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Authors

Maurer, Bill
Martin, Sylvia J

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BILL MAURER

University of California, Irvine

SYLVIA J. MARTIN

University of Hong Kong

Accidents of equity and the aesthetics of Chinese offshore incorporation

ABSTRACT

The British Virgin Islands is second only to Hong Kong as a source for foreign investment into China. Over the past two decades or so, Chinese entrepreneurs have demonstrated a preference for incorporating in the offshore finance centers of the Caribbean. Chinese offshore structures are different from earlier uses of the offshore in their unique and seemingly transparent aesthetic form. We show how equity—a legal argument and tradition that moderates the letter of the law—and these structures mutually engage one another through spatiotemporal reference and framing. We argue that this engagement is accidental, a coincidence of aesthetic form rather than an emergent phenomenon of any larger process or the product of a plan. It is also not a contingent articulation of compatible elements from the corporate and legal domains. In exploring the aesthetics of Chinese offshore incorporation and court cases that invoke equity, we argue that the accidental discovery of equity can reorient certain analytical conceits about capital and how we can know it. [*accident, aesthetics, Caribbean, China, corporations, deixis, law, offshore*]

In Chinese writing, new characters can be formed by juxtaposing an existing character that already conveys a certain meaning with another character that hints at the pronunciation of the word represented by the new, compound character. Thus, the character for uranium, 铀, is composed of the character meaning “metal” and a character that is pronounced /yóu/. The first character, the radical, contains a semantic element. The second character, sometimes called the “rebus,” contains a phonetic element. When uranium was discovered, orthographers decided the Chinese character for this new element should indicate the sound of the English word (Li and Thompson 1990:830). The rebus in the compound character thus points doubly outside itself: to a semantic item somewhat related to the compound (for uranium is a metal) and simultaneously to a sound also somewhat related to the compound. It is like rebus brainteasers that use combinations of words and images to suggest a phrase by playing with words, images, words as images, words as sounds, and the spatiotemporal elements of writing itself (see Figure 1).

Over 90 percent of modern Chinese characters follow the compound radical-rebus form (Li and Thompson 1990:830). Hence, Chinese is a logographic writing system but not straightforwardly so (Sampson 1994). Lines sketched in space do not iconically represent a semantic term. Rather, the lines work because the radical and the rebus operate in concert, in relation to one another but also in relation to the values—semantic, sonic—that they can stand for in certain other relations. Their combination under just the right circumstances creates a transformation into a new value. There is no rule or law that determines why any particular character that represents the meaning or the sound should be placed next to any other particular character. There is no cause that predetermines which characters could be brought into relation with one another in the radical-rebus compound. One might call the conjunction “accidental.”

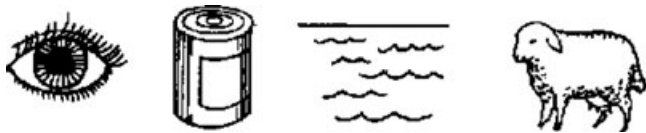


Figure 1. I can see you. Reproduced by permission from John DeFrancis, *The Chinese Language: Fact and Fantasy* (Honolulu: University of Hawai'i Press, 1984), p. 139.

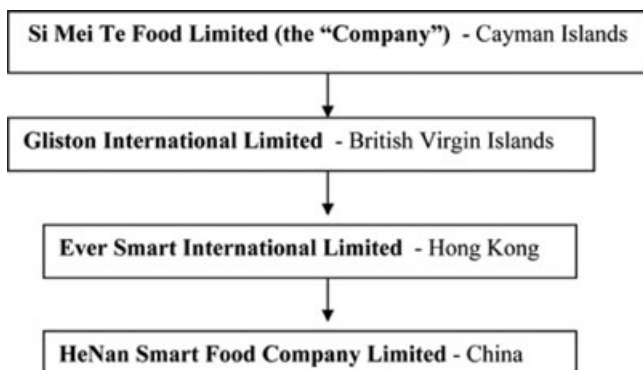


Figure 2. Simple Chinese subsidiary structure (Securities Exchange Commission [SEC] file number 000-52679).

