The AMERICAN INTEREST

All the Money in the World

The World's Largest Tax Haven? Guess Who

James S. Henry

For decades, the United States has been one of the leading destination havens for wealthy individual offshore investors.

Q: "So where else do you advise clients to set up their offshore companies and trusts?"

A: "We think Delaware is pretty good. They have over a million companies and trusts there, and no beneficial ownership registration. No one can find you."

—Senior partner, leading Panama law firm, money laundering conference, 2008

By now we (should) all know that global trade wars, as well as imperial wars, can be costly. But the high costs of *global tax competition, deregulation wars, and financial secrecy wars* have received much less attention. Unfortunately, at current course and speed, such wars may well proliferate.[1] Furthermore, the United States, which has long prided itself on being one of the world's leading proponents of progressive taxation, multilateral cooperation, and stiff sanctions for white-collar financial crime, is now actually leading this race to the bottom.

Indeed, as discussed below, despite record corporate profits, soaring inequality, and high debt levels, the United States is on the verge of fulfilling one of the most hyperbolic fantasies of ultra-economic libertarians—as Rep. Devin Nunes (R-CA) put it way back in 2013, this is "to make the United States the largest tax haven in history."[2] As an Indian economist once remarked, "the 'invisible hand' is nowhere to be seen." But mere evidence has never deterred true libertarians from believing in tax competition, and other forms of legalized dueling.

The New EU Blacklist

This past December the European Union published an official "blacklist" of 17 "non-cooperating jurisdictions for tax purposes." This blacklist was a response to a series of reports by investigative economists and journalists, and to whistleblower leaks like "SwissLeaks" (2013), "LuxLeaks" (2014), and "Panama Papers" (April 2016). It was designed to prevent EU aid, investment, and tax subsidies from being channeled through secretive companies and banks located in (warning: euphemism alert!) "offshore financial centers" like Panama. Since the 1980s, a handful of countries like Argentina, Brazil, and Latvia, as well as the OECD itself, had tried something similar, with very mixed results.[3] But the European Union hoped to be more successful because its blacklist would be immediately binding on its "27 plus 1" member countries.

The blacklist was supposedly based on a careful year-long look at 213 countries, that rated them according to "1,600 indicators" of their efforts to promote tax justice and transparency.[4] It was nothing of the sort. The first draft was a dog's breakfast of 17 countries whose contribution to the global haven industry was trivial at best. They ranged in size from South Korea to American Samoa, which has the same population as Niagara Falls. The list also kept changing.[5] The second draft, issued in March 2018 just as Panama's Mossack Fonseca was closing its doors, relocated 11 of the initial 17 to a "grey list," and added three new miniscule ones. In the end the list managed to omit *all* of the world's top secrecy jurisdictions, including *all of* the European Union's own havens—for example, Ireland, the Netherlands, Luxembourg, Cyprus, Malta, and Latvia.[6] It also omitted key Middle East havens like Dubai, Bahrain, and Lebanon, as well as key Asian havens like Singapore and Hong

Kong, which happen to be important EU trading partners.

z **OTHER LEADING JURISDICTIONS OF INTEREST**

Jurisdiction	(2015-18)	Secrecy **	Global Export Market %
Switzerland	Tied for 1	114%	4.5%
USA	Tied for 1	89%	22.3%
"UK Spiderweb"	Tied for 1	112%	22.6%
Hong Kong	4	106%	4.2%
Singapore	5	100%	4.6%
Taiwan	8	113%	0.5%
Malaysia	31	108%	0.1%
UAE	9	125%	0.14%
Bahrain	17	116%	0.11%
Lebanon	11	108%	0.51%
Seychelles	77	112%	na
Mauritius	49	108%	0.02%
Luxembourg	6	87%	12.1%
Netherlands	14	99%	0.5%
Malta	20	90%	0.7%
Cyprus	24	92%	0.5%
Ireland	26	75%	2.7%

*"UK Spiderweb" = UK plus 11 Overseas Terr.+Crown Dependencies

Source: OECD, TJN FSI 2018, my analysis

By far the most striking omissions from the EU blacklist, however, were the world's top three *destination havens*: Switzerland, the United States, and the "UK spidernet,"[7] the far-flung haven archipelago that the United Kingdom has cultivated since the late 1950s.[8] These top destination havens play several crucial roles. First, they are the *penultimate safe harbors* for wealthy individual investors, offering low tax rates, anonymity, stability, liquidity and legal security.[9] Second, they are also very attractive *corporate havens* for multinational corporations and banks. Finally, they are also *residential havens,* where wealthy offshore investors can spend long periods of time, virtually tax free.

To put this in context, let's step back and take a look at where these destination havens fit into the structure of the global haven industry. Not all financial havens are created equal; over time a striking division of labor has evolved. Unlike the far more numerous *conduit* havens, the premier destination havens don't need to offer the absolute lowest possible tax rates, cheapest services,[10] or even the best financial secrecy on their own. All they need is seamless access to the global haven *network*. Their huge complements of *professional enablers*—accounting firms, law firms, banks, investment companies, corporate trust service providers, and asset managers—take it from there, earning hefty fees by supplying *layer upon layer* of the very best cross-border secrecy that money can buy.

Since the 1960s the global haven industry has expanded dramatically. As of 1960, there were only about a dozen secrecy havens that really counted, mainly in Europe and the Western Hemisphere. As of 2018 there are *more than a hundred conduit and destination* havens, in every time zone. Professional enablers can access this network night and day to outsource all the *secrecy paraphernalia* they need at competitive prices from multiple conduits—shell corporations, LLCs, partnerships, trusts, and faux foundations; secret bank accounts; haven attorneys; nominee agents, managers, trustees, and faux "ultimate beneficial owners" (UBOs); anonymous credit and debit cards in multiple currencies; "hold mail" accounts; high-frequency "darknets" for anonymous trading; and even their very own banks and corporate registries.

Contrary to the conventional image of "offshore havens," most of the assets channeled to the comparative handful of *premier destination havens* are not really located "offshore." They are either invested in the destination havens themselves or roundtripped through conduits back to key source countries—for example, in the developing world, countries like China, Russia, Saudi Arabia, Nigeria, South Africa, Angola, Brazil, Mexico, Venezuela, and Argentina. The conduit havens provide the linkages as well as the legal impediments to expropriation, taxation, and anti-money laundering laws.

