The open-ended UCITS are an EU-wide version of a U.S. mutual fund or British unit trust. UCITS products are more regulated when compared to other types of investment funds, such as hedge funds, and offer greater protections for investors.

[8] Luxembourg bankers, as explained in chapter three, began acquiring a clientele of "Belgian dentists" – along with "French lawyers" and "German butchers" – beginning in the mid- to late 1960s, a trend that intensified in the 1980s with passage of banking-secrecy laws. These pioneering "offshore" clients of Luxembourg's banks represented members of Northern Europe's growing petty and professional bourgeoisies during a time of heightened prosperity on the continent. They were often self-employed, engaged in commerce or liberal professions, and dealt frequently in cash.

[9] While there have been six iterations of the UCITS directive, the Luxembourg government has only passed four of them into national law. My informants cited the legislature's current inability to past finance-related legislation as "proof" that the Luxembourg financial center now faces political inertia and a crushing regulatory burden at the EU level. I would add, however, that UCITS VI deals with the thorny question of distribution of a fund's dividends. Ostensibly, this legislation would increase transparency with regards to the beneficial owners of the nearly four trillion dollars housed in Luxembourg funds. As we will read, the link between the Luxembourg fund and its beneficial owner has often been concealed by "technologies of secrecy" similar to those detailed in chapter three, most notably the shell company and the numbered bank account (*compte numéroté*).

[10] The Swiss canton of Zug, just south of Zurich, is another jurisdiction that holds this notorious "internal tax haven" distinction. Akin to the ultra-liberal Delaware within the otherwise capital-friendly United States, the canton of Zug has some of the lowest corporate tax rates in Switzerland, a confederation long known for its permissiveness with regards to foreign finance capital (Ziegler 1979).

[11] EU circulars, directives passed by the European Commission, control the legal and regulatory framework for the UCITS market. These regulate, among other factors, the asset diversification and risk profile of a fund. Until recently, EU circulars could be implemented in as flexible a manner a possible by the governments of individual member states. As might be expected, the Luxembourgish state "took advantage" of this process of implementing EU circulars at the national level, as quipped a senior fund administrator, as if to say that such a tactic were commonsensical and totally justified (interview, October 2015).

[12] The permissiveness of the Luxembourgish state's administrative practices has been well documented by the "Lux Leaks" revelations, in which a lone civil servant signed off on tax-avoidance "rulings" worth billions of dollars for hundreds of multinational corporations, including Fiat, Heinz, Amazon, Koch Industries, and Starbucks (Marian 2016). The European

Commission – whose president is the longtime Luxembourg pol Jean-Claude Juncker – has subsequently declared that these rulings constituted illegal and unfair "state aid" and has forced the companies in question to pay back taxes.

[13] Zucman is working on the 2015 figure of Luxembourg's total fund assets, which was $3.5 trillion. The 2018 amount is four trillion dollars.

[14] Apple closed its Luxembourg operations in June 2016 and consolidated these into its European headquarters in Ireland. In doing so, Apple joined other technology giants Netflix and Zynga by leaving Luxembourg in the wake of regulatory scrutiny stemming from Lux Leaks.

CHAPTER FIVE

The Art Market Comes to Luxembourg, or, How Those Wishing to Hide Assets Materialize Them

It was a typical winter day for northwestern Europe. Amid the gusts and cold rain, I attempted to make my way from the Luxembourg City center to "Le Freeport," a hyper-luxurious and securitized warehouse for fine art and other collectible assets that opened its 10-ton doors for business in September of 2014. Unlike most trips within this tiny country, which one can do on foot or via public transport, my journey to the Luxembourg Freeport was long and circuitous and proceeded in an uncertain manner.

My difficulties began at Findel, the country's lone international airport. I proceeded to the front of the outdoor taxi queue and asked to be taken to the nearby *port franc*. A blank stare from the taxi driver. *« La zone franche alors ? »* Another blank stare. The driver left to consult some of his colleagues. The verdict: one of them had heard of something, sometime of a *port franc* – but he was not certain what it was or where it was located. This "present absence" (see chapter three) of the Luxembourg Freeport was not totally unexpected, though still curious; after all, His Royal Highness Henri, the current Grand Duke of Luxembourg, had attended the facility's well-publicized inauguration, for which local philharmonic had performed a piece of music written specifically for the event (Letzing and Colchester 2015).

Having had a hunch that directions would be an issue, I had jotted down beforehand the phone number of the freeport. I dialed the facility and asked the administrative assistant to explain to the taxi driver how one could get there. While located on the airport premises, a short distance "as the crow flies" from the main terminal, the freeport is nevertheless inaccessible by foot; one must drive, or be driven, which this taxi driver begrudgingly did for me – peeved perhaps that this short route would net him a mere 12 euros. Upon returning to the terminal, he

would be at the back of the queue, to wait again for the more lucrative, 35-euro rides to the luxury hotels in the city center.

From the back of the taxi, I caught my first glimpse of the Luxembourg Freeport. The structure is forbidding, its exterior protected by stacked crates filled with stone, similar to those used to protect embankments. I could see just a few entrances into the freeport – one for people and others for storage items – yet scores of surveillance cameras, some 300 according to *The Economist* (2013). Only trucks transporting objects can enter the gated parking lot and approach the loading dock. In preparation for visiting the freeport, I had looked at a satellite image of the layout of the site; adjacent to the facility is a runway used for private jets and specialty cargo airplanes, the infrastructure necessary to welcome the ultra-wealthy art aficionados and their objects of passion and/or investment.

Photo 18 – An aerial view of the Luxembourg Freeport in relation to the airport (Google Maps)

Promising high security, minimal taxes, and discretion, this "fortress of art" totals a cavernous 22,000 square meters of space (Letzing and Colchester 2015). The facility has "four bullion chambers guarded with 50-centimeter-thick metal doors, and four other chilled rooms

designed to hold 700,000 bottles of fine wine," as freeport staff told Blenkinsop (2014). Writing in *The New Yorker*, Knight cites equally implausible specifications: that the Luxembourg Freeport is made is made of sixty thousand metric tons of concrete, and its "doors are locked with six-digit codes" (2016:70).

I eased myself out of the taxi after paying the fare. The driver sped off in the opposite direction, back presumably to the taxi queue at the airport. In the wind and rain, I trodded to the gate, a fortified turnstile ringed by a barbed-wire fence, and pressed the doorbell, which also served as a call box and surveillance camera. I heard a muffled *bonjour*. *« Je m'appelle Samuel Weeks – j'ai un rendez-vous à 17h »* I blurted. The immoveable gate-turnstile clicked and went slack, allowing me to push through. I was in.

At the first of a series of doors, a burly security guard greeted me. Sparing the usual French-language pleasantries, the guard asked for (then held) my identification and made me sign a ledger. This completed, he beckoned me to place my backpack and coat onto the conveyer belt of a metal detector and pass through security as if I were heading into the departure terminal of the nearby airport. The guard met me on the other side of the x-ray machine and murmured that he would accompany me to the facility's main office, where I would conduct an interview with a freeport administrator.

We moved slowly into the interior of the facility. In the corridors, the windowless walls are sterile and bare, which did little to absorb the sound of my wet, squeaking shoes. At each of the thick doors the guard and I encountered, he stopped to enter a code into a control pad and placed his hand over its biometric scanner. Writing about developments in interior security, Cox asserts, "for the most discerning, fingerprint-activated locks are a must… Programmable security

keys can limit when, and how long, staff can gain access, as well as… where they can roam" (2016).

With regards to security, the Luxembourg Freeport resembles its companion facilities in Singapore and Geneva, as both are managed by the Swiss art-logistics firm Natural Le Coultre. What unites these freeports is that they are "technosocial assemblages" *par excellence* (Appel In Press), a space where social and economic processes come together and are mediated by high technology. In the Geneva facility, Knight notes that "iris scanners, magnetic locks, and a security system known as Cerberus guard the freeport's storerooms, whose contents are said to be insured for a hundred billion dollars" (2016:62). On their trip to photograph Natural Le Coultre's Singapore facility, Woods and Galimberti reveal the following: "one of the most secure places on Earth, the [Singapore] Freeport has biometric recognition, more than 200 security cameras, vibration detection technology, Nitrogen fire extinguishers and seven-ton doors" (2015). In Singapore, Yves Bouvier, the former enigmatic president of Natural Le Coultre, painstakingly designed all these security features, "from the fire-resistant walls, coiled through with steel, to the height of the doors: three meters, to admit the largest contemporary [art] installations. 'I chose everything,' he said. 'The door handles. I'm obsessive about that'" (Knight 2016:66).

The guard and I had arrived at our destination: a spacious office in which three people were silently at work filing papers. There, I saw some touches of human presence – some personal photos and a few decorative plants – in this otherwise somber, albeit luxurious space. The administrator muttered a greeting and invited me to sit at a round table in the middle of the room. I extracted from my backpack a notebook and a list of questions. My education on freeports and the adjacent field of "art finance" was about to begin.

Tangible Assets

"Art is a mirror of society. Every era gets the art it deserves. We see professional dealmakers, speculators, seduced collectors and exhausted artists. Today's art system involves many diverse forms of dependency and manipulation." – German art critic and collector Harald Falckenberg (2014)

"[In the mid-1980s], people used to turn up with cash in suitcases to buy Old Masters and no one really cared." – The former chairperson of an art dealers' association (cited in Zarobell 2017:242)

You might be asking, what are the socio-economic trends behind the surge in collecting items destined for the world's freeports? To answer this question, we must first point to the increased demand for "collectible assets" – such as fine art, classic automobiles, and vintage wine – among elite collectors, investors, and what might be called "investor-collectors." To examine the tastes and consumption patterns of freeport patrons, a re-reading of Bourdieu's classic *Distinction* (1984) would be a good starting point. Yet in this chapter, on the Luxembourg Freeport and attendant activity in the country's budding "art finance" sector, I examine "collectible assets" not from angle of consumption, à la Bourdieu, but rather from that of the production, preservation, and accumulation of *wealth*. In line with Boltanski and Esquerre (2016), I focus my analysis not on freeport patrons – ethnographic access to whom would be undoubtedly difficult, if not impossible, to obtain – but rather the professionals whom these patrons task to transport, store, buy, sell, and securitize their assets. As we shall see, the relations surrounding the freeport-bound objects belonging to the world's growing coterie of elite "collector-investors" reveal an entire cartography of inequality and social division.

Let us begin with the artworks themselves and how they possess a value and status of their own. Unlike the common products of industry, which are manufactured with an eye to use or durability, the objects bound for a freeport are simultaneously a "means of investment, a marker of economic success, a luxury commodity, a cultural good" (Fillitz 2014:86). These

coveted items thus reverse the trajectories established by industrial commodities: instead of being used publicly and decreasing in worth as time passes, they remain hidden from view and become ever more valuable. In this light, our exploration into the storage and transaction of these limited-quantity, high-priced objects must span neoclassical art economics (see McAndrew, ed. 2010) and the socio-cultural analyses of social scientists such as Benjamin (1936), Bourdieu (1984), Knorr Cetina and Preda, eds. (2012), Beckert and Rössel (2013), and Boltanski and Esquerre (2016).

Akin to other growth sectors in the age of post-Fordism, the global market for fine art takes place according to distinct, yet flexible and frequently overlapping logics. Thus, it is possible for our "investor-collectors" to fancy themselves accumulating economic capital, purchasing goods with symbolic and cultural significance, and displaying their possessions as a means of distinction. The social fields for which patrons mobilize these logics include auctions, art fairs, high-end galleries, and freeports – where the acquisition of art becomes both spectacle and a lifestyle choice (Beckert and Rössel 2013:183). As Benjamin theorized decades ago (1936), the commodities in these venues exude an *aura* – frequently formulated, or induced, by the *savoir-technique* of specialists – which signifies that these goods are exceptional, the property of the elite.[1]

The Rise of Art Finance

"Bankers [in Luxembourg] now know a new word: Art." – A local art observer (interview, March 2016)

The "art finance" found in Luxembourg and other financial centers is a phenomenon of recent vintage, as a consultant in this field recounted to me over coffee one afternoon (interview, February 2016). During the last 40 years, in the opinion of this informant, the sector has evolved

from modest origins to becoming a recognizable branch of finance that counts a growing number of products and transactions. Today, works of fine art are used as collateral to secure multimillion-dollar bank loans, are featured in retirees' pension portfolios, and form the basis of art investment funds.

The rise of art finance has not gone unnoticed by artists and the greater art world. Boltanski and Esquerre note that its emergence in the 1980s took place during a period of declining public funding for the arts, yet heightened media attention dedicated to the ever-increasing prices fetched at art auctions, particularly those at the long-established houses Christie's and Sotheby's. While this frenzy of news about the latest blockbuster art sale provoked indignation among many artists and collectors, such "reporting" about auction prices became commonplace, even banal, and indispensable for the "evaluation of works, artists and even collectors themselves (with publications listing 'the most influential figures of the contemporary art world', 'the reputation-makers', and so on)" (Boltanski and Esquerre 2016:47). Even the fiercest critics of art finance today would still acknowledge the market's ability to influence the way art is conceived, created, displayed, and marketed. Adam admits, "[art finance] has challenged the very nature of a 'work of art' as a unique expression of the artist, as it has become a product made to satisfy an increasingly voracious market" (2014:181).

This criticism notwithstanding, the headwinds in favor of art finance have only strengthened over the last decade, as more and more bankers, insurance executives, and fund managers take interest in art as a proper investment asset class (Gerlis 2017b). Roaring back from a brief dip in 2008, activity in the long-opaque art market has come to resemble international financial transactions,[2] as a Luxembourg-based art consultant revealed to me (interview, April 2016). As prize works change hands among individual and institutional

investors with growing frequency, many are more interested in the "performance" of these assets than their aesthetic beauty or historical importance. Data on the art market confirm these trends; McAndrew reveals that, from 2003 to 2007, the price of fine art rose a startling 28 percent per year, while the "aggregate art market grew by 311 percent, and the contemporary art market grew by *851 percent*" (2010:7; emphasis added). By 2015, the global art market totaled a whopping and record $55 billion (Letzing and Colchester 2015).

While the art market did retreat during the 2008-09 global financial crisis, prices of high-quality works rebounded quickly to overtake pre-crisis levels. "The 2008 crisis created a real demand for physical assets. People realised banks could go down and take their money with them. That meant demand for the likes of gold, but also art," asserted Tony Reynard, Chairman of the Singapore Freeport, whose owner is also the principal investor in the Luxembourg Freeport (cited in Blenkinsop 2014). My consultant interviewee cited first in this section went so far as to state that one of the reasons that the richest investors were less affected by the crisis than the general populace was due to the breadth of their holdings in art (interview, February 2016). The second Luxembourg art consultant cited above recalled to me the post-2008 desire of HNWI and UHNWI (see chapter three) to ensure that collectible assets were included in their investment portfolios, a significant enough change in demand that led my informant to begin offering art-consulting services (interview, April 2016). Taking advantage of low interest rates, as well as the unregulated nature of the art market, this growing class of "collector-investors" invest in art of widely recognized importance so as to ride out any volatility found in financial markets in the aftermath of the crisis. After all, "the value of most categories of art tends to hold strong even the direst economic conditions," notes McAndrew, ed. (2010:137).

While other wealth managers are forecasting a future of low yields for financial assets and high attendant costs for compliance, my informants working in art finance are bullish on the prospects for their sector, in light of increasing prices and investor interest. What these developments bode for the rest of the world's population is less clear. As contemporary politico-economic dynamics concentrate more and more wealth in the hands of an elite few (Piketty 2014), the art market has been one of the outlets for this unprecedented level of new wealth. According to the first consultant interviewee cited above, the art holdings of the world's top 4,000 collectors top $1.5 trillion, which is comparable to the assets under management of the hedge-fund and private-equity industries (interview, February 2016). In line with current private-banking logic, these UHNWI are advised to invest 10-20 percent of their total wealth in collectible assets, or so was told to me by two wealth managers who provide these very services to clients, frequently as part of their "family office" investment vehicles on offer (interviews, February 2016). "This is part of the *psychology of things*," one admitted (emphasis added), thus implying that collecting art has more ramifications for an individual's sense of value and identity than does owning stocks or bonds.

Why Financialize Art?

"It [is] a natural activity for banking to move into lending in the art world. It's a matter of understanding values*." – The former administrator of the art-advisory division of a major U.S. bank (cited in Marquis 1991:248; emphasis added)*

One financializes works of art for the obvious reason that they have come to share many of the characteristics of financial assets. In general, the prices for fine art do not just mirror major stock-market indices such as the FTSE 100 or the S&P 500, but also *increase* when stocks are volatile or decline in value. Given this tendency, art holdings allow "collector-investors" to further diversify their portfolios in terms of asset type and market cycles (Beckert and Rössel

2013:181). In addition, "carefully selected works of art can have an international marketability that transcends many of the weaknesses in individual economies or currencies" (McAndrew, ed. 2010:136). In light of these factors, and in the idiom of the industry, the inclusion of art among other assets (stocks, bonds, shares in funds, gold and real-estate holdings, et cetera) is a solid "hedge against risk."

Ownership of art also brings with it several significant tax advantages. In many countries, investment in art – particularly via a foundation based in Liechtenstein or Panama – is a way to reduce or escape personal or corporate taxation. The resulting tax benefits from owning art is often an important part of the investor's final "return." There are, for example, multiple strategies for avoiding, or deferring indefinitely, the capital-gains taxes from the sale of an artwork. As I detail later in this chapter, art can serve as the collateral for a loan – meaning that one can continue to enjoy the piece, use it to generate cash liquidity, *and* avoid the capital-gains taxes that would inevitably come from the sale of the item (McAndrew, ed. 2010:131).