The offshore Caribbean has become a major site of incorporation for Chinese private enterprises.¹ Historically, it was the location of complicated trust and corporate structures whose creators generally intended to hide assets—from tax collectors, from business competitors, from wives. The Chinese offshore corporate structures are not very complicated, however, and are often public. They are also reminiscent of the radical-rebus compound, as they often involve two main elements: a Cayman Islands company and a British Virgin Islands (BVI) company organized on top of a series of other subsidiaries, in the Caribbean, China, and elsewhere. The resemblance to the radical-rebus is formal, aesthetic. Most are variations on the following theme:

A Cayman company owns a BVI subsidiary (see Figure 2). This radical-rebus compound, in turn, owns a Hong Kong subsidiary, which, in turn, owns a subsidiary in the People's Republic of China (PRC). More complicated structures are only apparently so: They repeat the pattern whereby a Cayman-BVI radical-rebus animates the action that takes place below. Figure 3 shows an example of a compound on top of a subsidiary in Hong Kong, which, via contractual agreement with a trustee, sits atop a number of Chinese subsidiaries.

Figure 4 presents a slightly more complicated structure, but, again, close examination shows that it is based on multiple Cayman-BVI compounds.

The charts are not as complicated as they appear. The draftsman who made them helpfully indicated which activities are “inside” and which are “outside” China. As in a rebus, the spatial layout on the page helps the viewer de-

code the puzzle, and the prepositions index spatiotemporal coordinates beyond the printed page that the chart supposedly replicates. These organizational charts come from U.S. Securities and Exchange Commission (SEC) filings, available in the SEC's public database, EDGAR Online. Foreign issuers of securities in the United States are required to register with the SEC and to file a form, 20-F, listing details of their organizational structure. Ten to 15 percent of Chinese companies listed in the SEC's database have filed Form 20-F.

Using SEC data, economists Dylan Sutherland and Lutao Ning (2011:46) have demonstrated that, as of 2011, nearly all of China's private “multinationals” had a Cayman Islands-registered company as their listing vehicle for the U.S. and Hong Kong stock exchanges. The press has never reported on Chinese companies' Caribbean connections, however. Many of China's biggest corporate names are structured this way: Baidu.com, China's Internet rival to Google; NetEase, a Twitter-like social-media microblogging website that was also the distributor in China of *World of Warcraft*; Focus Media, China's largest outdoor digital media and advertising company. Early academic and policy assessments attributed this pattern to an effort by Chinese entrepreneurs in the PRC to take advantage of tax preferences afforded foreign direct investment (FDI). China has a worldwide taxation system, collecting revenue from Chinese individuals' and corporations' profits no matter where earned (in contrast to the United States, which has a territorial income tax system).² Some entrepreneurs could exploit their connections to overseas Chinese communities to get around this system. Others could reap the benefits that went to “foreign” investors by using the Caribbean jurisdictions. Policy analysts termed the sending of money abroad to create the appearance of foreign corporate control “round-tripping”: Capital made a round-trip from China to a foreign jurisdiction and back again. Round-tripping distorted the statistics on FDI inflows and may have led to overly optimistic assessments of China's economic vitality.

In 2008, however, China removed the FDI tax preferences. Yet companies continue to make use of Caribbean offshore shell corporations. For forensic accountants and financial investigators working in the Caribbean, like some of Maurer's informants, the practice is puzzling because there is nothing to disentangle. Not only is information on corporate structure public but it is also not that complicated. Chinese offshore structures do not involve complex relationships of part-ownership that do not add up to 100 percent or interlocking subsidiaries that loop back on one another—the kind of impossible architectures that have long characterized offshore incorporation for tax evasion or “asset planning” purposes. Said one such professional, while he and Maurer were looking together at a chart like that in Figure 2, “You have to wonder why they bother.”³