Nor are the premier destinations merely "tax" havens. We recall the bar scene in *Star Wars*: In addition to tax dodgers, the villains seated at the haven industry bar include kleptocrats, drug traffickers, arms dealers, flight capitalists, corrupt politicians, and financial fraudsters. While their chicanery is diverse, they have mutual needs for iron-clad secrecy, porous regulation and taxes, feckless law enforcement, malleable politicians, and smart enablers. The global haven industry's majestic achievement is its ability to satisfy all these needs at once.

From the standpoint of these big-ticket cross-border investors, what matters is the overall network, not this or that particular conduit. Any one—or even ten—conduit havens could completely disappear, and yet the overall network would quickly anneal. On the other hand, the comparative handful of premier destination havens are not so easy to replace. They host less portable investments like real estate, art, yachts, and *residential rights*. They also supply the essential professional enablers, since sophisticated money laundering and tax dodging services are not likely to become do-it-yourself activities any time soon.

The premier destination havens also supply essential political capital. These are the places where the crucial decisions about the haven industry's future really get made, and where lobbying and campaign finance is concentrated. Paradoxically, all of the premier havens are parasitic on trillions of dollars of flight capital that has fled or been recycled via conduit havens from the lawless, undemocratic world of "submerging markets." Meanwhile, all of the key destination havens maintain relatively open, democratic political systems, independent judiciaries and journalists, and (ironically enough) relatively efficient tax administrations, free of influence from tyrants and one-party potentates.

All the premier havens also have a kind of love-hate relationship with their own financial service industries. On the one hand, as noted, the global haven industry has been a treasure trove. But as investors were also reminded in 2008, financial crises are not exactly a thing of the capitalist past. When push comes to shove, countries really do want to *be perceived* as able to service their old debts and issue new ones by *taxing* the real side of the economy. So all of the key destination havens try to avoid the "finance curse"—excessive dependence on financial services. The dilemma is that they can only do so by diversifying *beyond* finance, by attracting world-class *non-financial* companies and technology. Indeed, that is the condition for the premier destination havens to be able to play host to the world's largest private banks. In short, libertarian wet dreams aside, wealthy investors want to be assured that when the *next* big financial crisis hits, the destination havens' largest financial institutions will be able to rely on the kindness of governments.

This means that if a "blacklist" strategy like the one deployed by the European Union is ever really going to work, all of the premier destination havens need to be on it. And yet they somehow never are. This oversight is especially unfortunate in the case of the United States. For it turns out that even while other key destination havens like the United Kingdom and even Switzerland have actually been *improving* their behavior with respect to transparency and tax dodging lately, the United States has been slipping. Indeed, especially on the "private (pirate) banking" side, it is on the brink of becoming the global market leader for wealthy offshore investors, flight capitalists, and crooks alike.

The Changing U.S. Role

This dubious achievement has deep roots. It reflects growing U.S. competitive advantages in several key arenas, especially (1) favorable tax and residency laws; (2) financial secrecy and asset protection; (3) professional

enablers; (4) strong *non-financial* sectors, as a hedge against financial crises; and (5) malleable politicians and regulators. Only in the arenas of law enforcement and national security is the United States somewhat "disadvantaged" when it comes to attracting dodgy money. Even there, the owls of Minerva are fluttering in the background. All told, therefore, the only thing missing from the Panama lawyer's remark cited above is that he did not add more U.S. states to his list.

Favorable Tax and Residency Laws. As noted earlier, two essential ingredients in destination haven services are low tax rates and flexible residency. Since 1913, the United States has often been described as a seedbed of progressive income taxation—and one of the few countries that taxes its own citizens, residents, and corporations on the basis of their worldwide incomes. But partly just because of the sheer clout of the U.S. financial services industry, as well as its real estate industry and enabler services, for decades the United States has also been a very attractive destination haven for wealthy foreigners. And its comparative advantages are only increasing. A little history sets the scene.

The United States has been a technical "tax haven" of sorts since the early 1920s, when it first introduced zero taxes on the interest income earned by "non-residents aliens" ("NRAs")[11] on their U.S. bank deposits. Back then, few foreigners bothered to take advantage of this rule, because both U.S. federal tax rates and their tax rates back home remained in single digits until the 1930s. Even then, the financial flows were mainly *outbound*. In 1936, for example, Henry Morgenthau, FDR's first Treasury Secretary, informed the President that in response to rising U.S. income and estate tax rates, a few wealthy Americans had been detected shifting their assets to a handful of budding new "offshore havens"—"Switzerland, Panama, and Newfoundland (!)."

As of the late 1960s, most of the U.S. haven action was still outbound. In 1973, for example, the Nixon Administration became embroiled in the famous "Castle Bank & Trust" case. A private eye hired by the IRS discovered that 200 well-connected Americans—including the head of Chicago's Pritzker family, Playboy's Hugh Hefner, the rock group Creedence Clearwater Revival, and leading members of the Cleveland Mafia—had apparently been dodging taxes by setting up illegal trusts in the Bahamas with the help of shady Miami and Chicago lawyers. For a time it looked like this influential crowd might actually be jailed for tax fraud. But then President Nixon stepped in, denounced the investigation as an intolerable violation of "civil rights," and appointed a new IRS Commissioner—from Cleveland—who promptly squelched the case.[12]

On the "inbound" side, the first large-scale inflows to the United States arrived in the late 1960s and early 1970s from Latin American drug cartels. For more than a decade their cash poured into U.S. banks, especially to border states like Florida, Texas, and California. The U.S. Treasury then implemented stricter rules for currency deposits in banks, but these remained loosely enforced until the 1980s, and it was reluctant to adopt a "big bill recall."[13] Indeed, when the European Union issued "euro" notes in the early 2000s, it actually decided to *compete* with the U.S. $100 bill, issuing €200 notes and even €500 notes. By the time the ECB finally stopped printing notes in 2018, there were more than $300 billion of the so-called "Bin Laden" €500 notes outstanding, delighting money launderers, kleptocrats, and bribers all over the world.

One explanation for the European Union's curious behavior turned up in 2014, when I discovered that Spain's Central Bank alone had been responsible for up to 25 percent of the European Union's stock of €500 notes.[14] made sense, because Spain's Central Bank was only responding to local demand from the banking system: Spain is not only the European Union's main entrepôt for illegal drugs; it is also a center of extraordinary political corruption. So this was a close parallel to the shenanigans of Florida and California banks *forty years* earlier.