Given our previous discussions of private banking (chapter three) and investment funds (chapter four), one should not be surprised that art's financial and tax benefits have attracted the interest of the world's many offshore jurisdictions, Luxembourg included. Offshore art finance, akin to its peer activities of private banking and investment funds, seeks to "separate" an individual from his[3] art assets in the eyes of legal and fiscal authorities, while still allowing him to use and enjoy the artworks in question (cf. Harrington 2016:138). Art-finance specialists have long realized the growth potential of offshore arrangements for their services. In the emic words of a practitioner: "Whatever the approach, most art-fund managers favor *tax-efficient structures* that achieve greater *tax transparency* for investors depending on their tax residence. Among some of the favorable tax jurisdictions that have been used for art investment vehicles are Jersey,

Guernsey, BVI, Luxembourg, Gibraltar, and the Cayman Islands" (McAndrew, ed. 2010:157; emphases added).

Art does not simply share characteristics with financial assets; in many ways, it is a *better* investment than stocks, bonds, or shares in investment funds. I count four advantages for art in comparison with securities. First, as discussed earlier, the ownership of art is associated with a cultural aura à la Benjamin that does not exist for the equivalent ownership in financial products. To paraphrase the quip of a Luxembourg-based gallerist: one cannot brag about and show off stocks and bonds at a dinner party! If someone has $500,000 in the bank, why not make it "work" in art? (interview, March 2016).

Second, for those investors with a larcenous streak, the art market is more attractive than its financial counterpart *because insider trading is, for the most part, legal*. This lack of regulation-*cum*-corruption can result in spectacular returns on an initial investment, an art-finance specialist and interviewee of mine verified (interview, February 2016) – though it can also go awry, as seen in the recent case of art-logistics specialist and dealer Yves Bouvier (discussed later in this chapter). Knorr Cetina and Preda, eds. state,

> Insider trading – in the sense that assets are bought or sold because a buyer has insider knowledge about conditions or events that will affect the value of a piece of art – is by and large legal. Imperfect information and the unregulated character of the art market may create opportunities for arbitrage that are attractive to some investors, but the resulting uncertainty has the effect of deterring others (2012:482).

Third, whereas companies such as British telecommunications giant Vodafone count *billions* of shares in circulation (Lex Column 2017), all of which are identical in value, fine art exists in a rigidly fixed supply, numbering from a single painting to limited-edition series of prints or lithographs. The scarcity of works of art can cause prices to spike, even spectacularly so under certain conditions, as "collector-investors" try to take advantage of the few opportunities

to buy high-quality pieces. In the language of neoclassical economics, this is a situation of "zero elasticity"; no matter what price someone might be willing to pay for an artwork, extra supply cannot be created simply to meet demand. McAndrew declares, "it is because of these limits on supply that prices for art can shoot up to seemingly extraordinary levels when works appear on the market, with collectors trying to seize the often rare opportunity to own a particularly unique asset" (2010:20).

The fourth benefit – one that certain investors acutely covet – is that, unlike securities, art is a "hard asset." As physical items, works of art change hands less frequently than with financial assets. In this regard, they can represent an insurance policy for their owners, a means to turn cash into something believed to be better suited to preserve wealth from dissipation or destruction, as an art-consultant informant of mine emphasized (interview, April 2016). In such a context, it is common for elite collectors to enjoy their artworks for aesthetic reasons and historical significance, at the same time that they turn their holdings into a kind of reserve currency of collectible assets.

As we saw in chapter three – that is, how Luxembourg private banking developed in part due to tax evasion by the "Belgian dentists" and their ilk – so too has an "art finance" industry appeared in the Grand Duchy to provide services to those wishing to financialize their art holdings. Art finance in Luxembourg, as in its traditional strongholds of London and New York, generally offers loans and other financial products to the owners of art who want to use it as collateral. A Luxembourg art-finance practitioner described this process to me, and I paraphrase: we initiate a local bank to lend a percentage of the artwork's value "as is determined by us" (interview, February 2016). Often, however, the clients also have sufficient net worth and cash

flow to pay off the loan separately, so that the providers of art-backed loans only rarely have to foreclose and seize the specific work being used as collateral.

As this art-finance specialist (and others in the field) repeatedly stressed, their expertise usually forms the basis of auxiliary services to the much larger sectors of private banking, wealth management, and the administration of "family offices" (interview, February 2016). In large and boutique banks alike, as in the Big Four, art-finance specialists are believed to help their institutions better understand the investment decisions of wealthy individuals (cf. Marquis 1991:246-247). Certain clients of these banks and accountancy firms can spend many millions of dollars each year collecting art. As a result, many of these institutions began offering a suite of services to this growing group of "collector-investors," from investigating the provenance of artworks, to administering estates with substantial art holdings, to handling such crucial details as insurance, framing, and restoration.

Barriers to Financialization

*"The artwork [*œuvre*] is no longer at the center. From now on, there is an amalgam: one buys to invest. It is heartbreaking [*navrant*]." – A Luxembourgish gallerist (cited in Petit 2015)*

While fine art may seem promising for some investors, there are also many reasons why it makes for a *less* promising investment than financial assets. First and foremost are the numerous moral objections to the financialization of art. As was common until more recent times, artists and dealers would separate between collectors' "good" and "bad" motives for purchasing art. Acceptable ones included seeing art as a passion and an intellectual pursuit, as well as demonstrating a will to become involved in the "art world," by participating in museum boards, reading relevant publications, and attending exhibitions, gallery openings, biennials, and

art fairs (Fillitz 2014:88). Bad motives, of course, centered on the buying and selling of art solely for investment purposes.

While they still exist today, moral objections to art financialization have gradually waned over the past 15 years. More and more common is the tactic of "cornering," practiced by (in)famous "collector-investors" such as Charles Saatchi. They enter into a contract with, or buy the entire oeuvre of, an emerging artist in order to "corner" or control the re-sale market for these pieces (Thompson 2010:245). In the meantime, the investors "pull the levers" of the art world to create a "buzz," arranging solo exhibitions for the artist in galleries or museums and securing articles on their works in key publications (Beckert and Rössel 2013:180). When the prices for the young artist's work hit a certain level, they "flip" the oeuvre, usually to another speculator. Adam writes candidly of this practice: it is "like a game of 'pass the parcel'; the works go up in value each time – until they don't, and someone is left holding the parcel" (2014:182).

"Purist" collectors, artists, and journalists are not the only ones to be critical of the recent trends toward financialization in the art market. Many in the world of finance have also resisted this tendency, from an inverse position: that art – even its finest works – makes for a poor investment. The limits to the financialization of art are, in fact, numerous. Notwithstanding recent efforts to list price information, create art investment funds, and develop an art-only stock exchange that would allow people to buy "shares" in an artwork,[4] financiers generally lament this market's inefficiencies, including its "illiquidity, opacity, and extreme product differentiation or heterogeneity" (McAndrew, ed. 2010:157). A senior private banker admitted, and I paraphrase: art is not a "bankable" asset, meaning that banks are limited in the art-finance services they can provide to clients (interview, March 2016). Knorr Cetina and Preda, eds. write, "most members of [the financial] community have not recognized art as a valid asset class,

pointing to structural barriers to the financialization of art, such as [its] heterogeneity…, lack of liquidity, and the non-transparent character of the art market" (2012:475). Likewise, the Deloitte/ArtTactic Art and Finance Report laments that "the art market falls short of meeting the legal expectations of an asset class, particularly in terms of regulatory structure, information availability and clear title" (2014:19).

Further separating the art market from its financial counterparts is the amount of time that "collector-investors" must hold on to their assets. For securities, in our age of high-frequency trading, this can be mere milliseconds – the ultimate "liquid" market, meaning that one can buy and sell assets at will and at any time. In the art market, in contrast, this period is orders of magnitude longer, usually from 1.5 to 10 years, according to a Luxembourg art-finance consultant with whom I spoke. In the words of this same consultant, and I paraphrase: you cannot analyze art markets as you would ones for equities due to the lack of liquidity and information about prices (interview, April 2016). For art, "liquidity" comparable to that in financial markets is near impossible; particular artworks usually change hands on such an infrequent basis that it is difficult to "get your money out" at a moment's notice (McAndrew, ed. 2010:18). To see "returns" on an art holding, an investor must keep works of art for many years, if not a generation, which makes the speculative, short-term trading seen in many financial markets a particularly high-risk strategy when applied to art. An additional reason many investors stay clear of the art market is that works of art are either unique, as is the case with paintings or sculpture, or form part of a limited edition, as with some lithographs, prints, or engravings (Beckert and Rössel 2013:191-192). The influential "Lex" column of the *Financial Times* states, "No two Picassos are alike… [this is] a reminder of how misleading it can be to treat highly individual items as an asset class" (2017).

Keeping all this accumulated fine art safe is yet another turnoff for private bankers and fund managers. Storage costs can be exorbitantly high, especially when compared to financial assets – which, it should be noted, exist in immaterial form on the servers of banks, insurers, and fund companies (Knorr Cetina and Preda, eds. 2012:476). These expenses, which include the pricey premiums to insure art against damage or theft, frequently depress any potential returns. Adding to the impediments, in the words of a Luxembourg private banker with expertise in art finance, is the fact that art assets do not generate revenue in the interim to cover the costs of their maintenance. "This means that art is a negative-return security," the banker noted accordingly (interview, February 2016).

Lastly, there have been several high-profile forgery cases to roil art markets in recent years, including one involving a Luxembourg-based collector who is accused of selling a forged canvas attributed to the sixteenth-century Italian Mannerist Parmigianino (Siegal 2017). This ever-present threat of forgery necessitates the careful tracing of each work's provenance and ownership history, a task which adds yet more costs to the practice of art finance. According to the first Luxembourg private banker cited above, and I paraphrase: there are serious issues of fraud in art finance. You also have to ask yourself *why* particular works are up for sale. Collectors often want to get rid of their worst stuff (interview, March 2016; emphasis added).

Art-Finance Products

"When bankers get together for dinner, they discuss Art. When artists get together for dinner, they discuss Money." – Oscar Wilde, The Model Millionaire

In the section that follows, I briefly discuss two common art-finance products: art funds and art-backed personal loans.[5] "Art funds amount to simple speculation on particular artworks, artists, or styles," asserted a Luxembourg private banker whose institution provides art-finance

services to clients (interview, March 2016). In this regard, managers of art funds buy opportunistically[6] from the market with pooled investor funds in the hopes of making a medium- or long-term return on capital. With this seed money, art-fund managers "buy art with an eye to investment potential" on behalf of their client shareholders (McAndrew, ed. 2010:148). Art funds are often "close ended," meaning that investors must keep their money in the fund for its entire duration, which is usually in the range of 5-10 years. The goal of these funds is, of course, to profit from increases in the prices for artworks, which on average generate "real growth" (after factoring in inflation) on the order of 2.5 percent as opposed to 1 percent for financial assets – a figure cited to me by a Luxembourg art-finance consultant (interview, February 2016). According to an academic who studies art finance, the basic strategy behind the art fund is "a private-equity vehicle. You buy art – say, $30 million in works by Basquiat. In five years, this investment vehicle can be worth much more – say, $80 million – thus giving the investors a 15-percent annualized return" (interview, January 2016).

How have art funds fared over the years? "Disappointing," "inadequate," and "mostly failures" were how my interviewees described the funds' general performance. Furthermore, they believed that the limitations plaguing art funds – including negative returns, illiquidity, and high maintenance costs – would continue to inhibit their potential scope and profitability. The examples of successful art funds are few. There is the paradigmatic case of the British Rail Pension Fund, which netted a 10 percent-plus annual return over the 25 years it owned art assets (McAndrew, ed. 2010:139-148). In addition, my Luxembourg art-consultant interviewee noted a London art-fund guru recently closed a 10-year fund that had an "unspectacular return of seven percent." "It is possible to beat the market, though the actual instances of this are few," this informant admitted to me (interview, April 2016). Another art-finance consultant was blunter:

"There is lots of talk, but art funds are a small market," valued at bit over $1 billion – a tiny sum in today's multitrillion-dollar financial-services industry (interview, February 2016).

A more promising market, yet also still a small one, is the issuing of loans using artworks as collateral. The general trend behind such efforts is to convert collectors' art holdings into a revenue stream, a practice the consultant cited above called "secured lending" (interview, February 2016). Another Luxembourg art-finance specialist described this practice as "[releasing] liquidity currently stuck in tangible assets," akin to refinancing a home mortgage (interview, February 2016). These and other informants presented "art-secured lending" as the ultimate "win-win" arrangement: collectors can secure an income stream from their artworks *while* keeping them in their possession, meaning that they will not have to sell any holdings that would typically be subject to capital-gains taxes. McAndrew, ed. describes the "collector-investors" who take out art-backed loans: "Individuals seeking loans secured by their art collections typically come in two categories: people who are art rich and cash poor and need the money for a particular purpose or people who are both art rich and cash rich and want to monetize their art holdings, a typically illiquid asset, to use the resulting liquidity for other investments" (2010:122).

Art Finance in Luxembourg

"Luxembourg will stay away from the actual art." – An art-finance specialist, when asked if programs in art history and preservation will accompany the University of Luxembourg's course offerings in "art finance" (interview, February 2016)

As it has done at numerous other junctures,[7] the Luxembourg financial center is trying to specialize in yet another niche, this time in art finance. In doing so, it has again followed the pattern of emulating market niches that have been successfully developed elsewhere. In this regard, and following Petit (2015), we could say that Luxembourg is currently "[surfing] the art

wave." Similar to the process of "offshore governmentality" that resulted in the financial center's other specialties, Luxembourg's bankers, consultants, and lawyers came together "to devise texts likely to jump start the market [*donner du tonus au marché*]" – that is, to draft legislation that would form the legal basis for art-finance activity in the country. To quote a member of the newly formed trade association LAFA (Luxembourg Art Law and Art & Finance Association): "our involvement… will permit us to work with the government concerning the refinement [*amélioration*] of the legal, fiscal, and regulatory framework [*cadre*] of this unique sector" (Petit 2015). Thomas sees this effort in a more critical light: "last autumn [2015], [LAFA] was established, bringing together essentially actors from the financial center. It was not long before they dropped off [their] propositions at the office of the minister. The lawyers demanded from him the introduction of an 'innovative' legislative framework including 'art lending' (loans that use works of art as collateral)" ("Les mousquetaires du Freeport," 4/29/16).

Photo 19 – Serious inquiries only; Luxembourg City (photo by the author)

The first step in support of Luxembourg's nascent "art finance" sector came in August 2014, in the form of a law (number 6713) that proposed two legal changes designed to initiate art-finance activities in the country. The first of these was a modification to the statutes regarding value-added taxes (VAT), such that *all* art and antiques could now qualify for a VAT rate of 6 percent, the country's second lowest. The second of these changes secured a VAT-free status for those transactions taking place within the confines of the new Luxembourg Freeport, which opened the grounds of the country's lone international airport in September of 2014. Thus, owners of art do not have to pay any import or export taxes when they store or ship their works using this facility (cf. Bowley 2015).

The second initiative helping the development of art finance in Luxembourg was the formulation of legal structures specifically for the transaction and ownership of art. An art-finance consultant and informant of mine mentioned that a key moment was the decision by the CSSF to allow art to be held via the lightly regulated SICAR[8] and RAIF[9] investment vehicles. Other legal structures include a Luxembourg-domiciled "family office," which give owners "maximum flexibility" to buy and sell art, donate or use it as part of a private museum, or "safeguard holdings for future generations" (interview, April 2016).[10]

Nearly of all my art-finance informants were also keen to point out the potential overlap between their field and Luxembourg's long-established niche in private banking (see chapter three). One informant crowed about art finance's appeal to the HNWI and UHNWI, the wealthy clients of the Luxembourg financial center who have supposedly replaced the "Belgian dentists" in recent years. According to this specialist, art finance constitutes a "comparative advantage" if a private banker can offer these services alongside those traditionally offered to clients (interview, February 2016). Another informant talked up the possible links between art finance

and Luxembourg's $4-trillion investment-funds industry. "The freeport has legitimized Luxembourg as a domicile for art funds," according to this person (interview, February 2016).

Unfortunately, however, for the proponents of art finance in Luxembourg, not all has gone according to plan, as even a few of them begrudgingly admitted to me. Despite all the LAFA colloquia and speeches and scores of glossy brochures, the "art finance" sector has not had the success that many foresaw for it. While Luxembourg legal structures, such as SICAR and RAIF, are being used for individual ownership of art and its private sale, very few art funds have been established in the country to date. To quote the damning verdict of a local observer: "do these [art-finance] guys even exist? I mean, how many people are *actually* doing deals?" (interview, March 2016; emphasis added).

What Are Freeports?

"Freeports are pawn shops for ultra-high net-worth individuals." – An art-finance specialist (interview, February 2016)

"For all intents and purposes, art in freeports becomes invisible" (Zarobell 2017:239).