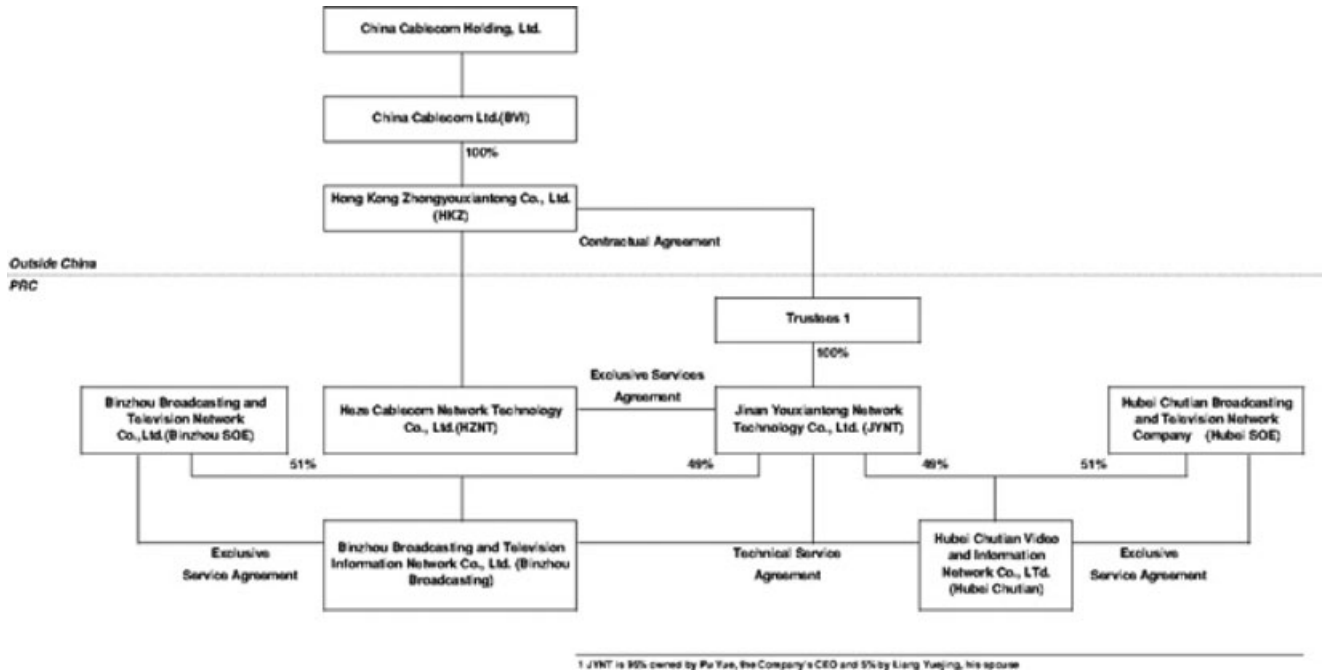


Figure 3. Subsidiary structure for China CableCom Ltd. (SEC file number 001-34136).