Then, in the mid-1980s, the first surge in flight capital inflows to U.S. banks appeared, mainly from heavily indebted developing countries like Mexico, Venezuela, Argentina, Brazil, Nigeria, and the Philippines. After the 1973 oil price spike, U.S. banks had taken the lead in "odious finance," the dubious business of recycling OPEC oil surpluses rather carelessly to such Third World "debtors." When the debt bubble burst, one result was a dramatic expansion of the global haven industry, powered by these very same leading U.S. bank "creditors."

It is sobering to recall how long it has taken for this "debt hoax"/"pirate banking" story to reach the surface, let alone to result in any effective remedies. After all, unlike drug money, we are not just talking about obscure Florida banks, but about the largest banks on Wall Street, in Geneva, and in the City of London. I published several prominent articles and books on the "debt hoax"-related investigations in the 1980s, 1990s, and early 2000s,[15] and my first article on the role of "The U.S. as a Tax Haven" appeared in the *Washington Post* in January 1989.[16] Thirty years later, after the Panama Papers in April 2016, this same meme was replayed by *Bloomberg*, *Guardian*, *Newsweek*, *The Atlantic*, *the New York Times*, and many NGOs. Indeed, in April 2016 the

Washington Post published yet another article with the title "How the U.S. Became a Tax Haven."[17] In other words, we have known about this problem for *thirty years*, during which it has only gotten worse.

Of course, April 2016 was just seven months before Donald Trump was elected President. Since then, as we'll see, the comparative advantages of the United States as a premier destination haven for foreign loot have only been enhanced.

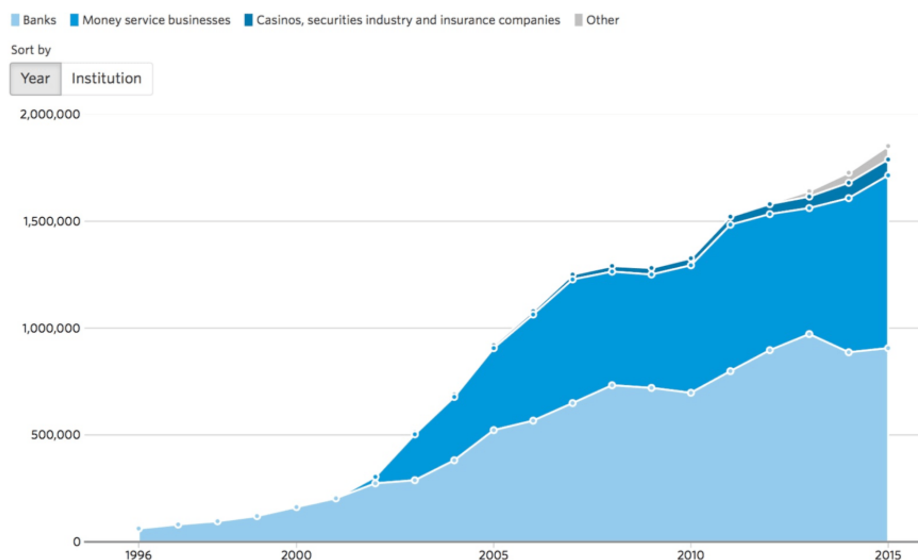
The favorable tax benefits enjoyed by NRAs who bring their financial and human capital to the United States have expand dramatically since the 1980s. As of 2018, they enjoy exemptions for most types of capital income, including interest on short-term debts, traded government and corporate bonds, and "portfolio interest" on complex instruments like "equity participation loans" and convertible bonds.[18] They also enjoy tax exemptions on dividends paid by mutual funds, income from U.S. life insurance or annuities, and capital gains on *non-real estate* assets, including stocks, bonds, options, commodities, precious metals, futures, derivatives, EFTs, e-currencies, and art.

Even for real estate, where the United States has had a special tax regime for offshore investors since 1980, with the help of trusts, LLCs, partnerships, investment funds, and the creative use of tax treaties, it is possible for NRAs to owe minimal income, capital gains, estate, and gift taxes.[19]

The United States has also reinforced its generous NRA residency rules. They can now live in the United States virtually free of all state and federal income taxes up to 183 days in any given year, year-in, year-out, for at least 120 days a year; or even longer with the help of various loopholes. Since—unlike U.S. citizens—most NRAs come from countries where foreign-source income is not taxed at all, or is only taxed if they spend enough time at home to be deemed "residents," it is easy for them to become stateless persons for tax purposes.

Financial Secrecy and Asset Protection. For cross-border investors, two more critical services are financial secrecy and "asset protection" against the claims of creditors and other claimants. On both fronts the United States has also become a global market leader, in two main stages.

During the 1970s, the first decades of major offshore inflows to the U.S. economy, as noted, most of the inflows headed for the U.S. banking system. In 1970, Congress had enacted the "Bank Secrecy Act," requiring banks to submit "currency transaction reports" ("CTRs") for currency and check transactions exceeding $10,000 per day. For the first decade this law went unenforced, but CTR compliance gradually improved. By the mid-2000s U.S. FIs were filing more than 16 million CTRs a year.[20] Other FI reporting requirements also got stronger—in 1996, for example, U.S. banks, money transfer houses, and casinos were required to file "suspicious activity reports" ("SARs"). By 2018 these FIs were filing two million SARs a year.



As noted, in the 1980s U.S. banks also saw a dramatic increase in flight capital. Initially this foreign wealth flowed mainly into U.S. banks. At the time most source countries had exchange controls, but "know your customer" ("KYC") and other anti-money laundering rules for U.S. banks were weak. So the largest inflows came directly through (illegal) black-market transactions via exchange dealers, or from U.S. branches that were located directly (and illegally) in key source centers like Mexico City or Rio. This allowed private banking clients to transfer their funds *directly* to bank accounts on Wall Street.

Over time, other more indirect routes became cheaper and more anonymous. Offshore investors set up shell companies in offshore havens like Panama or the British Virgin Islands, established bank accounts in corporate names with nearby "correspondent banks," and then transferred funds directly to banks in Miami or New York. They also started to use other more sophisticated schemes like corporate "transfer mispricing" and "back-to-back loans."