As mentioned previously, the centerpiece of the nascent art-finance sector in Luxembourg is undoubtedly the country's new freeport, which opened for business in September of 2014. In this section, I place the Luxembourg Freeport within a larger context of increased demand for "collectible assets" and in relation to the world's other fine-art freeports – which are currently found in Geneva, Singapore, and Shanghai. As the international art markets have boomed in the last 15 years, so too has demand for the discreet storage space offered in freeports – particularly for art not intended for a museum, or even a living-room wall, but rather as an asset in which to invest. Boltanski and Esquerre note this contradiction: "the acquisition of such commodities can serve another purpose, that of conspicuous consumption, drawing attention to

one's wealth; but they often seem to be purchased and stockpiled without ever being displayed before the eyes of others – or even their owner's eyes, in the case of large-scale collectors" (2016:41).

The world's first freeport for fine art developed as an outgrowth of Geneva's *Ports Francs* complex, which itself dates to 1854. Letzing and Colchester (2015) state that the original idea for this zone was to allow commodities in transit, particularly grain, to be stored in a space in which they would not incur taxes. Taxation, in theory, would take place once the goods had reached their destination. In the second half of the twentieth century, art collectors came to realize that they could take advantage of this "in transit" status indefinitely – that is, that their luxury objects could remain in an untaxed limbo *forever*. Thus, freeports offering no-time-limit storage seems entirely inconsistent with its ostensible commitment to servicing "goods in transit." A 2013 article in *The Economist* spells out this tension: "this [taxation] benefit may have been originally intended as temporary, while goods were in transit – but for much of the stored wealth, it is, in effect, permanent, as there is no time limit: a painting can be flown in from another country and stored for decades without attracting a levy" (2013). Today, the Geneva Freeport is still governed by special customs statutes, meaning that the transactions occurring within the freeport are not subject to VAT or capital gains. Normal taxes and duties should (technically) be payable in the destination country when a particular item leaves this "parallel fiscal universe," though by then it may have changed hands several times without leaving a corresponding paper trail:

> It is not uncommon for a painting to be swapped for, say, a sculpture and some cases of wine, with all the goods remaining in the freeport after the deal and merely being shifted between the storage rooms of the buyer's and seller's handling agents (The Economist 2013).

As a result, the fine art, precious metals, rare automobiles, and vintage wines that have amassed in the Geneva Freeport quite possibly make for the world's most valuable collection of "physical assets" – although, it should be said, no one knows this for sure because the freeport's holdings have never been publicly disclosed. A Luxembourg banker informant of mine, who is familiar with the markets for art finance and other services, mentioned that a leading art insurer will no longer underwrite policies for items at the Geneva Freeport because "there is too much concentrated risk" (interview, February 2016) – which was recently calculated to be anywhere from $20 to $100 billion (Blenkinsop 2014). What is actually stored in the Geneva Freeport has long been the stuff of legend and intrigue. Members of the Lebanese-origin Nahmad family are among the world's major collectors to house artworks there:

> [David Nahmad's] collection makes museums and salesrooms dream. Two hundred, three hundred Picassos? [asks the reporter]. "I haven't counted them. The number matters little; it's not necessary to fall into that banality [*tomber dans cette banalité*]," he retorts. "But I believe that we are the largest collectors of Picasso in the world." It is said that he possesses 3,500-4,500 paintings, from Monet to Matisse, from Renoir to Rothko, shared with his brother and stored in the Geneva Freeport – for a total value of $3.3 billion? [asks the reporter]. "It fluctuates," he grins (Herzberg 2016).

Photo 20 – Storage vaults, flanked by "light art"; Luxembourg Freeport (photo by the author)

As David Nahmad would no doubt concur, storing art in a freeport offers several unique advantages to collectors of the finest artworks. The first is the freeport's status as a "no-man's land," akin to an embassy, where certain laws of the surrounding jurisdiction do not apply. Thus, items en route to freeports in Geneva or Luxembourg technically do not cross the borders of their respective countries. Knobel writes, "free ports and special economic zones are supposed to be territories with special rules… because they are not considered regular parts of a country" (2015:47). Freeports are not open to the public and thus provide to the owners of fine art the discretion to buy and sell at will – transactions that will not be taxed so long as they take place within the confines of the facility (Pinçon and Pinçon-Charlot 2015:21-22). Irrespective of their extraterritorial and tax-exempt status, a Luxembourg industry official nevertheless believed that "freeports are *normal*. We don't tax things in transit. It is merely a conduit" (interview, January 2016; emphasis added). A "conduit," of course, might not be the most accurate way to describe a freeport, given that many objects in it are not moved but rather stored *ad infinitum*.

The "offshore" nature of freeports has provided collectors additional advantages, as countries such as Germany and Italy have passed restrictive "cultural-property protection laws" in recent years. The German *Kulturgutschutzgesetz*, which took effect in July of 2016, restricts the export and sale of artworks more than 70 years old that are worth over €300,000. Murray Brown asserts, "[the law] is designed to preserve Germany's cultural heritage, and permits will be granted for export only if the work in question is deemed not to be of national significance" (2016). As seen in other contexts where similar laws have come into effect, some "anxious owners" had pre-emptively sold or transported works from Germany in advance of the law's implementation. No doubt some of this art made its way into nearby freeports in Luxembourg and Geneva. Zarobell writes, "to put a work of art into a freeport is not exporting it, in legal

terms, because it is [technically and legally] *not entering another country*" (2017:239; emphasis added). According to a Luxembourg art-finance consultant, and I paraphrase: our freeport benefits from geopolitical decisions taken elsewhere. For example, there are laws on the books in Italy whereby any artwork older than 50 years or worth more than €150,000 will require an export certificate. Such laws compromise the liquidity potential of an artwork for its owner. This is a reason to keep art offshore, such as in the Luxembourg Freeport (interview, February 2016).

In addition to its offshore status and the discretion provided to collectors, the tax advantages associated with freeports are also appealing. As previously mentioned, all art and other collectable assets can be bought and sold in the freeport without having to inform the fiscal authorities in either the buyers' or sellers' countries of origin. "This golden safe is one of the means used by the very rich to guarantee… the flight from the tax authorities of their rare and precious items," in the formulation of Pinçon and Pinçon-Charlot (2015:208). Bowley gives us an idea of how significant these tax savings can be, in his discussion of the new freeport planned for Delaware, an "internal tax haven" within the United States:

> [Delaware] is special because storage spots in most other states cannot offer the same tax advantages… It is one of only five states without any sales or use tax, meaning that a Manhattan collector who might owe, say, $887,500 in sales tax on the purchase of a $10 million painting at Sotheby's in New York, would owe nothing by shipping the art to Delaware directly after purchasing it (2015).

The freeports in Geneva, Luxembourg, Singapore, and Shanghai are the brainchild of reclusive Swiss businessman Yves Bouvier, the former president of his family's art transport company, Natural Le Coultre.[11] In his twenty years as head of the company, Bouvier has made hundreds of millions of dollars serving as both a transporter and dealer of art, thus covering two aspects of the art market that many critics believe can lead to conflicts of interest.[12] With the hundreds of millions of dollars earned from his art dealing, Bouvier sought to open freeports in

new locations. In 2005, he chose the city-state of Singapore, a jurisdiction that bills itself the "Switzerland of Asia."

Requiring special legislation to be passed by parliament, the Singapore Freeport opened in 2010, reportedly costing Bouvier $100 million to build (Knight 2016:66). The facility, which abuts the city-state's international airport, is an excessively engineered hybrid of vault and temple. After a well-publicized opening, and the announcement that auction house Christie's had become an early client, it was clear that the project would be a success. With it came much international media attention for Bouvier, whose "über warehouses for the ultra-rich" (The Economist 2013) tapped into widespread fascination with the tastes and financial shenanigans of the global "one percent." By then, Bouvier was already considering other jurisdictions for his freeport model. It was not long until he had made his choice: Luxembourg.

The Luxembourg Freeport

"I above all don't want that the Freeport becomes a cemetery for art." – A Luxembourg Freeport administrator (cited in Thomas, "Les mousquetaires du Freeport," 4/29/16)

By the time Bouvier had decided upon Luxembourg as the next jurisdiction for a freeport, the "state-finance complex" had already been at work on a plan to develop an "art and finance cluster" in the Grand Duchy, with the stated goal of diversifying an economy in which "regular" finance makes up some 35 percent of GDP.[13] As might be expected in an economy this dependent on financial services, the global crisis of 2008-09 prompted much soul searching among those in Luxembourg's "state-finance complex." What would the future bring for the country's system of "offshore governmentality"? Adding to the urgency of these conversations was the realization that Luxembourg's famed banking-secrecy laws would not be able to remain on the books in their current state. The international political pressures for greater transparency

had become simply too great. Thomas describes how the "state-finance complex" eventually warmed to the idea of "art finance":

> After 2008, when the operators of the financial center came to the realization that good old days of secrecy were numbered, a gust of panic took flight. The government and the lobbies assembled as quickly as possible new legal products to attract the UHNWI from all continents… In 2008… [a local art-finance consultant] began spreading the good word of "art and finance" within [his firm], and afterwards the government ("Les mousquetaires du Freeport," 4/29/16).

Thus, it is worth highlighting that art finance first took shape in Luxembourg *during a moment of crisis*. We recall that the financial center's earlier forays into other markets – the holding company law of 1929, legislation on banking secrecy and investment funds during the early 1980s, et cetera – came at points of crisis for the country's political economy. Such crises – be they the global crash of 1929, the steel crisis from 1974-81, or the so-called third-world debt crisis of 1982 – "which normally take the form of falling rates of profit, are also periods of intense technological and political innovation," including the proliferation of offshore jurisdictions, zones, and niches (Palan 2006:73). Along these lines, the Luxembourg Freeport is the result of new "zoning technologies" that fragment a state's territory "in order to capitalize on specific locational advantages of economic flows, activities, and linkages" (Ong 2006:103).[14]

At the time, Luxembourg's art-finance proponents were quick to establish a narrative behind their efforts. A local consultant recounted these for me: the sector would help to diversify the economy, spur local interest in art, and help the country to shed its reputation as a "tax haven" (interview, February 2016). None of my interviewees – as might be expected – added that they themselves also stood to benefit personally from the development of this sector. The closest an interviewee of mine came to acknowledging this tension was an art-services specialist, and I paraphrase: [a Big Four firm] was first to bring the "art finance" idea to the Luxembourg

authorities. It has clients who want to establish investment vehicles – "listed or not" – to make a return on their collectible assets (interview, January 2016).

In 2008, the first "art and finance" conference was held in Luxembourg, sponsored by one of the Big Four accountancy firms. The then sitting Minister of Culture gave the opening address. According to an attendee of this conference, the buzz was that "something is happening [in the art-finance market]… we need a freeport in Luxembourg" (interview, February 2016). Shortly thereafter, the "state-finance complex" – in this case, representatives from the Ministries of Finance, Economy, and Culture; lawyers, bankers, fund administrators, and consultants; and executives from country's sizeable logistics sector – began churning the wheels of "offshore governmentality," with a strategic analysis to see if a freeport and an art-finance industry could become yet another dynamic specialty market for the country. In the words of a senior financial-center representative, the idea for the freeport-and-art finance "cluster" was to bridge Luxembourg's well-developed niches in banking and logistics (interview, April 2016). By 2010, those undertaking the strategic analysis had answered in the affirmative their initial question as to whether the project had potential. The first step was to approve a plan for a "Luxembourg Freeport" similar to the one in Singapore, whose principal investor and manager would be Yves Bouvier and his family company, Natural Le Coultre.

A number of factors resulted in additional headwinds for the freeport, as might be expected in a jurisdiction famed for its "offshore governmentality." First, Bouvier was keen to work with Luxembourg's capital-friendly legislators and public officials, as he had previously done in Geneva and Singapore. A foreign fund industry executive described to me this support: "an example of the solid conditions for business in Luxembourg [is your] access to the ministers and that you can just call the Ministry of Finance" (interview, December 2015). Second, if the

Luxembourgish state would meet Bouvier's conditions – particularly, legislation to establish a special customs and tax-free zone for the facility – then he would personally invest in the project and not require any public funds. That the government would not have to take a financial stake in the project and served as the "market validation" it was looking for, as an art-finance consultant explained to me (interview, February 2016). Third, Luxembourg is home to Cargolux, one of the world's five largest freight companies, which has extensive experience in the global transport of fine art. Its headquarters are located adjacent to the site planned for the Luxembourg Freeport, a strategic plot that the government provided to the project at no cost – an "offer… [that] helped persuade [Bouvier] to put it there rather than in London or Amsterdam" (The Economist 2013). Fourth, while construction of the freeport ensued, state officials readied the "enabling legislation" – in the words of an art-services executive (interview, January 2016) – that formulated the facility's legal basis, including its duty- and VAT-free status. This required an act of parliament to amend the country's fiscal laws in order to codify the tax perks, thus creating what *The Economist* calls the freeport's "parallel fiscal universe" (2013).

As mentioned in the introduction to this chapter, the Luxembourg Freeport marked its September 2014 opening in the presence of the Grand Duke himself, as well as the local philharmonic that performed a piece specifically written for the event. Akin to the buzz of Bouvier's Singapore opening – in particular, the revelation that Christie's had agreed to rent space – was the news that Luxembourg's central bank was planning to move its sizeable gold reserves to the facility from their longtime home at the Bank of England. After the opening addresses, dignitaries from the "state-finance complex" were given a tour of the facility. As was explained to me by a participant, guests were taken to see the showrooms, which the guides boasted could be used for art-world fêtes and even multimillion-dollar auctions (interview,

January 2016). Initial press reports raved about the size of the facility: “there are about 160 rooms and eight private showrooms off the main lobby for artworks in the Luxembourg centre’s 22,000 square metres – about the size of three soccer fields” (Blenkinsop 2014). Freeport officials explained to the attendees that the stored goods receive a special customs and tax status because they are technically “in transit.” The art and other collectables arriving into the facility, via doors that open onto the international airport, become taxable only once they leave this “special zone” and enter Luxembourg or another country.

Photo 21 – High security, bad weather; Luxembourg Freeport (photo by the author)

Yet akin to the uncertain fate of the country’s experiment in “art finance,” the Luxembourg Freeport has not been met with the success that its boosters had hoped. The scandal involving Yves Bouvier and the Russian Oligarch Dmitry Rybolovlev – with the latter accusing the former of overcharging millions of dollars on the sale of 30-plus artworks over a ten-year period – has cast a shadow over the entire project. The space in the freeport leased by Bouvier’s firm, Natural Le Coultre, is reportedly only 15 percent full (Letzing and Colchester 2015).

Bouvier and his associates are no longer responsible for the day-to-day management of the facility, and there are rumors that it is for sale. The much-vaunted link between the freeport and Luxembourg's private-banking sector has also proved elusive. In the words of a senior industry representative, art dealers and consultants, not private bankers, make the decisions as to where art should be stored: "Owners of art don't ask their private bankers about where to store it," this official divulged (interview, January 2016). Thomas reports the more scathing pronouncement of a local art observer:

> Among local gallerists, formerly rather excited, disillusionment has set in. In 2014, [a local gallerist] had hoped that the freeport would bring "professionalization" to the local scene, though now believes the freeport to be a "machine of capitalism" allowing "oligarchs with too much money to hide and securitize their wealth." According to [this person], the freeport and the "art cluster… has nothing to do with the local cultural scene. The artists' sales in [local] galleries are not considered" ("Les mousquetaires du Freeport," 4/29/16).

The Luxembourg "state-finance complex," meanwhile, is scurrying away from the project. A politician and informant of mine reported that one of his colleagues – a former supporter – pronounced the freeport to be "bullshit" (interview, July 2016). After lamenting that the "freeport [is] under attack," a normally sympathetic senior civil servant admitted that the Luxembourgish state should have realized in its risk analysis that an event akin to *l'affaire Bouvier* was in the realm of possibility (interview, April 2016). According to the politician interviewee cited above, the Ministries of Finance and Economy are now starting to interrogate the project, having "come to the realization its activities are not moral" (interview, July 2016). This change of heart among those in the "state-finance complex" might explain why the freeport's managers have rushed to put former senior civil servants from these very same ministries onto its board of directors (*conseil d'administration*).

Offshore Mimicry

« Mir sollen nët versichen d'Rad nei ze erfannen; mir sollen kucken eist Rad méi ronn ze maachen. Mir sollen intelligent dat kopéieren waat schon anerwärts besteet. » – A Luxembourgish adage

Translation: "We should not try to reinvent the wheel; we should just try to get our wheel rounder. We should intelligently copy what exists already elsewhere."

"These are not our ideas [for the Luxembourg financial center], but we run with them." – An art-finance specialist (interview, February 2016)

With its newly built freeport, we might say that Luxembourg City has become a second Geneva, or Singapore, for that matter, with its scores of private banks, financial services dedicated to art and other collectible assets, and growing stockpiles of high-value goods. As if on cue, the Luxembourg "state-finance complex" has heeded the guidance spelled out in the Deloitte/ArtTactic Art and Finance Report: "When dealing with UHNWIs, Luxembourg, Swiss or Singaporean wealth managers should consider incorporating [freeport services] into their wealth management strategy to create a competitive edge" (2014:87). Indeed, this tendency of the Luxembourg financial center to imitate, which I call "offshore mimicry," has a long history in the country. As we have seen in the three market niches discussed in this dissertation – private banking, investment-fund administration, and art finance – the Luxembourg "state-finance complex" has long sought to follow the advice of the country's large professional-services firms and the examples of success from other financial centers.