In response to 9/11, stage two began. Under the impact of the tougher anti-money laundering rules that were enacted in the October 2001 Patriot Act, U.S. banks gradually became slightly more discriminating.[21] Traditional U.S. market leaders in pirate banking like Citigroup and JPMorgan gradually retreated from the business of servicing offshore investors *directly*. They have also invested in complying with the new rules established by the Financial Crimes Enforcement Network, the U.S. Treasury's anti-money laundering ("AML") regulator, including "know your customer," "customer identification programs," and latest "customer due diligence" rules (May 11, 2018), which require U.S. financial institutions to identify all "25 percent and/or control beneficial owners" for new corporate or LLC accounts.[22]

As a result of such rules, plus several recent Federal money laundering prosecutions, it now appears that most U.S. banks and, indeed, financial institutions in other key destination havens now prefer indirect relationships by way of "independent" asset managers, lawyers, trustees, investment advisors, and real estate developers, all of whom remain relatively underregulated. Accordingly, the center of gravity has shifted from investing in cash hoards, bank accounts, and bank-managed portfolios to non-bank investments like real estate, hedge funds, and independent asset manager-guided portfolios, often held by way of haven trusts or companies. So even though U.S. *bank secrecy* has gone the way of the dodo bird, it no longer really matters.

This helps us to see why, despite the many improvements in U.S. bank transparency and due diligence since the 1970s, there are still many loopholes in U.S. anti-money laundering laws. As a 2016 Financial Action Task Force's ("FATF") "mutual evaluation" concluded, many other havens now have much greater transparency than the United States.

Indeed, cross-border investors are finding that when it comes to secrecy and asset protection, it is hard to do better than LLCs or trusts provided by "onshore" states like Delaware, Nevada, Wyoming, and South Dakota, especially when it comes to buying U.S. real estate. This trend began with Wyoming's pioneering creation of "limited liability companies" in 1977. It was accelerated by subsequent IRS decisions to recognize LLCs as legitimate pass-through vehicles for tax purposes in the late 1990s. By then, LLCs were available from all 50 U.S. states, offering the same limited liability enjoyed by corporate shareholders, but with lower cost, complexity, and many other advantages, in the jurisdictions that recognized them, like the United States (but not Canada).[23]

For those with assets to hide, the U.S. LLCs' greatest advantage is cheap anonymity. To date, no U.S. state offers a public registry of "ultimate beneficial owners" ("UBOs") for LLCs, corporations, or trusts. And eight U.S. states, including Delaware, Wyoming, and New Mexico, don't even require LLC founders to disclose the identities of their managers or "members" (UBOs). Others, like California, do require this information, but they also permit their own LLCs to be owned by "foreign" LLCs, including those from these willfully blind eight states.[24]

Since 2011, legislation has repeatedly been introduced in the U.S. Congress to mandate public UBO registries.[25] This has been steadfastly opposed on "privacy" and "costly burden" grounds by the U.S. Chamber of Commerce and other business interests,[26] and by lobbyists for states like Delaware and Nevada that are afraid to lose the huge revenues they now enjoy from their corporate registries.[27]

Given the power of such interests, we might have thought that the election of President Trump, combined with Republican control over Congress, would have stifled such proposals once and for all. However, since 2017, an attempt to reposition UBO registration as an "anti-terror finance" measure has attracted some Republican support. *Public* UBO registries, however, are still not likely to happen,[28] even though experience shows that

public registries are vital to ensure that the data on UBOs is accurate and timely.[29] And there are also many other loopholes.

Partly to keep pace with the OECD and the European Union, and partly because investigative journalists have unearthed huge volumes of anonymous high-end U.S. real estate ownership, in January 2016 President Obama's Treasury issued the first in a series of "geographical targeting orders" ("GTO"), requiring title insurance companies to identify UBOs for any real estate deals over the specific limits that have been paid for by cash or cash equivalents. These orders have since been extended six times, most recently by Trump's U.S. Treasury. The most recent extension applies to high-end residential real estate in several U.S. cities, including New York, Miami, San Francisco, Los Angeles, Honolulu, and San Antonio. The thresholds vary by city—for example, in Manhattan, the threshold for residential condos is $3 million; for Miami and Palm Beach, $1 million.

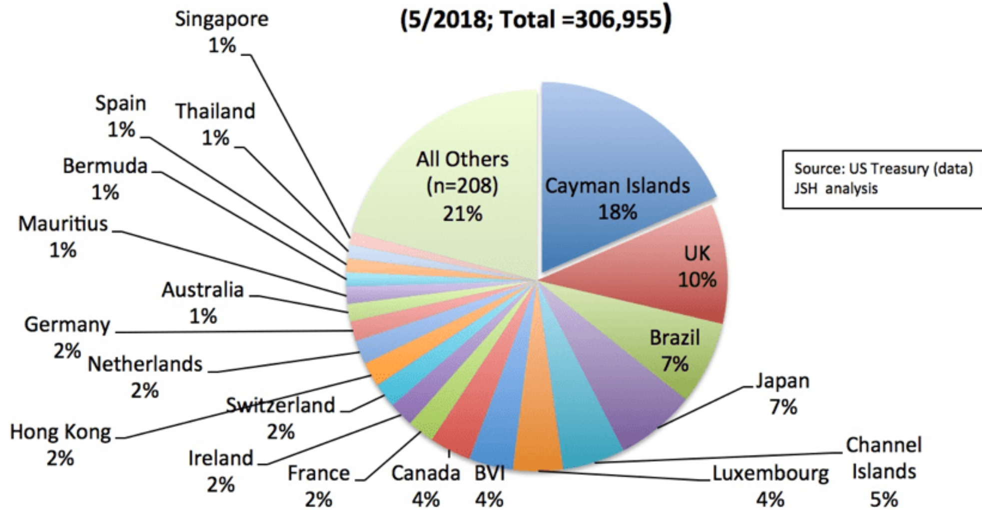
All real estate financed by private loans or mortgages is excluded, which opens a large escape valve. And the other rules that pertain to GTO UBOs are also easily defeated.[30] Overall, even if the toughest versions of existing UBO registration bills were to pass, and the GTO orders continue to be extended, well-advised NRAs who want to invest anonymously in U.S. real estate or other non-bank assets will likely be able to do so for quite some time.

Even though UBO transparency has been more or less stuck in the United States, it has been making much greater progress elsewhere. Spurred on by the 2008 financial crisis and the desire to curb tax dodging, the G-20, the OECD, FATF, the United Nations, and the European Union have all positioned the demand for public UBO registries at the center of their reform efforts. In 2009-15 the OECD, in particular, relaunched the "Global Forum on the Transparency and the Exchange of Information" that it had created in the early 2000s.

This revival was inspired in part by the Obama Administration and Senator Levin, whose "Foreign Account Tax Compliance Act" ("FATCA") (March 2010) required all foreign financial institutions ("FFIs") with U.S. activities to report any client assets to the U.S. IRS that have indicia of ownership by U.S. citizens or "green card" holders—whether or not they currently reside in the United States. FATCA thus requires every FFI in the world—including banks, investment companies, hedge funds, and trusts—to register with the U.S. Treasury, on pain of being subjected to a 30 percent withholding tax on U.S.-source dividends, interest, and other capital income.

That got everyone's attention. By May 2018, 306,955 FFIs from 228 countries had registered with the U.S. Treasury under FATCA, either directly or through their own governments. In effect, on pain of this stiff withholding tax, they all agreed to become a gigantic intelligence network for the IRS.

The resulting FATCA registration list provides an interesting cross-section of the world's key cross-border FFIs. As described below, about 40 percent of FFIs come from the UK "spidernet" alone, especially the Cayman Islands (18 percent), the UK itself (10 percent), the Channel Islands (5 percent), British Virgin Islands (4 percent), Ireland (2 percent), and Bermuda (1 percent). In retrospect it might have been much less costly and time-consuming for the U.S. Treasury to have simply updated its information exchange agreement with the UK spidernet.



As for FATCA's tax collection benefits, back in 2009 Senator Levin offered a guesstimate that the U.S. Federal government was losing up to $100 billion a year to offshore tax dodging by wealthy Americans.[31] More careful analysis soon reduced this to just $800 million a year of increased revenue collections through 2020. Even this estimate turned out to be excessive, certainly by comparison with FATCA's implementation costs, which have been substantial. But these have been born mainly by FFIs and the 7-8 million U.S. citizens who live offshore. Initially there were reports that these offshore Americans were finding it difficult to get any FFIs to serve them, given FATCA's noxious reporting requirements.[32] However, since so many FFIs have registered with the U.S. Treasury, these complaints were probably exaggerated. In any case, contrary to the expectations of many conservatives, FATCA is one recent piece of stiffer U.S. tax enforcement legislation that has survived.[33]

FATCA is important to the story of the growing U.S. haven role for several reasons. First, as noted, FATCA helped to inspire the OECD's Global Forum and the European Union to deploy its *reciprocal* "Common Reporting System" (CRS) for information exchange on a global basis. Second, when they did so, however, they soon discovered that except for a handful of "advanced" destination havens like the UK and Switzerland, the United States was unwilling to enter into full reciprocal information exchange. In other words, it was willing to receive but not to give. Nor, as we've seen, has it so far been willing to implement the kind of public UBO registration systems necessary to have any useful information to give. In that sense, *relative to the rest of the world* U.S. financial secrecy has been *increasing*.

Finally, FATCA has underscored a striking U.S. tax policy anomaly. Even while the United States has thrown open the door to (very) wealthy non-U.S. citizen NRAs who want to avoid all taxes at home and abroad and hide their wealth *onshore* by way of, say, Delaware and Nevada shell companies and trusts, it has insisted on this elaborate FATCA system to chase down (mainly middle-class) U.S. citizens all over the globe. The lesson: It helps to have influential pirate bankers.

One unintended positive byproduct of the U.S. FATCA double-standard is that it has promoted transparency elsewhere. As noted, the OECD and the European Union, for example, saw FATCA as an important step toward exchanging taxpayer information across borders. But they also recognized that without comprehensive public UBO registration, there would not be much useful information to exchange, given the importance of shell companies and trusts. So in 2015 the OECD's Global Forum—148 member countries, including more than 90 conduit havens—committed to rolling out both reciprocal "automatic exchange of taxpayer information" ("AEOI") across borders and public UBO registration by 2017-2020. Even Switzerland agreed to comply with the OECD's new "Common Reporting Standard"("CRS") for reciprocal AEOI. The European Union also made progress toward establishing public UBO registries for "letterbox companies."[34]

The United Kingdom's progress toward both AEOI and public UBO registration was especially striking. In April 2016 it launched its first public UBO registry for about three million UK companies and LLCs. There were still

many loopholes, but this was important progress.[35] The most important loophole, however, was that at first the United Kingdom failed to require its overseas territories or dependencies (such as the Cayman Islands, British Virgin Islands, and Bermuda) to register their UBOs. So the first installment of the United Kingdom's public UBO database contained numerous opaque references to shell entities from these islands.[36] It was therefore good news when in a coalition of Labor and Tory backbenchers rose up in May 2018 and demanded that all of these UK-related havens also implement public UBO registration. Assuming that this decision survives, the entire UK "spidernet" may well have a public UBO registry by 2020—long before any such registry will likely exist in the United States.

Meanwhile, the United Kingdom has also supported a surprising number of other pro-transparency reforms, including the OECD's AEOI and CRS initiatives, public "country-by-country" reporting for large companies, a "diverted profits tax" to address systematic tax dodging by digital giants like Apple and Google, and an "unexplained wealthy" statute to help law enforcement track down dodgy wealth. In May 2018 Parliament even held tough hearings on the role that Russian "dark money" has long played in the City of London.

Of course, many critics remain skeptical about this entire "transparent data" approach to combatting corruption and tax dodging. This skepticism has some merit. To begin with, the technical resources required to deploy robust, scalable, secure software platforms to manage all this data are beyond the reach of many countries, especially poorer ones. Unless data is accurate and timely, the enterprise is also easily gamed—that's why permitting public access for journalists, NGOs, and academics is so critical. We've also already seen top private banks helping wealthy clients devise ways to avoid CRS and FATCA reporting requirements.[37] At the end of the day, data alone is rarely sufficient—the most important deterrents to financial chicanery are investigative journalists, whistleblowers, and tough prosecutors.

Most important, the United States, the lead dog in the global haven industry, has so far withheld support from almost all of the key pro-transparency reforms. The U.S. Treasury and Congress have to date opposed *public* UBO registration for companies, LLCs, and trusts. They have declined to support reciprocal AEOI with all other OECD members, let alone the Global Forum or the world at large. On the corporate side, they have also failed to support public disclosure of *country-by country* financial data—even at the aggregate industry level.[38]

All told, the United States has been playing a hypocritical role—maintaining the extensive secrecy and tax benefits it offers to wealthy foreign tax dodgers, crooks, and kleptocrats, even while insisting that the entire world must help it tax its own citizens.