In his recent history of the country, Haag (2011) calls tiny Luxembourg "an original success" (*une réussite originale*). He writes, "the evolution of Luxembourg between 1945 and the present is extraordinary… This melting pot functions smoothly and efficiently without international or xenophobic tensions, a mode of peaceful co-existence unique in Europe" (2015:310). He continues this line of reasoning when describing the evolution of the country's

financial center: “financial services have now become one of the prime sources of national wealth creation, rendering the economy less dependent on national resources and more reliant on its innovative skills and managerial abilities” (2015:271). While the Luxembourgish state and civil society have bought about much social progress – for example, the attempts to integrate the nearly 50 percent of the resident population that is comprised of non-nationals – the country’s financial center in contrast may not be as exceptional as it likes to think. To get a sense of this, we must look at how similar offshore jurisdictions view themselves. Thomas examines the promotional materials of both Liechtenstein and the British Virgin Islands:

> Liechtenstein promotes as well a “high level of political continuity and stability” (more precise: “strikes are not a part of the working culture”), “minimal bureaucracy” (synonym of “fast decision making”) as well as juicy exonerations over intellectual property. Without forgetting a “AAA rating” and the fact that the Principality counts among the “safest countries in Europe”… (“Les commis voyeurs,” 6/3/16).
>
> Like a family resemblance, the salient traits of the BVI recall those of Luxembourg: the drafting of laws by interested experts, political consensus, economic vulnerability, the influence of local corporate attorneys, nation branding, sovereignty games, rent distribution. The resemblances between the two distant cousins are not fortuitous: they are characteristics of an offshore jurisdiction (“Anthropologie d’un paradis fiscal,” 8/19/16).

While Luxembourgers generally believe their country to be a *réussite originale*, individual members of the financial center nevertheless note the parts of the legal, fiscal, and economic systems borrowed from other jurisdictions. This process dates from when the Grand Duchy gained its independence from the Netherlands in 1839. As a senior regulator recalled to me, the *fin-de-siècle* Prime Minister Paul Eichen had already acknowledged this much: “the Luxembourgish legislator must be a copier, but he should be an intelligent one” (interview, February 2016). A senior securities attorney admitted that “Luxembourg has not invented anything”: Luxembourgish civil and commercial law is based on the French system, or its

interpretations made by Belgians. The constitutional law is Dutch in origin. Luxembourgish fiscal law is based on the German system, which was implemented during the Nazi occupation of the Grand Duchy during WWII. The contemporary "best practices" found in the Luxembourg financial center, the attorney continued, have often originated elsewhere, including the common-law United Kingdom and its associated "tax havens" Jersey and the Cayman Islands. "Making comparisons [between financial centers] is normal… nothing genius," my informant confessed (interview, March 2016).

The historical precedents of this "offshore mimicry" are many. The 1915 company law allowed foreign shareholders to participate as equals with their domestic counterparts in the governance of companies domiciled in Luxembourg. Passed in a moment of crisis provoked by the outbreak of WWI, this law was an "intelligent copy" – see the senior regulator's invocation of Eichen above – of the equivalent law in Belgium (interview, February 2016). Likewise, the infamous 1929 holding company law was drafted with an eye to similar structures already in operation in certain Swiss cantons.

Throughout the 1960s, Prime Minister Pierre Werner believed that Luxembourg could emulate the rapid growth of the Swiss financial center in part by "selling" the Grand Duchy's sovereign ability to draft legislation (see chapter three). The former banker Werner had numerous contacts with homologues in Switzerland and believed that the Swiss financial center could become a model for Luxembourg. Another former senior regulator summed up Werner's thinking as simply: "we should copy the Swiss banking model" (interview, March 2016). Nowhere was this more obvious than in the case of the secret numbered bank account (*compte numéroté*), thousands of which were opened for the "Belgian dentists" and their ilk from the 1970s onwards. Hampton and Abbot, eds. write,

> Switzerland became the benchmark and any newcomer had to up the stakes. Whereas the Swiss created the numbered account, meaning that only two officials in the bank know the identity of the holder (which can very well be different from the ultimate user), Luxembourg took the principle a step further, allowing only one bank official to know the identity of the holder of a numbered account (1999:33-34; cf. Deneault 2016).

In offshore jurisdictions such as Luxembourg, determining whether these actions constitute "emulation" or "innovation" can often be difficult. As we have seen, the Luxembourg "state-finance complex" has at different times followed an already existing blueprint for a particular niche or allowed outsiders to use its laws and geographic location as the basis for new markets. During the 1970s, the strategy that I call "offshore governmentality" (see chapter two) incorporated "emulation" *and* "innovation" – both "pursued under the guidance of roving lawyers and accountants acting as advisors to [the] government" (Palan 2006:120). A senior corporate attorney and informant of mine concurred with this interpretation; regarding the Luxembourg financial center's ability to adapt niches and legal structures formulated elsewhere, this interviewee mentioned the importance of foreign banks in the process. Those within the Luxembourg "state-finance complex" simply ask, "can we do the same here?" This attorney interviewee continued, and I paraphrase: there is a tendency to accommodate the needs of international capital. Bankers, lawyers, people from the Big Four, and others go to international conferences and bring back ideas for new business in Luxembourg. They were especially attuned to developments in [other offshore] jurisdictions such as Hong Kong and Singapore (interview, April 2016).

"Developments in Singapore," of course, would include the attention-grabbing 2010 opening of the freeport in this city-state. Thomas notes how this news was received within the Luxembourg "state-finance complex":

> Later when Singapore, the great rival, drafted a law to incentivize the establishment of a freeport, the Luxembourg financial center, possessed by the fear of missing out on an opportunity, discovered the deregulated art market and the tax-free bunkers of the ultra-rich. Deloitte drafted a favorable tax analysis and, in March 2011, the government proposed legislation introducing a VAT-suspension regime ("Les mousquetaires du Freeport," 4/29/16).

After the government bequeathed to the project a prime parcel of land next to the international airport, construction quickly began on the new Luxembourg Freeport, of Swiss design (Geneva architects 3BM3) and similar in style and dimensions to its Singaporean equivalent. Yet even the mimicry of such a feat cannot guarantee its own *réussite*, *pace* Haag. Though it presents itself to be a platform for the international art market, the Luxembourg Freeport has not been able to follow the lead of its *confrères* in Geneva and Singapore. Perhaps an art-finance consultant was implying this much when revealing to me: "There are still not many players [in art finance in Luxembourg]. There is no history. We are not *re-inventing* anything, merely using Luxembourg as a platform" (interview, February 2016; emphasis added).

The Art Market and Secrecy

"To be invisible is the best way to make business." – Yves Bouvier, the lead investor of the Luxembourg Freeport (cited in Knight 2016:66)

"The French state might come looking [at the freeport] where its Renoir is…" – A local gallerist (interview, March 2016)

The construction of the Luxembourg Freeport, and the attempt at developing "art finance" activities, comes at an interesting time for the country's financial center. Ever since the 2008-09 global financial crisis, the country has been under increasing pressure – from the OECD, the G20, the European Commission, and the U.S. Treasury Department – to drop its banking-secrecy laws. In response, the "state-finance complex" has largely obliged with the spirit of the negotiations, though the details and outcome of this process paint a more

complicated picture. One would not know, however, this more ambiguous state of affairs solely by listening to those associated with the financial center – either in public, the media, or in most of the 80-plus interviews I carried out. In the domestic and international business press, scarcely an article on Luxembourg passes without some figure from the "state-finance complex" asserting the country's seeming commitment to "transparency," which ironically is the very same language used by tax-justice campaigners such as Richard Murphy. For a taste of this, I quote the CEO of a local bank: "in the future clients' affairs will be *transparent*, due to regulations coming into force in 2015. Critical mass, quality and client *transparency*: banks that fail to take these three components as the basis for their activities are losing ground" (cited in Moyse et al. 2014:166).

In this section, I argue that the push toward "transparency," however tentative it is in reality, has been further compromised by the opening of the Luxembourg Freeport and the attendant activities in art finance. As demonstrated earlier in this chapter, "collectible assets" such as works of art, jewelry, and precious metals have become a new source of wealth for the richest investors. These non-financial assets are often stashed in freeports located in offshore jurisdictions such as Geneva, Luxembourg, and Singapore. "In these places, great paintings can be kept and traded tax-free – no customs duty or value-added tax is owed – and anonymously, without ever seeing the light of day," writes Zucman (2015:44-45).

One could make the argument, as art economist Rachel Pownall does, that this market represents a new frontier for wealth that wishes to be hidden – given that leaks and increasing international coordination on fiscal policy have made certain offshore *financial* activities more difficult and less lucrative in recent years. "Privacy and anonymity, cherished in the western world, are shifting trade towards dealers in certain markets," Pownall asserts (cited in Gerlis

2017a). In the "extremely opaque" art market, she continues, secrecy is paramount, as sales often take place in tax havens or in the world's growing number of freeports. Adam highlights the key role that freeports play in the approximately $60 billion-per-year art market:

> The mushrooming of freeports around the world can certainly help tax-dodgers… These huge, heavily guarded buildings contain a series of strong-rooms that can be used by dealers as an extension of their galleries – in a tax-free environment. If the work is resold while in the freeport, the owner pays no transaction tax, and while tax is payable in a destination once a work leaves the freeport, the work of art might have changed hands a number of times, certainly complicating the task of the tax authorities… The discreet nature of their operation is attractive. (2016:179).

As one might expect, the "technologies of secrecy" found in the art market are similar to those in private banking: bearer shares, unit-linked life-insurance policies, and holding and shell companies (see chapter three). For many years, a shell company emitting bearer shares seems to have been the most common strategy to hide the ownership of an artwork. Herzberg discusses how the Nahmad family of collectors hid its possession of a Modigliani canvas of contested provenance:

> It is Giuseppe [Nahmad], the oldest brother, who created, in 1995, [a] Panamanian company, by an intermediary from UBS and the Geneva office of Mossack Fonseca.[15] Three years previously, the patriarch [David Nahmad] created another [shell] company, Swinton International Ltd, domiciled this time in the BVI. The shares of [their other family offshore company] International Art Center were emitted "to the bearer" (2016).

Having been made public as part of the 2016 Panama Papers leak, these details point to the extensive use of shell companies by the family, who stores its paintings in the Geneva Freeport and conducts its affairs from New York, London, and Monaco. Another active user of offshore technologies is none other than Yves Bouvier, the main investor in the Singapore and Luxembourg freeports, who has been accused of fraud and money laundering for dealings in the international art market in recent years. At the helm of art transporter Natural Le Coultre,

> Bouvier financed purchases that dealers couldn't afford on their own. He sorted out cash flow and bills. He became adept at setting up offshore companies—Diva, Blancaflor, Eagle Overseas—to enable galleries to buy specific works and mask the identity of other investors in a transaction (Knight 2016:64).

Hidden behind offshore companies, Bouvier disguised his role in all sorts of transactions. "To be invisible is the best way to make business," he revealed to Knight (2016:66), without – it should be noted – the slightest trace of irony.

Another characteristic of art that makes it appealing to those wishing to hide money is its transportability. While prime London real estate can be owned by an offshore company, its "bricks and mortar" value cannot be physically removed from the city and taken to another jurisdiction. Owning fine art, diamonds, or precious metals, in contrast, enables their owners to transport the value held in these assets. Indeed, mobility is one of the selling points used by those in the art market. For example, the 2014 Deloitte/ArtTactic Art and Finance Report was bullish on the prospects of modern and contemporary Russian art: "this is likely to highlight the advantages of art as a *tangible and moveable asset*, which could be attractive in light of the current geopolitical situation" (2014:25; emphasis added). According to a Luxembourg art consultant and informant of mine, art is the ideal means to bring value *outside a country* due to its portability (interview, April 2016). A foreign banker who came to Luxembourg for work throughout the 1970s and 80s was even more explicit, and I paraphrase: as a repository for wealth, fine art can be akin to the untraceable suitcase of cash or bearer shares (interview, January 2016).

Three factors are noteworthy when high-value commodities such as art, antiques, and rare coins are used to transfer wealth to other jurisdictions. The first is that the collectible assets in question must be able to become "liquid" at a moment's notice, that is, able to be sold and thus converted quickly into hard cash. The second factor is the ability of the owner to conduct

transactions of the items in as discreet a manner as possible, preferably without attracting the attention of tax inspectors – hence the appeal of freeports. The last requirement for owning and trading mobile collectible assets is that the value(s) associated with the pieces be recognized in a "wide geographical area, so that the object can be bought or sold for a similar price in many different places" (Boltanski and Esquerre 2016:48). The appeal of the art market becomes obvious in this light. Works of fine art are small in size and easy to transport or hide. A single work, by Matisse or Pollock for example, has value that is widely recognized, meaning that it can be bought and sold on an increasing price trajectory across different markets.

Even the art-finance field – currently a *chantier* of the Luxembourg financial center – also counts secrecy to be a main selling point. Art funds are typically "closed" affairs, open only to a select group of individuals and not to outsider investors. The non-listed nature of these specialty funds means that they are exempt from the regulations and oversight of most financial vehicles (McAndrew, ed. 2010:151). A consultant informant of mine called most art funds "club deals," specialized private-equity structures – open by invitation only – whose yields are frequently higher than funds with more stringent regulatory and reporting requirements (interview, March 2016). Holding art in a Luxembourg unit-linked life-insurance policy can also provide another layer of secrecy to the works' owner(s) – though an informant of mine, whose institution sells these products, was keen to emphasize that this kind of abuse was more difficult nowadays (interview, March 2016). Yet, for 30-plus years, such activity attracted little regulatory scrutiny in Luxembourg. As was explained to me by a senior financial-center official, owners of these policies could choose which assets they place into the product as collateral. This can include shares in art, car, wine, or other speculative funds that the insurance companies themselves cannot offer. By accepting these assets as collateral, the company becomes the

"official" owner of them, even as the ultimate beneficiary can keep the privileges of owning the artworks or fund shares housed in the policy (interview, March 2016).

More so than closed art funds or unit-linked life-insurance policies, the "black box" of the global art market could very well be the freeports such as those found in Geneva, Singapore, and Luxembourg. Their association with concerns over money laundering, tax evasion, and theft of cultural patrimony has been widespread and is the source of alarm among many independent observers. According to a Luxembourg journalist, the business model of freeports ensures layers of opacity and secrecy for users and, some would say, allows the facilities' operators to take a "see no evil" approach to compliance (interview, July 2016). The first unusual characteristic is that Bouvier's firm, Natural Le Coultre, is simultaneously the primary shareholder *and* main tenant of the freeports in Singapore and Luxembourg. As the owner of these facilities, Natural Le Coultre is not required to investigate the provenance of the goods stored there by other firms – although it would be responsible for this task if a client were to use its logistical services. Furthermore, it does not possess any list of all the items stored in the facilities, only those goods that are under its control as a transporter of art. To make matters more confusing and opaque, individual persons cannot rent space at the freeports, but rather must sublet it from a logistics firm registered with the facility and the customs authorities. Gough writes, "[freeport management] cannot gain access to the vaults once they have been leased to customers… In marketing materials, many tenants highlight [this] confidentiality as a selling point" (2017). A supporter of the freeport project in Luxembourg resorted to a dubious metaphor to describe the role of Natural Le Coultre, "which doesn't know what the contents are in the [facility]. It is like real estate and [Natural Le Coultre] is selling condos. [It] rents the space but doesn't know what contents are put inside" (interview, February 2016).

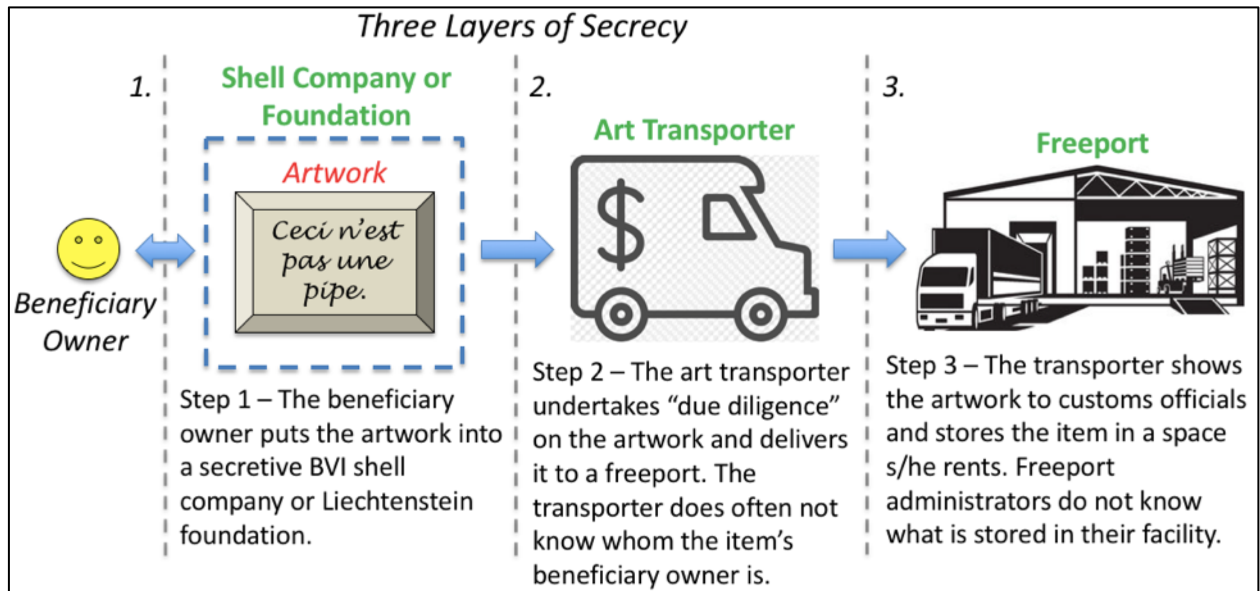

Figure 10 – On several regimes of secrecy

Critics have voiced their concerns over freeports in major news outlets. *The Economist* laments that

> the art market is custom-made for money laundering: it is unregulated, opaque (buyers and sellers are often listed as "private collection") and many transactions are settled in cash or in kind. Investigators say it has become more widely used as a vehicle for ill-gotten gains since the 1980s, when it proved a hit with Latin American drug cartels. It is "one of the last wild-West businesses", sighs an insurer (2013).