Another key role that leading destination havens play for cross-border investors is to help them defend against claims from creditors, disgruntled business associates, family members, extortionists, and governments. Here, offshore havens like the Cook Islands (1989 trust law), the Cayman Islands (1989), Nevis (1994), Bermuda, Belize, and the Bahamas set the pace with respect to the key protections—"self-settled" trusts, very short (two- to four-year) periods to challenge fraudulent transfers, and the sheer cost and hassle of pursuing cases in far-away jurisdictions.

However, beginning with Alaska's approval of self-settled asset protection trusts (APTs) in 1997,[39] a growing number of U.S. state have also entered the AP fray. By now all of the key protections are available at much lower cost from (at last count) 16 U.S. states—including Alaska, Delaware, Nevada, and South Dakota. Despite the serious public policy issues raised by this practice, these U.S. states have been delighted to extend asset protection to foreign trust settlors and NRAs.[40]

Enablers, Non-Financial Sector Strength, and Malleable Agency. As the world's leading destination haven, the United States has several other attractions. First, it features the world's largest, most sophisticated asset markets. Unlike most other financial centers around the world, the United States has never once implemented exchange controls.[41] From Seattle to New York and Miami, the United States now also boasts the world's largest, most liquid markets for anonymous real estate.[42] The United States is also among the world's top markets for other asset markets of special interest to high-end investors, like art, precious metals and collectibles, yachts, and jets.

Second, the United States has become the leading provider of the professional "enabling" services required for state-of-the-art financial secrecy, tax dodging, and odious finance.[43] It also happens to be global leader in "fin tech," and in high-frequency trading, which now accounts for more than 75 percent of all equity and bond trading.[44]

Finally, U.S. financial institutions are among the most politically influential financial institutions in the world. Especially since the 1990s, they have managed to acquire enormous political power at all levels of government, and indeed abroad. Together with their enabler-partners, they have used it to defend and expand the prerogatives of their clients and themselves, not only through lobbying and campaign finance but also through strategic investments in key states. In the wake of the 2008 global financial crisis, for a brief time it seemed as if this influence might be reined in—after all, many leading financial institutions needed huge government bailouts to survive. In hindsight, however, the crisis only demonstrated their enormous political clout once and for all. Not only did it avoid outright nationalizations, in striking contrast to several other OECD countries, but over time it has also been able to substantially weaken or even repeal most of the new regulations that were adopted in the wake of the crisis, with broad support from both major U.S. political parties. All this adds up to almost total FI state capture on an almost unheard of scale. This is deeply reassuring, not only to the wealthier-than-ever Wall Street elite, but also to offshore investors.

That is not quite all. Despite having these competitive advantages as a haven, the United States for decades lagged behind Switzerland and the "UK spidernet" as a destination for offshore wealth, even while its largest financial institutions pursued it all over the global, setting up branches and subsidiaries in Geneva, London, and elsewhere to compete for it. To a great extent this was because U.S. law enforcement has long been viewed as much tougher on "white-collar" financial crime. That was due, in turn, to the fact that at least since Prohibition, U.S. law enforcement has had to deal with a larger organized-crime sector, and the fact that the until very recently, U.S. financial services accounted for a much smaller share of the economy than in, say, the UK or Switzerland. So law enforcement there was always biased against punishing financial crimes severely, especially where the offenders are wealthy foreigners or their local private bankers.[45]

As a result, while growing numbers of "ordinary" foreign tax dodgers and flight capitalists have frequented the United States since the 1970s, until recently the world's dirtiest money and largest dictator fortunes headed elsewhere. Indeed, after decades of abject silence, just this year the OECD—which has featured Switzerland as a charter member since 1960—*finally* gave it a rotten review for its lynchpin role in facilitating global corruption and kleptocrats like Marcos and Putin, and for the fact that the Swiss government continues to avidly pursue whistleblowers all over the planet.[46]

Despite this long-term pattern, there are disturbing signs that the United States is now becoming more lax toward penalizing white collar financial crimes. First, review of more than 650 fines and settlements incurred for a wide variety of cases involving financial chicanery by the world's top 22 banks from 1998 to 2015—the majority of which were due to U.S. law enforcement—indicates that they got off very lightly, in striking contrast to the penalties that were exacted during earlier bankster crime sprees. [47]

Second, despite a rising tide of corporate criminality in the United States and elsewhere, U.S. prosecutions and convictions for white collar crime are at their lowest levels in decades.[48] This trend was already evident under President Obama, especially from 2011 on. It has accelerated under President Trump. Not only is he totally unsympathetic to U.S. tax enforcement and anti-bribery statutes on policy grounds, but he also has a long history of personal associations with financial criminals himself.[49]

As a result, the Federal Bureau of Investigation has recently experienced a significant budget cutback.[50] For tax enforcement, the cutbacks have been even worse. From 2010 to 2018, the IRS experienced a 20 percent real budget cut and a 23 percent staff cut, even as its workload increased dramatically, driven by ten million new taxpayers plus the administrative burden of having to implement new legislation like FATCA, Obama's health care plan, and Trump's "Tax Cut and Jobs Act." As a result, audit rates for corporations and individuals have plummeted to 15-year lows.

Of course, the United States still has some of world's toughest long-arm anti-bribery, anti-kleptocracy, anti-money laundering, and tax fraud statutes on the books. But at a time when U.S. law enforcement is preoccupied with cybersecurity, global terrorism, and undocumented workers, it is not surprising that the number of offshore kleptocrats who are seeking to exploit the United States as a destination haven is soaring.

As we noted earlier, the United States has been one of the leading destination havens for wealthy individual offshore investors for decades. But by a host of objective criteria the uber-libertarian strain of American conservatism really has now realized its objective: The United States has recently surged right to the very top. Indeed, while the recent Trump/Goldman corporate tax "reform" deserves separate treatment, this new U.S. haven role is only reinforced if we consider recent U.S. policy changes in international corporate taxation.

If any jurisdiction in the world deserves to be "blacklisted," by the European Union or anyone else, let them begin right here.

[1]For other recent related discussions by the author of "tax wars," especially MNC tax competition, see (1) James S. Henry, "The Apple Tax Give-Away," American Interest, January 26, 2018; and (2)" Ladies and Gentlemen, Take Your Places," *The American Interest*, December 21, 2017.

[2]Rep. Devin Nunes, R-California, Chairman of the House Intelligence Committee, March 2013, quoted here.

[3]See for example Brazil's recent blacklist, which included Delaware. Brazil. Regulation No. 1037 (Instrução Normativa no. 1037/2010), June 4, 2010. Latvia is the most recent individual country to adopt a haven blacklist, under strong pressure to clean up its own notorious banks. See here. The OECD had tried something similar in 1998-2000, only to have it quashed by the Bush Administration.