In *The Wall Street Journal*, other critics cite the specific role of freeports in facilitating art-market fraud. "I can't see any better way for people to launder money than to go through a freeport," says James Palmer, founder of Mondex, a firm specializing in recovering looted art (cited in Letzing and Colchester 2015). These facilities make it easy for money launderers to use ill-gotten gains to purchase works of art, which they can resell inside the facility months later. Experts such as Palmer do not believe that Swiss, Singaporean, or Luxembourgish customs officials would be able to determine how a painting's value was established or if the item sold was not forged solely on the basis of a receipt of a sale conducted inside the freeport. Nor, of course, do they know exactly who is the ultimate beneficiary of the works, as was pointed out to

me previously by a Luxembourgish journalist (interview, July 2016). Also concerned are U.S. customs and law-enforcement officials, who "don't know what's being stored there and who really owns the things," said Daniel Brazier, a special agent with the U.S. Department of Homeland Security, at a panel discussion on freeports in New York in June 2015 (cited in Letzing and Colchester 2015). Such critics of the freeport even include insiders from the Luxembourg "state-finance complex." I paraphrase the view of a senior banker, who believes that the facility's lack of transparency is a serious risk to the overall financial center: there are no checks once the items enter the facility. Auctions are organized on a confidential basis; goods often change hands in kind. This is an ideal location for money laundering (interview, April 2016).

In defense, freeport supporters argue that clients' desire for discreet storage should not be confused with wrongdoing. They say that increasing demand for freeports is not driven by theft or money laundering but rather by interest on the part of a new generation of "collector-investors." Some measures towards increasing transparency at the facilities have been taken. At the Geneva Freeport, a newly installed chairperson came with a mandate instigated by a report from the Swiss Federal Audit Office calling for a bolstered presence of customs officials. In Luxembourg, the "state-finance complex" has responded to criticism of the facility by drafting anti-money laundering laws specifically applying to "firms operating at [the Luxembourg] Freeport – which now have a heightened legal responsibility to know what they are putting into storage and for whom" (Letzing and Colchester 2015). Three customs officers are now reportedly based at the freeport and check arriving goods against databases of stolen merchandise. Untouched in these efforts, however, is the continued non-disclosure of sales, purchase prices, and beneficiary owners. A foreign art-market executive familiar with the

freeport projects believes that the current moves in Luxembourg and elsewhere to increase transparency are insufficient and are coming too late. According to this informant, goods stored in a freeport become "suspect," as if their owners somehow "know how to get around the processes of due diligence" (interview, January 2016).

In this vein, we might wonder if this corner of the art market – given its continued association with tax evasion and money laundering – might already count its own version of the "Belgian dentist." This association is not my own, but rather one I heard from a senior regulator in Luxembourg. "When there is a reduction in banking secrecy, the art market benefits," the interviewee mentioned, having heard this from a *dentist-turned-art dealer* acquaintance (interview, July 2016). Regardless, it seems irrefutable that the growth of the art market – freeports and art finance included – is linked, in part, to "threats" against the continued hiding of financial assets. As discussed in chapter three, these would include the curtailment of banking secrecy in jurisdictions such as Luxembourg and Switzerland and the adoption of the OECD's system of automatic information exchange (Pinçon and Pinçon-Charlot 2015:24).

In this moment of uncertainty for the future of the Luxembourg financial center, we should nevertheless be loath to discount its robust and time-tested system of "offshore governmentality." As mentioned, the new freeport might just be of use to those wishing to escape the reporting measures that banks are now obliged to undertake vis-à-vis their account holders. As *The Economist* notes in the Swiss case, some bankers "are said to have been recommending clients to move money from bank accounts to vaults, in the form of either cash or bought objects, since these are not covered by information-exchange pacts with other countries" (2013). How much money of dubious origin will ultimately be converted into fine art, gold, and jewels? It is difficult say, though we might fathom that Warhol canvases and 1,000-Swiss franc

notes are en route to becoming the shell companies and bearer shares of the post-Panama Papers era. In this light, and to avoid any doubt as to the *real* motivation behind the freeport project, I cite the pronouncement of Pierre Gramegna, Luxembourg's Minister of Finance, at the inauguration ceremony of the facility: "I am convinced that this project will add a new branch of excellence to our financial sector and *enhance its wealth management capabilities*" (cited in Knobel 2015:47-48; emphasis added). Such expectations seem little related to the freeport's ostensible goal of handling "goods in transit."

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We ended our conversation, and my interviewee asked a colleague to show me some of the facility *as well as* give me a ride back to the Kirchberg quarter of Luxembourg City, a place that is as well serviced by public transport as the freeport is not. Sensing my luck, I quickly stuffed my notebook into its backpack and got up to leave, only to be able to hear the squish from my wet shoes once again. The colleague was not quite ready, however, so my interviewee directed me to wait in the nearby lunchroom. I obliged. I went into this *cantine*, an automatic light came on, and the door shut behind me. Here, in a kitchen where only squeaky-clean dishes sat next to the sink, I was left to my thoughts, pondering the many meanings of this place – sleek, startling, swanky, sterile, and space-age. In the more simplistic formulation of *The Economist*: "iron-clad security goes along with style" (2013). After a long ten minutes, the colleague came in and commenced with an abridged version of the freeport tour. We proceeded down a corridor bathed in a harsh white light. Before we reached a row of private showrooms, the colleague pulled ahead of me ever so slightly, as if to be able to make sure there would be absolutely nothing to see – no dollies weighed down by ingots of gold or wooden packing crates housing canvases by Manet en route to Geneva.

Béton brut, or purposely unfinished concrete, encloses the freeport's atrium, which was lit throughout by tasteful and strategically placed LED lighting. For his facility in Singapore, Bouvier commissioned the U.S. "lighting artist" Johanna Grawunder, whose work he also collects, to complete the not insubstantial task of illuminating a vast and windowless freeport (Knight 2016:66). Descending a narrow staircase and passing numerous security cameras, the colleague and I walked out onto the floor of the spacious atrium. Around us was a "sculpture" the likeness of a rusted-out, 1970s U.S.-model sedan that had been relieved of its wheels – as well as a massive fresco by the Portuguese "street artist" Vhils, portraying the faces of five people. Made in Portugal in sections and transported to Luxembourg, this abstract group portrait of sorts was fashioned of raised cement and evokes – in equal parts – sculpted African masks, Mount Rushmore, pointillism, and the portraits of Chuck Close. A local journalist notes the irony of "[finding] a street artist in the freeport, a high-security fortress that will be protected by three-meter thick walls, hundreds of cameras, and guards 24 hours per day. And where 'one can enter only by invitation,'" as guaranteed an administrator of the facility in 2014 (Telo Alves 2014).

Photo 22 – Street art without the street; Luxembourg Freeport (photo by the author)

The colleague and I walked around the atrium. No other people were around, yet here was the space – as a senior financial-center official and project supporter told me – where freeport clients could entertain their friends, throw a fête, and ogle at hidden treasures. As such, this interviewee said, the freeport can easily become a "private museum" (interview, April 2016). Yves Bouvier would no doubt concur. His original idea, after all, was to turn his freeports into "places the high end-customer wants to be seen in, the best alternative to *owning your own museum*," as a facility administrator in Luxembourg revealed to *The Economist* (2013; emphasis added). Ultra-wealthy "collector-investors" of art, it turns out, do not just want a run-of-the-mill storage warehouse.

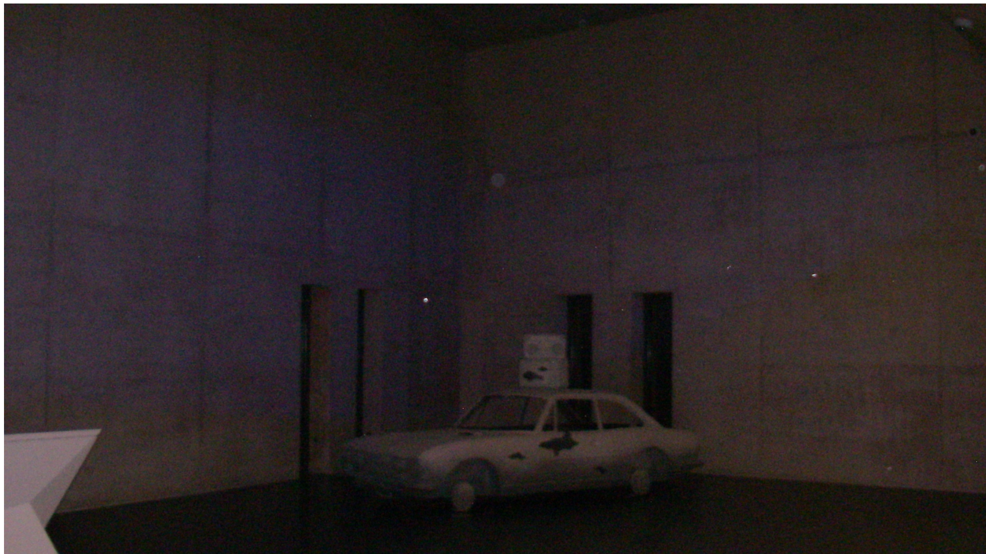

Photo 23 – Immobile art, under surveillance; Luxembourg Freeport (photo by the author)

In this regard, the atrium of the Luxembourg Freeport has become yet another *mise en scène* for the world's hyper-rich, whose wealth has continued to accumulate apace even amid a global financial crisis. To avoid volatility in the financial markets, the top 0.01 percent of earners have simply parked their money in the high-value art that they purchase at auctions or fairs, via private sales, or in galleries. In the Luxembourg Freeport, these "collector-investors" can visit their holdings or view potential ones without even showing their passport, given that the facility

is located within the grounds of the country's international airport. These clients are whisked into the freeport by its attentive staff and are free to trade their possessions, all without incurring customs duties, capital gains, or sales tax – charges that can be as high as 27 percent elsewhere in Europe (Blenkinsop 2014).

Showing particularly valuable artwork around the world to a number of potential buyers, who can scrutinize the pieces in a private atmosphere such as that of a freeport, is a time-worn strategy used by dealers and auction-house representatives to raise the price range of an artwork. These "previews," usually held for an invite-only audience in venues such as the Luxembourg Freeport, are spectacles par excellence of what Boltanski and Esquerre call "enrichment economies" (2016:35) – a kind of lifestyle commerce "where seeing and being seen is central and buyers can boast among their homologues of their newest expensive acquisitions" (Fillitz 2014:90). Boltanski and Esquerre, however, do not believe that such spectacles are marked by competition but rather by elite *connivence*:

> The seemingly exorbitant prices that some buyers are willing to pay in fact serve a rather mundane purpose by sustaining the value of *all the assets* in this category. This reduces the danger of a large-scale destruction of collective wealth, a threat which always hangs over accumulations of things, however exalted and "eternal" they may be (2016:51; emphasis added).

The colleague and I traversed the freeport's atrium one last time: past the sealed showrooms flanked in "light art," the fresco made of concrete, and the simulacrum of an automobile in decay. En route to the exit, we pushed through a series of thick doors, passed the metal detector in reverse, and stopped at the guard booth so that I could collect my ID. At last on the outside of freeport, the two of us hustled over to the colleague's car, drove past a gate in the barbed-wire fence that rings the facility, and sped off into the gloomy early evening of a northern European winter.

A local art-finance consultant asserted to me once that "there was no art culture in Luxembourg" before the opening of the freeport (interview, February 2016). It is almost *too* easy to state, however, that the "art culture" inspired by the freeport is not a healthy or inspiring one. To quote German critic and collector Harald Falckenberg: "art is a mirror of society. Every era gets the art it deserves… Today's art system involves many diverse forms of dependency and manipulation" (2014). Unlike the traditional art of representation – which long sought to manifest the power and influence of either the Church, the aristocracy, or the *haute bourgeoisie* – the convoluted and referential art world of today has been fashioned as much by its more emblematic artists, such as Jeff Koons or Damien Hirst, as it has by the likes of Yves Bouvier, Charles Saatchi, and the Nahmad family. These latter "collector-investors" utilize the potent assemblage of offshore technologies, art finance, and freeports as central to their global marketing strategies. In this light, I must wholly disagree with the aforementioned consultant who asserted that "there was no art culture in Luxembourg." It is not that the art world suddenly showed up in this tiny country, but rather that global "art culture" has come to resemble some of the more questionable activities long found in the Luxembourg financial center.

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[1] It is worth noting that even though most works of fine art are rarely displayed in public, they nevertheless maintain their aura (*pace* Benjamin). Value, thus, comes not only from the upwards-trending market for artworks, but also from the reputation and fame associated with their owner(s). There are many documented instances of an artwork gaining extra value solely by its association with a famous collector, as "proof" of its authenticity perhaps. Nancy Levine wisely pointed out to me that fine art, in this regard, shares a number of characteristics with the kula rings described by long ago by Malinowski in the Trobriand Islands (personal communication, April 2018).

[2] While some providers have been able to sell information on art prices to investors, such data are nevertheless circumscribed and fragmentary. Many art sales are not recorded, and protections against insider trading do not yet exist for the art market (Knorr Cetina and Preda, eds. 2012:477).

[3] I use the masculine possessive pronoun because, as is discussed in the conclusion, the techniques of offshore finance are used overwhelmingly by men, to the point that we could label offshore finance a "patriarchal technology."

[4] In recent years, a group of Luxembourg-based investors, technicians, and bankers attempted to develop such a platform. This "art stock exchange" would allow investors to purchase "shares" in a particular work of art, as an informant of mine knowledgeable about the project detailed to me one afternoon (interview, February 2016). Akin to the holder of one share of Vodafone stock becoming a 1/26 billionth "owner" of this telecommunications giant, this platform would enable investors to buy not an entire Johns or Kandinsky canvas, but rather, say, 1/40,000 of it. The project received the backing of the Luxembourg Ministry of Economy, but never came into being, due to several concerns – similar to ones discussed above – on the part of the Luxembourg financial regulator, the CSSF.

[5] As regards the art-finance products currently on offer in the Luxembourg financial center, the unanimous position of my informants was that art-backed personal loans are far more common than art funds.

[6] "Opportunistic purchases," in this case, frequently means offering immediate cash to "sellers coping with debt, divorce, or death" in exchange for their art holdings (Thompson 2010:245).

[7] I elaborate on this tendency, which I call "offshore mimicry," in a section toward the end of the present chapter.

[8] *Société d'investissement en capital à risque*; in English, "investment company in risk(y) capital"

[9] Reserve Alternative Investment Fund (see chapter four)

[10] Given its physical and undividable nature, it is impossible to split an artwork in half for inheritance purposes, which leads many wealthy families to establish a foundation or family office structure to ensure its safekeeping across generations. Thus, the art becomes owned not by one of a family's many possible children, but rather a legal structure that can certify that the holding remains integral at the moment of bequest.

[11] Bouvier and his family sold their stake in Natural Le Coultre in October 2017.

[12] As an art transporter, Bouvier would have an idea as to which artworks were up for sale at any given moment, insider knowledge that could inform his dealing of the very same pieces. As a Luxembourg journalist pointed out to me, the unregulated nature of the art market allows such "double dealing" and conflicts of interest to happen (interview, July 2016). Bouvier's opaque practices came to light in early 2015 when he was accused of systematically overcharging the Russian oligarch Dmitry Rybolovlev by hundreds of millions of dollars on the sale of some 33 paintings over the period 2003-15. Bouvier was briefly arrested in February 2015 as he entered Rybolovlev's residence in Monaco, where he had gone supposedly to discuss the upcoming sale of a Rothko painting owned by the oligarch.

[13] This figure is around eight percent for the United States and a bit over 10 percent for the United Kingdom and Switzerland, typically thought to be the three most capital-friendly jurisdictions in the world (Chavagneux 2015:185).

[14] One could argue, as an editorial in the Belgian journal *Cahiers marxistes* does, that *all* of Luxembourg was a *zone franche* from the 1960s onwards – a tiny territory boasting markedly different fiscal, legal, and economic norms than those of its neighbors in Western Europe, especially with regards to the finance-related activities of foreigners (Gillis and Godard 1996:4). In this light, we could say that the Luxembourg Freeport represents a "meta-*zone franche*," a duty-free area within a country that, for the most part, does not tax the large movements of foreign capital that the "state-finance complex" has succeeded in routing into its jurisdiction.

[15] Mossack Fonseca, the disgraced Panamanian law firm, was one of the world's most active providers of offshore legal and administrative services. In 2016, the firm's databases, totaling 2.6 terabytes, were leaked to the German newspaper *Süddeutsche Zeitung* as the "Panama Papers." This leak of some 11.5 million documents, which date from the firm's opening in the late 1970s, has provided what is perhaps the most detailed insight into the scope and activity of the global system of offshore finance over the past 40 years.

CONCLUSION

PART ONE: CONFESSION

I end my account of the uses of secrecy and consensus in the Luxembourg financial center on a textual, cultural, and ultimately interpretative note. In this vein, I draw inspiration from none other than Max Weber and the celebrated historical connections he makes between capitalism and Christianity. To introduce this analysis, I proceed with two observations. As I was completing interviews in Luxembourg, I was struck by how often my informants mentioned personal *transgressions* as the reason why clients wish to take their money offshore – away from the prying eyes of tax authorities, creditors, and especially close relatives. As a senior regulator revealed to me, financial-center clients look not only for "tax freedom" but also "family freedom." "People with disturbed family lives often hide their assets in order to avoid [inheritance] laws… Business is not always moral. You may have reservations," this regulator admitted (interview, March 2016). The "wrongdoings" that interviewees cited – in emic terms – include tax evasion, bankruptcy, avoidance of financial liability, non-payment of debts, divorce, adultery, estrangement, second families, out-of-wedlock children, among others.

With a similar frequency, my informants also made the connection between Luxembourg banking secrecy and the secrecy afforded to other professionals in the country, particularly those working in healthcare fields. As I described in chapter two, Article 458 of the Luxembourg penal code, which dates from the late nineteenth century, forbids professionals such as doctors, health workers, midwives, pharmacists, and other "depository persons" (*personnes dépositaires*) from making public any information pertaining to their patients. It was this legal basis for professional secrecy that was extended to bankers in 1981, and later to all those working in the financial center in 1993.

Even as banking-secrecy laws were explicitly based on Article 458 from Luxembourg's penal code – which does not mention priests, but rather "depository persons, who are told secrets on account of their profession" – I contend that it is Catholic canonical law as applied to *confession* that provided the social model and precedent for Luxembourg banking secrecy. The age-old rite of confession thus stands as a distant origin for the contemporary and secular version of "confession" between a client and banker. I continue this line of analysis by making a conceptual linkage between the priest and the banker – that is, that these two figures must remain *silent* after hearing the "confession" of a parishioner or a client. In other words, priests and bankers in Luxembourg both learn about the more delicate aspects of someone's life but are legally bound to keep this information secret. My argument asserts that it is this shared act of *confession* – a practice spanning secrecy and consensus – that gives "offshore governmentality" the profound social, economic, and political significance it enjoys in contemporary Luxembourg.

From Religious to Secular Confessions

"We have since become a singularly confessing society. The confession has spread its effects far and wide. It plays a part in justice, medicine, education, family relationships, and love relations, in most affairs of everyday life, and in the most solemn rites; one confesses one's crimes, one's sins, one's thoughts and desires, one's childhood, one's illnesses and troubles; one goes about telling, with the greatest precision, whatever is most difficult to tell. One confesses in public and in private, to one's parents, one's educators, one's doctor, to those one loves… One confesses or is forced to confess… Western man has become a confessing animal" (Foucault 1979:59).

Before I make my connection between the priest and the banker, I will address briefly the history, uses, and dynamics of confession as a rite. That confessing one's sins, crimes, or errors maintains its importance in the contemporary era points to the cultural affinities we share with the year 1215, when the Fourth Lateran Council of the Roman Catholic Church (henceforth "Lateran IV") made annual confession *compulsory* for all its faithful. Whereas early Christians undertook confession as a group pedagogic practice – in the form of the "shepherd" celebrant

and his “flock” (Foucault 2009:137-140) – in the aftermath of Lateran IV, it had become a private and intimate act between the confessor and confessant, protected by the newly elaborated Seal of the Confessional. Instead of consisting of group deliberation and reflection, post-Lateran IV confession required the penitent to seek out and prepare themselves to receive this sacrament *alone* (Brooks 2000:90-91). The confessant thus is obliged to examine herself and submit to a confessor who holds the power to absolve, acknowledge, and legitimate her status within a community. It was thus the (male) priest who became responsible for tending to the spiritual condition of his confessing parishioners, exercising both healing and reprobation. Canon 21 of Lateran IV states,

> Let the priest be discreet and cautious that he may pour wine and oil [a reference to Luke 10:34] into the wounds of the one injured after the manner of a skillful physician, carefully inquiring into the circumstances of the sinner and the sin, from the nature of which he may understand what kind of advice to give and what remedy to apply, making use of different experiments to heal the sick one.

Via this formulation, a vast new mission – and source of power and influence – presented itself to the clergy.

What did this new form of confession entail? It came to reflect the Church’s belief that that which is *hidden* – considered most private, secret, and possibly shameful – is precisely what must be given articulation and revealed to the confessor. According to Foucault, this new version of confession turned it into a crucial modality through which “truth” and “dissimulation” could be discerned. Moreover, it was via confession that the voice of “reason” – that of the priest’s – could be heard (1997:236). In this light, confession necessarily bonds the confessant to the confessor; the two establish rapport via the divulging of secrets and the acknowledgement that such secrets will be kept. This understanding is at the heart of confession and the desired

absolution, at which time the confessant can free herself from holding an unwanted secret or fault (Manderson et al. 2015:S185). Foucault writes,

> [Confession, *l'aveu*] is also a ritual which unfolds in a relation of power, since one does not confess without the presence… of a partner who… requires the confession, imposes it, weighs it, and intervenes to judge, punish, pardon, console, reconcile… a ritual, finally, where articulation alone, independently of its external consequences, produces, in the person who articulates it, intrinsic modifications: it makes him innocent, it redeems him, purifies him, promises salvation (1979:61).

It was not until the sixteenth-century Counter-Reformation that confession began to take place in the iconic piece of furniture that we now know as a confessional. These booths, which feature prominently even today in the interior of Catholic churches, are designed to facilitate a private exchange of words between confessor and confessant through a distinctive lattice-work grille. Such an arrangement "establishes a private world [that] shields itself from the public and fanaticizes its isolation from others" (McGowan 2016:52). Herzfeld brings our attention to the "moral architectonics" of these booths – that is, that they are the "architectural equivalent of the veil" (2009:144), reducing the eye contact between the parties during confession. As Brooks offers, the confessional – "this primal scene of exposure, shame, and guilt" – "is absolutely necessary to the project of making a confession" (2000:21).

Photo 24 – A confessional; Notre-Dame Cathedral, Luxembourg City (photo by the author)

In order to receive absolution, the confessant must submit to a regimen of orthodoxy in behavior and belief. In his multiple analyses of confession, Foucault cites this Catholic rite as an archetypal exercise of knowledge-power (1980), and the related concepts of panopticism and self-surveillance: that the act not only confers power to the confessor, but also allows for its exercise over confessants. As he shows, the conventions of confession, and the regulations seeking to maintain any attendant secrets, have remained remarkably constant since Lateran IV, thus creating "a shared ethics of what can be asked and told, revealed, and inspected" (Manderson et al. 2015:S184). By learning about a confessant's transgressions, according to

Foucault, the priest acquires a coercive device by which they can pressure parishioners into voluntary compliance with other social and moral norms.

After imposing the requirement of annual confession in 1215, the Roman Catholic Church – in light of the Reformation – re-affirmed its commitment to the practice at the Council of Trent in 1551, declaring that confession is divinely sanctioned and obligatory for one's spiritual redemption. Even as the fledgling Protestant churches of the time rebuffed the Catholic rite of confession, its form nevertheless proved deeply influential within the ranks of other institutions and intellectual movements. Beginning in the modern period, we see everything from literature to liberalism to the law and psychoanalysis adopting some version of confession and subscribing to its purported ability to reach our very sense of "self." Even for those in the West untouched by Catholicism or other religions, the confessional mode came to implicate everyday morality during this time. Indeed, it is difficult to think of the self, or its formation, without bearing in mind what confession implies about our inner lives.

During this progressively secular period of European history, confession no longer solely entailed truth to God, but also truth to oneself. Brooks writes about "[this epoch's] increasing emphasis on the individual's self-examination, which we may view as evidence, and perhaps precondition, for the emergence of the 'modern' sense of guilt and individual responsibility" (2000:92). Even the version of confession as systematized by Lateran IV in the thirteenth century suggests the arrival of a distinctly modern sense of selfhood, one whereby individuals now become *accountable* for attending to their aims, deeds, and judgments – as well as for initiating the speech acts that can lay bare guilt or personal failings. Regardless, what these religious and secular practices share is that attaining "the truth" necessarily involves a confessional gesture – that is, to expose what is most intimate in order to "know oneself" (Foucault 1988:19).

What unites these modern-era, secularized forms of confession? That confessing one's misdeeds – either to readers, a boss, judge, or psychoanalyst – means recognizing oneself as a wrongdoer, an admission that usually constitutes the grounds by which one can mitigate punishment. To fail to do this could aggravate one's own guilt and – even worse – lead to estrangement from her proximate relations. "To refuse confession," writes Brooks, "is to be obdurate, hard of heart, resistant to amendment. Refusal of confession can be taken as a defiance of one's judges" (2000:2).

Western literature is perhaps the most influential medium to employ the form of confession, turning it into a mode of self-expression that conveys the honesty and authenticity of an author. From Rousseau to Wordsworth to Roth, the baring of one's innermost thoughts, intentions, and desires has long been held among writers to be a gesture as necessary as it is risky. Practices akin to confession also pervade Western economic and legal systems. As Weber reminds us, in nineteenth-century Europe, as the economy became the central and widespread focus of classical liberalism, sound economic behavior indicated one's subordination to God (cf. Brown 2015:67).

Among modern social and cultural forms, however, it is psychoanalysis that most closely mirrors the act of confession, as a secular and "scientific" re-interpretation. Similar to a priest initiating confession, the psychoanalyst seeks to uncover something that the analysand already knows, though only in a cursory or unsuspecting fashion. In working toward the discharge of this "blocked" knowledge, the analyst must create a transferential bond in order to elicit a confessional mode of discourse from the analysand. In the words of Brooks:

> The need to confess speaks *of* guilt, certainly, but it does not speak *the* guilt [or] locate that psychic configuration that needs discovery and healing. It is not the "voluntary" confession that interests the psychoanalyst, but the involuntary, that

> which, we can almost say, is coerced from the analysand (2000:117; italics in the original).

In exploring this dynamic, Foucault (1979) shows how psychoanalysts have mirrored priests in steering analysands to reveal to their innermost desires and sexual practices. As he argues in *History of Sexuality, Vol. I*, these "confessions" frequently become data for the social sciences and were used in the formulation of ever-more subtle mechanisms of social control.

Priests and Bankers: From Absolution to "Solutions"

"The terrible serpent that this confession has forced out of its subterranean lair, to bring it out into the light and make its shame a public spectacle, is quick to beat a retreat" (Foucault 1999:178).

*"You have to listen to your client tell you about themselves [*sic*]." – A U.S. wealth manager (Harrington 2016:63)*

As mentioned previously, the scene of a confessant with priest – in the intimate-yet-detached space of the confessional – represents a ritual that secular institutions and disciplines have long recognized as a potent cultural experience. The confessional model is so powerful in the West, I believe, that even those whose religion (or non-religion) does not acknowledge the specifically Catholic practice of confession are nevertheless influenced by it. In this section, I present some reasons for how confession has served as a model for contemporary notions of "banker-client privilege," and the attendant secrecy laws afforded to these interactions in Luxembourg and elsewhere. Capitalism did not create the rite of confession, as is obvious – though "the development of capitalism necessarily coincides with an increasing turn to private spaces" (McGowan 2016:52), such as those typified by the confessional. In making such a comparison, we note an ideological parallel first drawn by Althusser: finance capitalism "[is] as 'natural,' indispensable-useful and even beneficial for our contemporaries as the Church was 'natural,' indispensable and generous for our ancestors a few centuries ago" (1971:148). Or in

the formulation of Muehlebach: “it seems that Catholicism has become good to think with in these neoliberal times” (2012:92).

Comparing priests and bankers is not as farfetched as it may initially seem. As distinct from other financial professionals, private bankers frequently build relations of extra-ordinary rapport with their clients, learning about many personal aspects of their lives. Once such bonds are established, they often endure a lifetime, or even over multiple generations within the same family. This is particularly the case for bankers administering trusts, estates, and “family offices” (see chapter three), which potentially give them vast insight into the private lives of their clients. The archetype of the discreet Swiss banker is salient in this light: his emotionless, unreadable demeanor gives him a reputation for protecting clients’ fortunes as well as their secrets. Here we see the parallel with the knowledge-power of the priest at confession: the private banker’s awareness of the innermost workings of rich families makes him, in certain regards, the clients’ master. Harrington writes, “like a family doctor or lawyer, a wealth manager[1] is privy to highly sensitive information, but that information is not confined to just one domain… The wealth manager, in order to do his or her job properly, *has to know everything*” (2016:79; emphasis added).

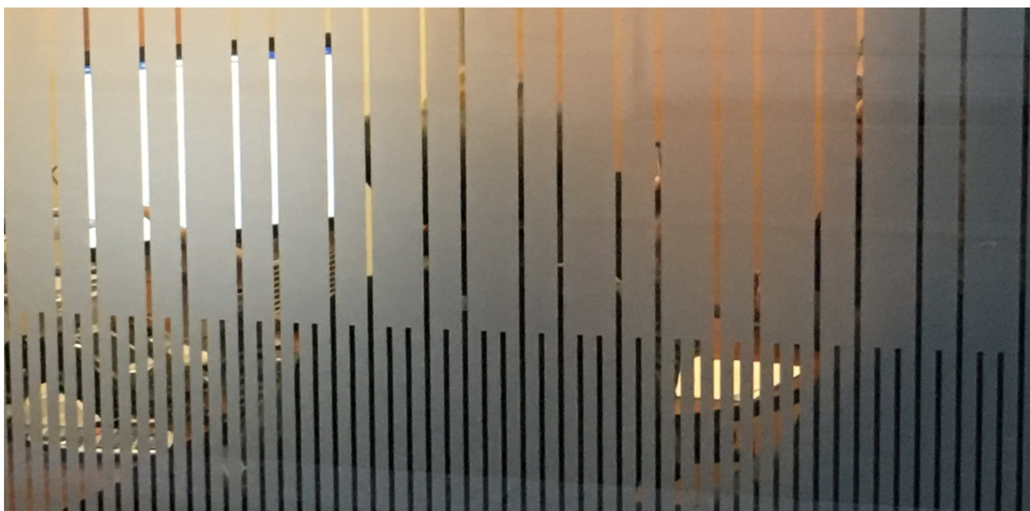

Photo 25 – Banking-confession (photo by the author)

What exactly do rich clients *confess* to their private bankers? A regulator informant of mine divulged that clients often pick their banker as "someone they want to know everything about them," such as – in this informant's view – "the addictions of children, mother's lesbian affairs, and *lots and lots of mistresses*" (interview, March 2016; emphasis added). Harrington cites an Australian wealth manager based in Guernsey: "You're privy to a lot of personal information, and you end up having *conversations that you know can't be had with anyone else, including the rest of their family*" (2016:84; emphasis added).

This proximity to the inner lives of the ultra-rich represents something of a puzzle: how do private bankers cultivate the levels of trust necessary to do their jobs for wealthy individuals normally inclined to be distrustful? Central in this regard are the secrecy laws found in Luxembourg and other offshore financial centers, as well as the codes of conduct of the professionals handling clients' money. The combination of secrecy laws and codes of conduct allow bankers to treat as personal and private their clients' affairs, even if certain of their actions are illegal or unethical: "the key notion [is] that the client's confidential relationship with the professional [is] *sacrosanct*" (Urry 2014:67; emphasis added). In this sense, the private banker's position of trust is premised on a peculiar combination of legal and financial expertise as well as confessional rapport. This latter part of the job can be extensive: with some clients, the private banker "acts almost as a member of the family, privy to its most compromising secrets, enlisted in battles, and occasionally serving as the surrogate for the authority of a deceased patriarch" (Harrington 2016:120-121).

It goes without saying that there are profound differences between priests and bankers. Priests are responsible for the spiritual guidance of their parishioners, a task that is not bound by the traditional logic of profit. The business model of banking, in contrast, is best understood

primarily in terms of revenue generation, winning and retaining clients, and "business development." To bankers, professionalism is often seen through the narrow prism of "keeping the client happy," a marked departure from the broader spiritual calling of what it means to be a priest. Spence and Carter (2014:949) note a precipitous decline in the "discourse of public service" among today's young financial professionals, in contrast to previous generations of their colleagues. A "tax-shelter lawyer" echoed this sentiment to Ong and Collier, eds. (2004), arguing that it is his lone responsibility to further the individualized interests of clients. Tax lawyers, he insisted, have no separate obligation to the fiscal system: "If we are able to use [the techniques of tax avoidance] to our clients' benefit and the government's detriment, we are merely doing our job," he concluded (cited in Ong and Collier, eds. 2004:83).

Further differentiating priests from bankers is that the former offers "absolution," whereas the latter touts its "solutions." While alike in diction, the priest's "absolutions" and the banker's "solutions" could not be more dissimilar. The "solutions" offered by Luxembourg private bankers over the years have frequently straddled the line of legality, and are often *explicitly* illegal in the clients' home countries. For years, bankers could maintain the façade of "plausible deniability" as to what their clients were (or were not) doing, even as they were key enablers of misconduct. As cited in chapter three, Luxembourg private-banking activities long operated on the "borderline of laws," in the words of a foreign banker who worked in Luxembourg in the 1970s and 80s (interview, January 2016). A senior trade-association representative was even blunter: "nowadays, [certain aspects of the Luxembourg private banking of yesteryear] would imply criminal activity" (interview, January 2016).

Article 458

« D Kierch bleiwt am Duerf ». – A Luxembourgish adage

Translation: "The church stays in the middle of the village."