[4]See here. For a useful discussion, see here. The OECD/G20 standards referred to are the so-called 15 "BEPS" ("Base Erosion and Profit Shifting") Actions that were proposed in 2015. See below.

[5]The initial countries on the list were American Samoa, Bahrain, Barbados, Grenada, Guam, Macao, the Marshall Islands, Mongolia, Namibia, Palau, Panama, Saint Lucia, Samoa, South Korea, Trinidad/Tobago, Tunisia, and the UAE. On January 23, 2018, Barbados, Grenada, South Korea, Macao, Mongolia, Panama, Tunisia, and the UAE were moved to a "grey list," subject to monitoring but no sanctions. On March 13, 2018, Bahrain, St. Lucia, and the Marshall Islands were elevated to this grey list, five more jurisdictions that had not been among the original 17 (Anguilla, Antigua, Barbuda, BVI, and Dominica) were also added to the grey list, and the Bahamas, the U.S. Virgin Islands, and St Kitts & Nevis were added to the black list. So the remaining "blacklist" now includes just nine tiny offshore havens, including these three plus the U.S. territories American Samoa and Guam, Namibia, Samoa,

[6]Objective measures show that According to objective measures of haven misbehavior and secrecy, all of these EU havens were far more harmful than any of the conduit havens included on the EU lists. See for example TJN's Financial Secrecy Indices (2009-2018).

[7]This is my term for the network of eight UK Overseas Territories, three Crown Dependencies, and another 10-12 former colonies that now have offshore financial centers.

[8]As of 2018, the core group of the "UK spidernet" includes seven UK Overseas Territories with offshore financial centers—Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, the Isle of Man, Guernsey, Jersey, Montserrat, and Turks and Caicos—plus three "Crown Dependencies" are Jersey, Guernsey, and the Isle of Man. The UK haven network also maintains relations with former colonies and Commonwealth members that are known as secrecy jurisdictions, like Anguilla, the Bahamas, Brunei, the Cook Islands, Dominica, Grenada, Mauritius, St. Kitts & Nevis, St. Lucia, St. Vincent, and Trinidad.

[9]Usually in the form of financial assets, real estate, precious metals, art, other collectibles, and yachts, plus the right to (tax free) domicile. As of 2018, the world's top destination havens included Switzerland, the United States, the UK spidernet, followed by Germany, France, Spain, Australia, New Zealand, Italy, and Canada. Singapore, Dubai, and Hong Kong play an interesting hybrid role as residential, corporate, and financial havens.

[10]Indeed, Swiss haven services are renowned for being among the most world's most costly.

[11]The simplest current legal definition of "non-resident alien" is a non-U.S. person—individual, corporation, estate, or trust . In the case of an individual, it includes anyone who does not have a work permit ("green card" or EB5 visa). NRAs may have B-1, B-2, or other types of visas, but they do not necessarily need visas, depending on their countries of origin. Under current U.S. tax laws, such "NRAs" may be permitted to reside in the United States for up to 183 days the first year, and an average of 120 days per over any three years. Under current U.S. law, NRAs are not subject to federal income taxes on their non-U.S. income at all or on any U.S. income from capital, including interest, dividends, or capital gains.

[12]The 1980 Castle Bank and Trust case was my first encounter with offshore banks and tax havens.

[13]See James S. Henry, "Calling in the Big Bills," *Washington Monthly* (May 1976); James S. Henry, "How to Make the Mob Miserable," *Washington Monthly* (June 1980). See also here and here.

[14] Luxembourgh's demand for €500 notes was also very high, but not as high as Spain's.

[15]See James S. Henry, "The Debt Hoax," *New Republic*, April 9, 1986; James S. Henry, *Banqueros y Lavadolares* (Tercer Mundo, 1996, 414 pp.); James S. Henry, *The Blood Bankers: Tales from the Global Underground Economy* (Basic Books, 2003-05).

[16]See James S. Henry, "The U.S. as Tax Haven," *Washington Post*, Outlook, January 22, 1989.

[17]See Ana Swanson, "How the U.S. Became One of the World's Biggest Tax Havens," *Washington Post*, April 5, 2016.

[18]For bonds issued after July 18, 1984, that have at least six month maturities; for bonds of all maturities after 1997.

[19]For example, one recent scheme designed for wealth Brazilian NRAs describes how they can invest in U.S. real estate and pay extremely low taxes on rents, capital gains, estates and gifts by establishing a Delaware LLC that borrows from foreign trust. See here, here, and here.

[20]Only part of this growth in the number of CTRs was due to the fact that Congress had failed to index the nominal $10,000 threshold that had been set in 1970 to inflation. By 2008, if it had done so, the threshold would have been $60,000.

[21]This is despite the fact that the current system for actually prosecuting banks and other corporations for white collar crimes has broken down, although, since 2008, we have continued to see serious money laundering prosecutions of many leading giant financial institutions, including HSBC, Wells Fargo, Deutsche Bank, JP Morgan, Citibank, Credit Suisse, BNP Paribas, and Barclays. One key problem is that we have not figured out how to penalize these institutions effectively—even very large fines, arriving very late in the decision making process and often being passed on to the customers or shareholders, don't do the trick. See my recent articles about the corporate crime wave.

[22]The new "customer due diligence" rules for U.S. banks and other selected U.S. financial institutions were introduced by Obama's U.S. Treasury's anti-money laundering regulator FINCEN in 2016 and became effective on May 11, 2018.

[23]For example, if LLCs are sued by their creditors, the legal relief may be limited to charging orders against actual distributions to members; in the case of corporations, creditors may be able to attach their stock certificates, effectively shutting them down. Note that many countries, like Canada, refuse to recognize the "pass through" character of LLCs, for purposes of corporate income taxation.

[24]As of 2018, the U.S. states that are preferred for "anonymous LLCs" because they don't require disclosure or publication of beneficial owners or managers even upon formation are Alabama, Colorado, Delaware, Georgia, Iowa, Virginia, and Wyoming,

[25]Most of these bills were introduced by former Senator Carl Levin (D-MI) and Senator Sheldon Whitehouse (D-RI). The latest draft proposals to emerge from House Republicans provides for FINCEN, the U.S. Treasury's anti-money laundering regulator, to establish one. The notion of mandating the state corporate registries to establish public registries was included in the initial "Stop Tax Haven Abuse Act," introduced by U.S. Senator Carl Levin (D-MI) in 2011. See here. Variations on that approach have been introduced every year since then. See the "Incorporation Transparency and Law Enforcement Assistance Act" (S.489, 2017) introduced in the U.S. Senate by Senators Sheldon Whitehouse (D-RI) and Diane Feinstein (D-CA) in 2017, described here. A similar bill was also introduced in 2016. It was also reintroduced in 2018. Not surprisingly, the states would like the federal government to pay for it.