Since their country's independence in the mid-nineteenth century, Luxembourgers have negotiated the intrigues of peasant farming and industrial wage labor, the bureaucratic *dispositif* of the nation-state, and the material allures of finance capitalism – all under the symbolic power of Roman Catholicism. We can see this trajectory in play by tracing the history of Article 458 of the penal code. The original version dates from 1879 and speaks to a country undergoing profound social changes linked to the development of heavy industry and a biopolitical state apparatus:

> Doctors, surgeons, health officers, pharmacists, midwives, and all other depository persons [*personnes dépositaires*], by status or by profession, [possessing] secrets told to them, who – notwithstanding instances in which they are called to provide testimony in court or those in which the law obliges them to divulge [*à faire connaître*] these secrets – upon revealing them, will be punished by imprisonment from eight days to six months and a fine of [the contemporary equivalent of] 500 to 5,000 euros.

As detailed in chapter three, Article 458 became the legal basis for the banking-secrecy laws passed in 1981 and expanded in 1993 – which have provided impetus to "offshore governmentality" and the precipitous growth of private banking since that time. "There was no mention of banking secrecy in Luxembourg legislation until 1981," specifies a regulator to Moyse et al. (2014:62). Even as the original Article 458 made no reference to bankers under its definition of "depository persons," "it was through this side door that banking secrecy was introduced into Luxembourg legislation," notes this regulator. Here is a justification for this rather tenuous equivalence:

> Whereas the professional secrecy of the physician or pharmacist is supposed to protect the intimate sphere of the client as for his moral, physical, and physic

> integrity, the professional secrecy of the banker aims to protect the client in all that which regards financial or asset transactions and, in other terms, comes into play where this intervenes with the public interest (Guill 1983:15).

Even as Article 458 makes no mention of priests, or bankers for that matter, subsequent revisions and interpretations of the original text do add priests to the list of professionals covered by secrecy laws (Kremer and Lebbe 2009:454). Article 144 of Bill (*Projet de loi*) 571, which passed in 1967, states

> Lawyers [*membres du barreau*], *ministers of a religion recognized by the State*, doctors, pharmacists, midwives, and all other depository persons, by status or by profession, [who possess] secrets told to them, cannot be interrogated regarding the facts which… they cannot provide… without violating the secrecy of which they are depositories (emphasis added).

The inclusion of priests with other "depository persons" covered by secrecy laws is also reflected in commentary on fiscal and legal matters. Kaufmann asserts,

> The question as to whether a witness who belongs to one of the categories of persons designated in Article 458 of the Penal Code may… refuse to testify tends… to be resolved in Luxembourg with distinctions depending on the person of the "confidant." The answer is affirmative in the case of one special category of "necessary confidants" such as doctors, lawyers, and *members of the clergy* (1991:12; emphasis added).

It goes without saying, however, that the contemporary Luxembourg "state-finance complex" is far more concerned with the secrecy afforded to bankers than that to priests. Secrecy during priestly confession – even though it provides the social form for banking secrecy, as I argue – is nevertheless not the basis for a nearly $1-trillion industry such as Luxembourg's private-banking sector of today. In the words of Dondelinger: it is not the priest but "the banker [who] should be considered, under Luxembourgish law… as a 'necessary confidant' [*confident inéluctable*], [and] elicit an absolute measure of trust from the public [*qui aurait reçu une véritable investiture publique*]" (1973:12). Steichen acknowledges the shift in importance from the priest-confessor to the banker-confessor: "the reflection of a *new religion* particularly

developed in Luxembourg, economism, a religion whose doctrine has only one canon: that constitutional texts must bend before economic laws, notably those of… fiscal competitiveness" (cited in Thomas, "Naissance d'un paradis fiscal," 8/5/16; emphasis added).

Photo 26 – The tête-à-tête bancaire *(photo by the author)*

What shape does this new banking-confession *à la luxembourgeoise* take? Our "client-confessant" arrives at the office-confessional of his banker-confessor at the start of the business day. "At 10 AM, the board of trustees [of the client's shell company] was completed and at 10:30, the bylaws… were prepared. At noon, the client would open a bank account, into which would go the company's share capital [*capital social*]. Then, after lunch, a visit to the notary public. At 3:00 PM, the client would leave." In exchange for his "confession," the client-confessant receives an *ab-solution* from the banker-confessor, such as "[sheltering] money from a spouse or from the tax authorities; each one had his reasons" (Thomas, "Quest for substance," 1/29/16). The banker-confessor, in turn, is legally obliged *not* to make public the proceedings of

the banking-confessions over which he presides. If the terms of an *ab-solution* are somehow disclosed, the banker-confessor can expect to bear the full brunt of the Luxembourgish legal system. For example, in 1989,

> a Luxembourg court opened a case condemning [French bank] Crédit lyonnais for the indiscretion of one of its employees who had transmitted the information of a client to the French tax authorities. In the decades to come, Luxembourg legal authorities would mention in its proceedings the argument of the ABBL, which this lobbying outfit itself had borrowed from the Swiss Bankers Association: the protection of the "intimacy of private life" (Thomas, "Les renards," 1/2/15).

PART TWO: SINS

Neoliberalized Kinship

When each citizen is constantly seeking to change his position, when open competition is pursued by all, when wealth is amassed or frittered away in the space of a few moments amidst the turmoil of democracy, visions of sudden fortunes and great possessions easily acquired and lost – and images of chance in every shape or form – haunt men's minds (de Tocqueville 2003:637).

The great families marry among themselves and, in a veritable collective alchemy, they produce the miracle of the multiplication of the loaves, in every form of capital (Pinçon and Pinçon-Charlot 2006:27).

As befits a work of anthropology, "family" has been a recurring theme of this study – as in "family offices" (see chapter three), or as in patriarchs wishing to leave tax-free fortunes to their offspring, or divert it from them entirely. In light of my discussion of "banking-confessions," I offer a few words on the effects of offshore finance and widening wealth inequality on contemporary familial relations. When talking about changes in kinship patterns in the neoliberal West, researchers such as Harvey (1990), Muehlebach (2010), Streeck (2016), and many others note a general re-orientation of material relations back towards the family structure – for everything from housing to child and geriatric care. For non-elites, these changes have meant vast reductions in welfarist programs that sought to provide a degree of support irrespective of an individual's relations with family members (cf. Muehlebach 2012:106).

Harvey adds how neoliberal de-industrialization has resulted in "older systems of domestic, artisanal, familial (patriarchal), and paternalistic ('godfather,' 'guv'nor,' or Mafia-like) labor systems [being] revived and flourishing as centerpieces rather than appendages of the production system" (1990:152).

The offshore finance found in Luxembourg and elsewhere has also affected the kinship structures of elite families – namely in how they have benefited tremendously from ballooning financial and real-estate markets and from the tax-free inheritance of estates. By turning one client's generational surplus – created perhaps through entrepreneurism, tax avoidance, or special investment opportunities – into a dynastic fortune, offshore professionals contribute to the reproduction of socio-economic elites and augmentation of class divisions over time. Via offshore shell companies, trusts, and foundations, private bankers set in motion a perpetual money-making machine, all but ensuring that wealth inequality grows in ways exceedingly difficult to reverse, short of war or revolution (Piketty 2014).

The existence of large fortunes, however, necessitates that family members coordinate amongst themselves in order to preserve shared assets against the typical forces of dissipation (Pina Cabral and Pedroso de Lima, eds. 2000:36). "There is [often] no compelling reason for descendants to maintain other than casual relations, *but* for the fact their reified shared wealth intrudes constantly into their mutual relations and individual lives," write Marcus and Hall about dynastic Texas oil families (1992:56; italics in the original). The heirs to the world's large fortunes, the Rockefellers for example, often stress how their vast inheritance represents an obligation, even a burden, as opposed to being a Maussian "gift." This family stewardship of wealth – which usually takes the form of a trust or foundation – is itself a holdover from medieval times, originating in the supervision and management of a lord's fiefdom. In this light,

Harrington notes the historical irony: "the family 'whole' as an organizing principle of social life hails from the pre-Enlightenment era, before the [modern-era] triumph of individualism" (2016:277).

While much anthropological literature on kinship continues to focus on the question of the individual – as well as the fragmentation, cultural diversity, legal issues, and structural changes facing contemporary families – elites reflect a different set of norms and orientations. In this regard, they are aided by the techniques of offshore professionals, who – via their "banking-confessions" – encourage and try to cultivate familial stability and an emphasis on the group. Given this collectivist counter-trend in the face of strong individualist pressures from society, Thomas provocatively calls offshore finance an "anti-modern" phenomenon ("La persistance de l'Ancien Régime," 5/27/16).

When it comes to elite families, private bankers and other professionals use the tools of offshore finance and the law to create something that is largely at odds with modern and contemporary notions of individualism: the ability of a patriarch to impose his will as to how assets are spent *even after his death*. Hence, we are dealing with a curious and anachronistic creation: a trust or family office designed to protect a family fortune *from* its successors and any future debts they might incur. As a result, assets held in trusts or family offices are "locked in," meaning that heirs can neither choose to sell them nor challenge their terms in court. Harrington notes dryly, "the beneficiary of a [trust] is bound to a perpetual family dynasty under highly specific terms, making him 'inherited in a way by his inheritance' rather than the other way around" (2016:276). It seems appropriate, then, that the founders of offshore trusts and structures be seen as perpetual "dei ex machina," as a Luxembourgish fiduciary quipped in a recent family-office trade brochure (cited in Thomas, "La persistance de l'Ancien Régime," 5/27/16).

Offshore as a Patriarchal Technology

"[Private banking is] like being a voyeur… the client has to undress in front of you." – A U.S. wealth manager working in Switzerland (cited in Harrington 2016:69)

A significant reason for the spectacular growth of private banking in Luxembourg and elsewhere during the 1980s and 90s was – as a number of my informants recounted – a desire on the part of clients to hide money *not only* from their home-country tax authorities *but also* from their spouses, ex-spouses, children, and other family members. In the words of a regulator informant of mine, and I paraphrase: there are instances of Luxembourg bank clients (and their businesses) going broke *on purpose* so as to hide as much money as possible from their wives (interview, April 2016; emphasis added). Such a "confession" should no doubt implicate the *gender* – male – of the vast majority of Luxembourg private-banking clients and, for that matter, users of offshore financial techniques more generally. Indeed, Confessore (2016:32) reports that among ultra-wealthy couples it is common for wives know little about the nature and amount of their family's finances.

Offshore finance, we could then say, increases significantly the power that many rich men have over their wives, both current and former. In this vein, I posit the practices of offshore finance to represent "patriarchal technologies," which seems even more appropriate upon realizing that the vast majority of offshore-service providers – bankers, accountants, lawyers, and others – are also men. While banking as a "patriarchal technology" dates from before the Luxembourg financial center had developed – a Grand-Ducal decree [*arrêté*] from 10 June 1901 states that "a married woman… cannot demand a bank book [*livret*] without being assisted or authorized by her husband; the bank book will bear the names of the wife and husband" – the advent of banking secrecy allowed husbands to wrest even more control over the family's finances. Already in the early 1970s, Schmit and Dondelinger acknowledge this much: "when

the assets [*devoirs*] appear in the name of the husband, the wife is not allowed, in general, to obtain this information" (1971:52).

Photo 27 – Economic man ensures his own dominance; Luxembourg City (photo by the author)

How does offshore finance increase men's control over women? Simply put, jurisdictions such as Luxembourg, the British Virgin Islands, Panama, and the Cook Islands offer legal structures and vehicles into which (male) clients can hide their assets from current, former, or soon-to-be-former (female) spouses. As we read in the Panama Papers, Panamanian law firm Mossack Fonseca offered

> its assistance to a [Thai] man who wanted a "miracle cure" in the case that his wife tried to strip him of assets. In Equator, [the firm] proposed shell companies to a "client who wanted to acquire a business before his divorce." In Luxembourg, not with some pleasantries, it helped a male Dutch citizen who wanted "to

> protect" his assets [*patrimoine*] "against the unpleasant consequences of a divorce on the horizon" (Fitzgibbon 2016).

Such actions were initiated due to the fact that, according to the laws of most European and North American countries, each party to a divorce has the right to an equal share of the couple's collective assets.

Yet knowing exactly who owns what can be nearly impossible when the assets are hidden via the "patriarchal technologies" of offshore finance. As Sam Knight details in his *New Yorker* profile of Yves Bouvier, owner of the Luxembourg Freeport, letter-box companies in the British Virgin Islands enabled Russian oligarch Dmitri Rybolovlev to place his collection of Picasso, Modigliani, Van Gogh, Monet, Degas, and Rothko canvases outside the legal reach of his soon-to-be ex-wife Elena (2016:66). Yet Rybolovlev is not an isolated case. Fitzgibbon writes, "[you find in] tax havens… former husbands who harbor the desire to defeat [their ex-wives] financially. Because there are two horrible things: to be forced to give money to the tax authorities or to ex-wives" (2016).

As with other phenomena analyzed in this study – the growth of "family offices" (chapter three) or "collectible assets" (chapter five), for instance – we could say that ex-husbands hiding money in tax havens from their former spouses is *yet another* side effect of the massive growth in financial wealth of the world's hyper-rich in recent years. In his article on how a Finnish entrepreneur hid the $400 million that he made with his ex-wife, and on the tortuous legal process she had to initiate in order to recover a rightful settlement, Confessore notes the current tendency of high-end divorce lawyers to also specialize in "white-collar litigation, representing the discarded wives of rich men with complex business concerns" (2016:34). As was revealed in the lengthy court case to recover a potential settlement, bank statements showed that this Finnish entrepreneur transferred $48 million into a Cook Islands trust – perhaps offshore finance's

ultimate “patriarchal technology” – on the same day that his wife discovered him leaving for a ski weekend with a new girlfriend. Needless to say, the ex-wife’s attorney “believed this [transfer] would be strong evidence in court that the trust had been set up in anticipation of owing his wife money” (Confessore 2016:67).

At this juncture, we should acknowledge the particularities of the legal systems found in Luxembourg and other Continental European countries with regards to the transfer of property to one’s immediate heirs. In continental Europe and South America, unlike in Anglo-Saxon common-law countries, it is impossible to disinherit proximate kin by writing them out of your will. This is to say, these heirs must receive a share of your estate – called a “heritage reserve” – even in cases of divorce, estrangement, or family rupture. Yet the techniques of offshore finance once again scramble this calculus; these “patriarchal technologies” allow their users to “organize their estates” – in the formulation of an informant (interview, March 2016) – in ways not predicated by the Continental European “heritage reserves.” Writing about the situation in Luxembourg in the early 1990s, Kaufmann states

> until the fairly recent past, when a married woman did not enjoy a juridical capacity in her own right, the preponderant right of the husband meant that, except in the case of a marriage with separate ownership of property, the husband had the *sole right* to seek communication of information on bank assets registered under the name of both spouses and was also entitled to have a right to the assets held in the name of his wife (1991:26; emphasis added).

Secrecy laws in Luxembourg – first passed in 1981 and further strengthened in the late 1980s and early 90s – merely augmented the power of those seeking “patriarchal technologies” via “banking-confessions.” Now, Luxembourg banks “could invoke secrecy against the wife in respect of joint accounts, and a fortiori in respect of the husband’s accounts” (Kaufmann 1991:26).

What kind of client seeks out these “patriarchal technologies”? Another regulator informant of mine mused that these are *men* looking for “tax freedom” and “family freedom.” When pressed for more information, this informant admitted that these clients are “people with disturbed family lives [who seek to] hide their assets from heritage laws” – to which he added, “business is not always moral. You may have reservations” (interview, March 2016). Harrington, however, cautions us against rushing to judgment: “in some cases, [offshore arrangements] may mean providing recognition for interpersonal ties that are meaningful to clients but which may have no legal standing, such as relationships with other adults not bound by marriage, or with children born out of wedlock” (2016:277). As such, the private banker is tasked with navigating the tension between the rational-calculative world of money and legality with the often-confessional world of human relationships. This ambiguous position often makes private bankers – as well as priests – privy to their client-confessants’ most compromising secrets and internecine battles. According to a London-based wealth manager, “when people choose a [private banker]… they have to pick someone they want to know *everything* about them: about Mother’s lesbian affairs, Brother’s drug addition, the spurned lovers bursting into the room” (cited in Harrington 2016:80; emphasis added).

The “patriarchal technologies” of offshore finance are usually employed with two kin distinctions in mind: “mistresses” and “out-of-wedlock children” – to use the emic terms of my informants. In the 1990s, a British bank profiled the typical offshore client – the “Belgian dentist,” if you will (see chapter three) – as a forty-something male business owner who uses a trust in order to leave assets to a mistress (Harrington 2016:125). With this “patriarchal technology,” the client avoids not only tax liabilities in his home jurisdiction, but also any

inheritance laws that mandate the transfer of assets to "legitimate wives and heirs," a category cited repeatedly by one of my regulator informants (interview, March 2016).

As concedes a Dubai-based wealth manager: "you are [the clients'] confidant. You are so trusted – you have to be totally confidential. A client will say to me, 'I want to leave money to my girlfriend, but I don't want my wife to know'" (cited in Harrington 2016:83). Another practitioner, working in the Cayman Islands, admits, "we may have a client with a mistress and children [born "out of wedlock"] he wants to provide for, and it all has to be kept totally private from the wife" (cited in Harrington 2016:88). While many offshore bankers and wealth managers do acknowledge their distress in helping "client-confessants" to disinherit spouses and children, they nevertheless find themselves in the unexpected position of having to adjudicate the social transformations taking place within contemporary families, or at least among those with significant financial means. We should not be surprised then that, due to this peculiar role, "some wealth managers liken themselves to *clerics*" (Harrington 2016:83; emphasis added).

Regarding the Losses of Others

"Tax the poor to save the rich" (Shaxson 2012:301).

"The desire and fantasy of offshore for some becomes the lived inequality and exploitation of others" (Appel 2016:16).

"An English wealth manager working in the Cayman Islands said with some resignation, 'You've got to totally be able to suspend your own personal sense of ethics in this work'" (Harrington 2016:229).

Over lunch one afternoon, a Luxembourgish banker casually told me that the "Luxembourg financial center was not built [to be] against anybody" (interview, March 2016). This comment, at best false and at worse callous, nevertheless reflects a common line of reasoning on the part of my informants. In fact, little could be farther from the truth: there are

many people the world over whose material circumstances *directly* suffer from the activities that tie the Luxembourg financial center to the world of finance capitalism. The relationship between the Grand Duchy's financial center and French nationals is particularly fraught in this regard. While French professionals work at all levels of the financial center, a large part of the financial services they sell to French individuals and businesses facilitate the direct or indirect avoidance or evasion of taxes that would otherwise be payable in France.

Examples of this tendency, present and past, are so numerous that I limit myself to two. First, in light of the tax agreements negotiated over the years between EU member states – and due to the fact that investment in France is often channeled through Luxembourg – the French fiscal authorities are unable to collect certain taxes on the many French-origin companies domiciled in the Grand Duchy, which levies little to no tax on capital gains and revenue earned abroad. While the Luxembourgish state earns revenue from the fees it charges for domiciliation, the big winners are the French executives of these corporations – whose bonuses increase due to added "profitability" and "tax savings" – and their principal shareholders (Shaxson 2012:359). Losing in this scenario, by contrast, are all those French unable to find work – due to the flight of productive capital and jobs from France – and those who rely on diminishing state expenditures for vital services in the areas of housing, education, and healthcare.

The second example of French capital flight to Luxembourg dates from the mid-2000s. The Grand Duchy was one of two EU member states (Austria being the other) opting for a flat withholding tax – beginning at 10 percent and gradually increasing to 35 – on the gains earned by foreign account holders *instead* of signing up for the system that exchanges EU citizens' fiscal information.[2] Zucman's verdict on this exception carved out for Luxembourg (and Austria) is damning: "thirty-five percent is less than the top marginal income tax rate in force in France:

oddly enough, the holders of hidden accounts thus find themselves having the 'right' to pay less tax than honest taxpayers" (2015:70). In this example, Luxembourg is violating the fiscal sovereignty of other EU member states (such as France), which are finding it increasingly difficult to set the rates at which they seek to tax their citizens. As shown in the two cases above, the tax revenue that the French state loses to offshore centers such as Luxembourg's – estimated to be 60- to 80-billion euros per year (Deneault 2016) – renders powerless the country's institutions that depend on public funding, as well as the democratic processes that have established the social mission of these institutions in the first place.

Still other "losers" come to mind. Not an insignificant amount of Bernie Madoff's $65-billion Ponzi scheme was invested via shell companies and offshore funds established by service providers in the Grand Duchy. To add insult to injury, in the years since the exposure of the Madoff fraud, Luxembourgish courts have "until now refused numerous investors access to due process, depriving them effective channels of recourse" (Shaxson 2012:364). Creditors and lenders are additional losers due to activity in the Luxembourg financial center. Via investment structures covered by banking secrecy, wealthy investors and entrepreneurs can artificially lower the stated value of their assets in the case of bankruptcy. If these investors or entrepreneurs fail in their business endeavors, they can hide the collateral that could otherwise be used to pay creditors. Harrington comments on these strange developments: "in recent decades there has been an increasingly aggressive movement on the part of offshore jurisdictions to… render wealthy individuals 'debt-proof'" (Harrington 2016:156).

You might say that the number of jilted creditors or individuals hurt by the Madoff Ponzi scheme is limited. That is true. Yet the offshore finance found in Luxembourg and elsewhere also harms *entire populations* in developing countries, whose elites easily send their legitimate or

illegitimate gains offshore – thus leading to insufficiently funded public services, poorly performing state institutions, and dangerously high levels of socio-economic inequality throughout the Global South (Maurer 2005:483). Indeed, the amounts of foreign capital in Luxembourg-domiciled financial vehicles is staggering: in 2011 alone, Soparfi investment companies (discussed in chapter three) "enabled 141.6 billion euros in exonerations on dividends; that is, almost the amount of the [nominal] GDP of Bangladesh, the eighth most-populous country in the world" (Thomas, "Naissance d'un paradis fiscal," 8/5/16).

Not limited to populations in the Global South, we could also say that *all people who do not use offshore finance* – either on principle or because they cannot afford its services – lose out in some fashion. To quote Palan et al.: "tax havens skew the distribution of costs and benefits of globalization in favor of a global elite and to the detriment of the vast majority of the population" (2009:3). Due to tax evasion and avoidance via offshore financial centers, there have been profound changes in fiscal burdens along generational, class, and racial lines. When wealthy individuals, corporate executives, and large shareholders – a population disproportionally made up of white males – reduce their tax bills via offshore financial centers, someone else has to bear the costs. Those forced to make up this lost tax revenue are the middle and working classes, who work for a living (as opposed to drawing from investment income) and do not have the money to purchase the services of offshore professionals.

Recent increases in regressive value-added taxes and "fees" for public services should be seen within a larger decline in the nominal and real taxation of businesses and wealthy individuals. Harrington believes tax evasion and avoidance via offshore financial centers thus "[imposes] a surcharge on those who are unable to afford (or unwilling to use) such strategies. In the United States, estimates of this surcharge vary between 7 and 15 percent in additional taxes

to cover the $35-billion underpayment by the wealthiest Americans" (2016:219). Such trends – the decline in progressive taxation, the augmentation of regressive taxes and fees, and the resurgent importance of inherited wealth – are responsible for the massive growth in inequality seen over the last 30 years, and the corresponding decline in social mobility for individuals. As we see throughout the contemporary Global North, this inequality reverberates within the entire social structure, preserving and compounding over time the manifold advantages for those who possess untaxable offshore structures.

In the literature on offshore finance, the "exit" of elites from their societal obligations is a recurring theme. The flight of capital via offshore structures – that is, protecting and hiding private wealth from regulation, taxation, and dissipation – makes it very difficult to impose the liabilities that have traditionally been tied to such assets. Indeed, certain HNWI have responded to states' modest efforts to impose the fiscal responsibilities of citizenship by fleeing the "iron cage" of the nation-state altogether. Accordingly, the appeal of the services found in Luxembourg and other financial centers is that wealthy investors and companies can escape the usual duties that come from making money or investments in the political economies of contemporary nation-states. "Offshore is [then] a project of a wealthy and powerful elite to help them take the benefits from society without paying," according to Harrington (2016:131-132).

The users of offshore finance, thus, have less stake in the current Westphalian system of liberal sovereign democracies – at least in the short term – and have proportionally less to lose from the deleterious systemic effects of offshore activities. As Hampton reveals about the case of Jersey, wealthy fiscal exiles can actually *negotiate* the tax rates they pay by sending their wealth managers to obtain secret individual "rulings" from island officials (1996:202-203). In this example, we see the emergence of a two-tier system of taxation, "whereby some people pay their

taxes in the conventional way, while others, because they have the means to do so, decide for themselves when, how much, and indeed whether they pay taxes at all" (Obermayer and Obermaier 2016:191). In this regard, the super-wealthy – with the assistance of their enablers-for-hire in offshore financial centers – are effectively constructing their own parallel legal and fiscal systems. If a certain technique or product is not on offer in one jurisdiction, they can simply "exit" and find it in another.

Effects in Luxembourg

*"The fact that [BiL and KBL owners the Al Thani family's] lawyer… is also the president of the administration of the assets [*biens*] of the Grand Duke has people talking. Is the Grand-Ducal family offshore? [This lawyer] denies it 'categorically': 'the administration of assets and the Grand Duke do not have shell companies! I can certify it to you'" (Thomas, "Pro mundi beneficio," 4/15/16).*

As much as the Luxembourg "state-finance complex" attempts to minimize the domestic side effects of offshore activities – a feat that it realizes with some success – it is nearly impossible to limit *all* the consequences of the turbocharged version of finance capitalism that is the country's forte. In the words of Thomas: "in a tax haven designed for others, the internal effects [of offshore activity] cannot be contained eternally" ("Rentiers et héritiers," 11/25/16). Indeed, since the 1980s, the partial replacement of the consensus-based corporatist relations of the post-WWII period with the shadowy, globalized, and highly competitive structures of neoliberal era has left many Luxembourgish citizens feeling apprehensive, atomized, and defenseless.

However, in light of abnormally high public-sector salaries, inflated housing prices, and a healthy dose of social democracy, the domestic tensions caused by the bloated financial center remain largely under the surface of Luxembourgish society. Nevertheless, the weight of the financial center in Luxembourg's economy is staggering, which proportionally dwarfs even

finance-friendly countries such as the United States, United Kingdom, and Switzerland. In 2008, a year of existential crisis for global capitalism, the financial center accounted for 21 percent of jobs in Luxembourg's workforce, 33 percent of tax revenue for the state, and a whopping 43 percent of GDP (Moyse et al. 2014:163).[3] Likewise, according to the data of the IMF, the combined value of stocks, bonds, and securities domiciled in Luxembourg represents *30 times GDP*, a world record without peer (Chavagneux 2015:185).[4] In such a context, it is easy to see Luxembourg's extreme dependence on its financial center, as well as the structural disadvantages that exist for other economic sectors within the country (cf. Hampton and Abbot, eds. 1999:167). Shaxson writes,

> When money flows [to the financial center], prices go up and locally produced products (notably agricultural and industrial) cannot resist the competition of less onerous imported goods. These sectors decline. The best-qualified people [in Luxembourg] are steered toward the financial center. At the end, politicians give up on maintaining the vulnerable sectors: it is much easier to submit to the source of easy money (2012:298).

Given that the "benefits" of offshore finance go mostly to the wealthy individuals and companies that use or offer these services, the financial center has not aided average Luxembourgers as much as its boosters like to claim. The surplus from the financial center, for example, has done little to improve GDP levels on a per-worker basis, which have grown by only 1.4 percent per year since 1970, "a very mediocre result that places Luxembourg at the back of the line of developed countries" (Zucman 2015:90). Meanwhile, socio-economic inequality among inhabitants has taken off, though this is still not as high as levels seen in the United States and United Kingdom. Salaries and stock options for those working in the financial center have also risen at a healthy clip, with particular mention for the thousands of employees of the large law firms and the Big Four accountancies.[5] In contrast, those within other sectors – such as manufacturing, construction, commerce, and transportation – have seen few, if any, gains in

purchasing power and have witnessed their relative position collapse in comparison with workers in the dominant financial center (Zucman 2015:91).

Perhaps the most common local grievance against Luxembourg's bloated financial center regards housing prices. As I often heard from informants, sleepy Luxembourg City is today as expensive as London (cf. Zucman 2015:91). It is hard to understate the effect that this has had on the country's working, middle, and even upper-middle classes, for whom the costs of housing have become uncontrollable in recent years. As such, local non-elites are being priced out of decent housing in their own country, with the result being that many Luxembourgers now live in bedroom communities on the other side of the Moselle River, in the German *Land* of Rhineland-Palatinate. A regulator informant of mine was the lone interviewee to mention ballooning housing prices as being a drawback to growth in the financial center. "The new tax regime for the UHNWI [see chapter three] will not make this better," he conceded (interview, March 2016). The trajectory in value of this regulator's house is indicative of these larger trends, having increased in price over a startling *5,000 percent* in the last 40 years. While this increase has been a boon to him personally, it also means that his children have not been able to afford to purchase a home in Luxembourg City.

I wish I could say that the high cost of housing in and around the capital is the only negative consequence of the perpetually hypertrophic financial center, but I cannot. The effects of its "offshore governmentality" run much deeper than that, all the way to the root of Luxembourgish democracy. While the country's consensus-oriented political system is, in certain regards, a model for other Global North countries – beginning with the corrupt, polarized United States – the control of the financial center over local politicians is nearly complete. Four of the six parties currently represented in the Chamber of Deputies – CSV, LSAP, DP, and ADR

– are an almost perfect reflection of the dominant interests in the country, in particular those of the "state-finance complex."[6] To quote Thomas: "in Luxembourg, we discuss many things, except what is most evident. The financial center is the cumbersome *non-subject* of our political debate" ("Les renards," 1/2/15; emphasis added).

Such "non-subjects" have long been within the analytical purview of social scientists, from Gramsci to Adorno to Foucault and Bourdieu. Indeed, what I call "offshore governmentality" in this study attains a near hegemonic status in Luxembourg; "it represents… what Herbert Marcuse termed the 'closing of the political universe' – the erasure of [even] intelligible, legitimate alternatives" (Brown 2015:67-68). Where can we see this hegemony at work? Look no further than the legislative process. Jérôme Turquey, a business consultant and one of the few Luxembourgers to criticize the financial center in public, asserts that "[finance] is a power like the others, but a much more important one… It can have [passed] a law or legislation at any time; if financial actors say no, the law will not be adopted, or it will not be applied" (cited in Shaxson 2012:362). In the same vein, Thomas asks why small, landlocked Luxembourg needs double-tax treaties with the far-flung island nations of the Seychelles or Trinidad and Tobago: "during the debates in the Chamber of Deputies, not a single person would pose this question. The most exotic tax conventions are analyzed there without debate. Regarding international tax policy, parliamentarians no longer carry out their mandate" ("Pro mundi beneficio," 4/15/16).

Filling this void, of course, are the lawyers, accountants, and bankers acting on behalf of the world's wealthiest people and businesses. In this light, it is as if Luxembourgish politicians are more responsive to the merchants of global capital than they are to their constituents. Yet the "largess" of the financial center – in truth, the crumbs of global capitalism – has purchased the

consent, or at least the silence, of (most of) the Luxembourgish electorate, or at least when it comes to concerns dear to the “state-finance complex.” These financial and political elites have few difficulties imposing their “offshore governmentality” onto local audiences or the press. Accordingly, the voting public has little – if any – critical perspective on the activities taking place in the financial center and their impact on the larger society. Thus, while Luxembourg remains very much a democracy in the general sense, certain democratic processes are nevertheless profoundly distorted due to the power of financial center and its clientele.

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Where does the Luxembourg “state-finance complex” go from here? An alternative I would suggest could be a form of collective *confession* – no, not in the search of a banker’s “solutions,” but rather as in seeking a veritable *absolution*. This process would not be simple or straightforward. It would entail clearing a path through the metaphorical forest of trustees and settlors, advisors and protectors, domiciliaries, and administrators. It would mean sorting out the paper trails and company registers in hermetic and hostile jurisdictions the world over: Panama, the British Virgin Islands, Jersey, the Cook Islands, and Liechtenstein, to name a few. Those wishing to the dismantle the offshore imbroglio constructed from its base in Luxembourg would need not only ample patience but also funds to pay all of the lawyers’ fees. Regardless of these expenditures, however, some step seems warranted to normalizing Luxembourg as a country and economy, to bring to an end its fifty-year experiment in offshore finance.

Photo 28 – A open door to confession; Eglise Saint-Alphonse, Luxembourg City (photo by the author)

As a local tax advisor once divulged, “I am not in [clients’] heads, but they should say to themselves: ‘All these years, I have slept poorly’” (Thomas, “La fin de l’impunité,” 9/23/16). An obvious response to this unease would be, as Lateran IV instructs us, the confession of prior sins. Even the (male) fraudster enjoying *his* pile of “tax savings” remains caught within the spell of guilt. In their heart of hearts, the rich clients of the Luxembourg financial center know quite well that they have been sinners. However tried and tested the machinery for justifying offshore activity, these clients would nevertheless be ashamed to have to reckon in full with the consequences that have resulted from their actions.

Throughout the history of Catholicism, there has been a tendency to delay the admission of sin until just before death. Those associated with the Luxembourg financial center should instead opt for the confession and penance currently on offer in the many churches of Luxembourg City, which have the advantage of being available as often as is necessary.

[1] The profession of "wealth manager" (*gestionnaire de fortune*) is primarily found in Anglo-American contexts. In the countries of Continental Europe, it is more common to find "private bankers" (*banquiers privés*) offering similar services.

[2] The Luxembourgish state was subsequently forced to adhere to the information exchange in 2009.

[3] Comparable figures on the weight of finance in the U.S., UK, and Swiss economies vary between 8 and 12 percent of GDP (Chavagneux 2015:185).

[4] The second and third countries with the highest ratio of financial assets to GDP are Ireland, at 10 times, the United Kingdom, at eight times (Chavagneux 2015:185).

[5] As documented by Thomas, the capital gains from stock options belonging to foreign workers enjoy a special "light touch" tax status that is not available to Luxembourgers. This act – which was passed via an administrative decree (*circulaire administrative*), not by a law debated publically by MPs – sought to achieve that most neoliberal of goals: to attract and retain foreign "talent" for the financial center.

[6] The two remaining parties with representation in the Chamber of Deputies – *Déi Gréng* ("The Greens") and *Déi Lénk* ("The Left") – take either a neutral and non-confrontational position toward the financial center, in the case of the former, or a critical and at-times confrontational one, in the case of the latter.

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