[26]Especially the U.S. Chamber of Commerce. See also this critique by the Heritage Foundation.

[27]Money laundering can be a very profitable sideline for governments as well as for private interests. For example, Delaware now hosts 1.2 million out of the 12 million U.S. corporations, LLCs and trusts. It earns over $1.2 billion a year from the fees generated by registering new entities and catering to old ones—a third of its tax revenues. As of 2016 (latest data), Delaware's Division of Corporations had registered more than 1.2 million corporations, including 189, 524 in 2016 alone. The Division's annual revenues from these new business entities and net business entities transfer taxes was $1.146 billion. Total state revenue from taxes and license fees in 2016 was $3.52 billon. See here and here.

[28]All UBO registration bills now before Congress would only mandate a *private,* law-enforcement-only version of UBO registration for companies and LLCs. Even the bills introduced by Senator Levin over the years never provided free access for journalists or the public at large.

[29]For example, all the bills now before Congress exclude trusts and partnerships, there are no penalties for inaccurate data, and even the definition of "beneficial owner" is very loose. Among the glaring loopholes in the current (May 2018) bills: (1) omission of partnerships and trusts; (2) omission of all businesses with more than 20 employees and more than $5 million in gross revenue; (3) confusions about who actually constitutes a "beneficial owner" or an "applicant" under the bill; (4) no auditing of data accuracy—which is especially important; (5) existing entities have 2 years to comply with UBO registration, and 60 days to record updates—a fortune of time for any serious money launderer. One recent analysis of the UK's public beneficial ownership data identified over 100,000 companies with inaccurate UBO data.

[30]If an LLC or trust does any real business, or needs a tax ID number from the IRS, someone has to be given power of attorney, but this can easily be passed off to nominee. If new bank accounts are needed, and an LLC (but *note bene*: not a trust or partnership) is involved, investors with more than 25 percent ownership or "control" of such entities have to be identified under the latest "Know Your Customer" rules for U.S. banks, while any changes in these account-related UBOs have to be reported to banks within 60 days, as well as annually. But for investors who change their entities like bedsheets, these rules are at most a nuisance.

[31]See the review of these FATCA revenue and cost estimates.

[32]Academic critics as well as organized FATCA opponents have generated a large literature of horror stories about the burdens created by the bill, including losing access to financial services abroad and the costs of complying. See here, for example.

[33]In particular, FATCA has survived several legal challenges and repeal efforts, partly because offshore American are not that wealthy or well-organized, and partly just because FFIs have already spent the one-time investments required to comply. See here and here.

[34]Elsewhere in Europe, even the historically sordid Vatican Bank has started to clean up its act.

[35]For example, the early version omits trusts, the threshold for "beneficial ownership" (">25 percent") is very high, the initial UBO data was filled with errors, and no one was penalized for failing to report.

[36]There are at least three times as many FFIs in these islands as in the United Kingdom itself. See the previous chart.

[37] For example, by using omnibus accounts for multiple clients that are managed by "independent" asset managers or lawyers that have to business interests in the U.S. and are therefore beyond FACTA's reach. Technically speaking, the accounts that these asset managers maintain with major banks like UBS or Credit Suisse are "domestic" accounts, and the assets they contain are counted by, say, BIS as "domestic," not cross-border.

[38]Aggregation would address legitimate concerns about competitive information, but for many industries even the disclosure of aggregate CxC data would also underscore the untoward role that havens play in shifting profits.

[39]For a detailed analysis of Alaska's 1997 Trust Act, see here.

[40]Again, it is usually a combination of onshore- and offshore entities that achieves the niftiest results—for example, by permitting NRAs to avoid U.S. estate taxes on financial assets by holding them by way of an offshore company that is owned by a U.S. APT.

[41]Prior to 1973, the United States fixed the value of the dollar to the price of gold, but it always met whatever demand for gold turned up. In 1973 President Nixon decided to "float" the dollar, suspending the fixed conversion rate

[42]The United States also leads the market in all the key attendant real estate market services, including brokering, development, legal and tax advice, insurance, mortgage finance, and security.

[43]Indeed, most of the world's largest, most successful players in the global haven industry—private banks, accounting firms, law firms, insurance companies, investment advisors, hedge funds, mutual funds, real estate investment firms, and private equity firms—are now headquartered in the United States, especially in New York. Since the 1980s, most of these service providers have developed units that specialize in serving wealthy offshore investors. Partly as a result of the concentration of all these high-end service providers and investment markets in a handful of major U.S. metropolitan areas, these markets have also become the world's best "beehives," where sophisticated investors can gain an "edge" just by being present, not only by way of better trade execution, more sophisticated financial products and tax structures, but also in the supply of valuable non-public information.

[44] With respect to technology and business skills, U.S. companies are the dominant players in e-commerce, software, mobile communications, cloud computing, data mining, and Internet- based communications, and social media, as well algorithmic trading, mobile payment technologies, cybercurrency and blockchain. More broadly, the United States also has a commanding lead in post-graduate business, design, and technology education, hosting all but one of the world's top 20 business schools. Alumni donations reinforce this dominance.

[45]Even today, the United States still leads the world in the prosecution of bribery and anti-money-laundering cases, with more than 1,200 "AML" prosecutions per year.

[46]The author's first investigation of Switzerland's stellar role in hiding stolen dictator wealth described the looting of the Philippines by Ferdinand Marco and his cronies. See Chapter 3, "Philippine Money Flies," *The Blood Bankers* (Basic Books, 2003, 2005). For the OECD's belated 2018 discovery that Switzerland has played this role, see here.

[47]For more details, see James S. Henry, "The Economics of the Global Bankster Crime Wave," *The American Interest*, October 25, 2017.

[48]See James S. Henry, "Sideswiping the Global Corporate Crime Wave," *The American Interest*, November 17, 2017.

[49]See James S. Henry, "The Curious World of Donald Trump's Private Russian Connections," *The American Interest*, December 19, 2016.

[50]The FBI's latest budget request for FY 2019, would reduce its budget by $496 million, compared with FY 2018.

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