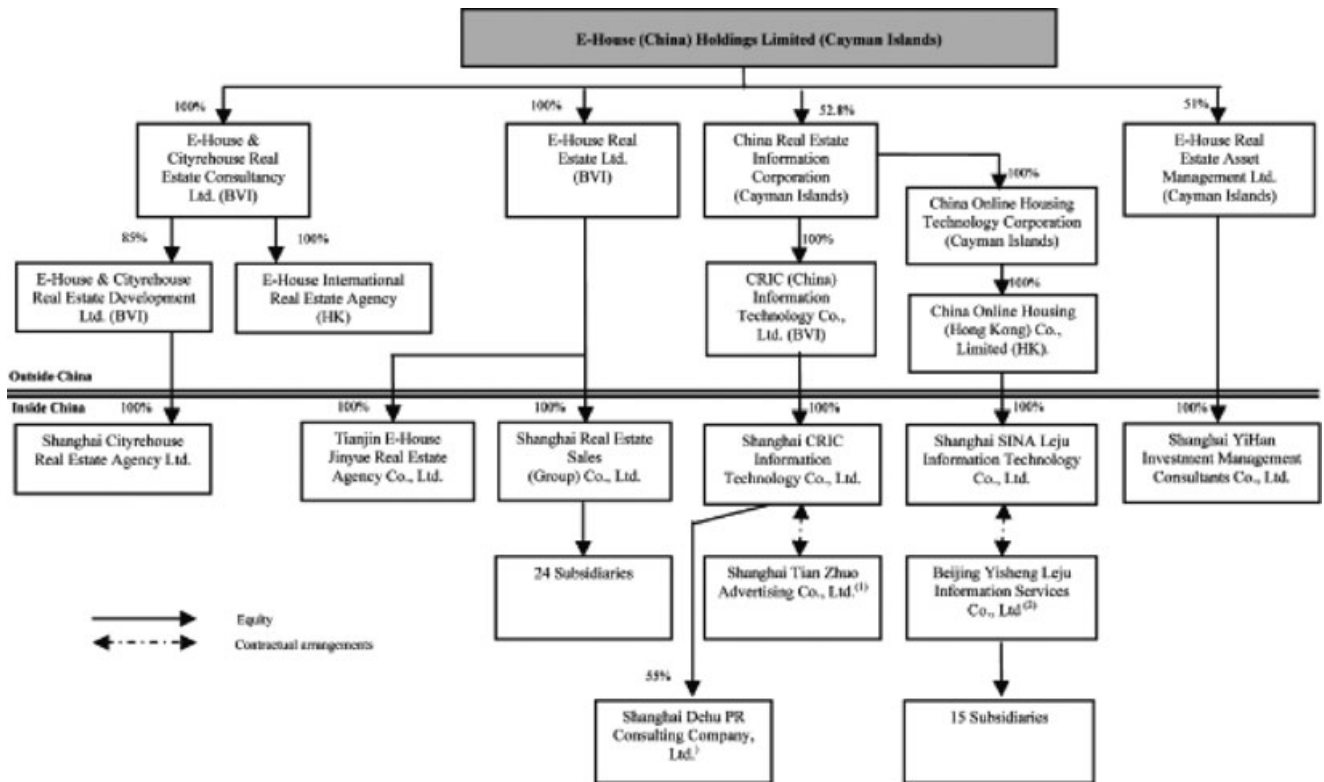


Figure 4. Subsidiary structure for E-House (China) Holdings Ltd. (Cayman Islands) (SEC file number 001-33616).

Why do they bother? We argue that the reasons may be less intentional than accidental and that the aesthetics of Chinese offshore incorporation shed new light on the global use of offshore financial centers and, even, on what has come to be called “global capitalism.” Traditionally, wealth from Europe and the United States was parked in the Caribbean havens. Today, South–South flows are becoming important. “India is the next big thing,” one investigator in the BVI said. Entrepreneurs and firms from China, India, Brazil, and Russia are currently making creative use of the world’s offshore centers (especially the Caribbean, Hong Kong, Mauritius, and Cyprus). Insofar as these economies are heralded as economically ascendant, it is important to understand their use—and the style of their use—of the offshore centers.⁴ We argue that the Chinese offshore drive toward simplicity involved an accidental discovery of equity, that the radical–rebus form of these offshore structures is coevolving with equity, and that this coevolution reframes certain analytical conceits about capitalism.

The ethnographic project on which this article is based began with Maurer trying to understand shifts in the global regulatory regime toward offshore finance and their effects in the Caribbean. Fieldwork initially consisted of interviews with professionals in accounting, law, regulatory agencies, and fraud investigation. It also entailed drawing on Maurer’s long-standing connections in the BVI to get a feel for how finance had changed since his first fieldwork there in the early to mid-1990s. Then, the scene seemed to be dominated by the big multinational accountancy firms (many long since dissolved by the accountancy scandals of the late 1990s and early 2000s) and smaller trust company agencies, mainly with regional connections. In the course of the new fieldwork, however, Maurer and several of his informants increasingly became fascinated by Chinese incorporations. The Chinese activities were fascinating because they did not seem to make sense in light of prior uses of offshore jurisdictions. The structures were too simple. And they were public, disclosed in SEC documents. This was a puzzle. As Maurer and his associates mulled over this puzzle together, they came more and more to appreciate equity.⁵ Their discovery paralleled but came later than Chinese entrepreneurs’ and their agents’ discovery of equity. And that opened up new puzzles, as the group, together, explored the history of equity and the common law, had wide-ranging discussions on the nature and origins of jurisprudence, traded citations, and talked about Aristotle over beer and pizza in the too-cold air conditioning of Pussers pub in the heart of Road Town, just a few yards from the new Eastern Caribbean Commercial Court (ECCC) building. Back home, Martin’s expertise in Chinese media companies’ business strategies and multinational ties helped shed light on the motivations of Chinese entrepreneurs. There were, of course, limitations to the fieldwork component of our research: Chinese entrepreneurs

and their agents would not talk to Maurer (except about handheld translation devices!). But courtroom proceedings and documents, as well as the tales told by fraud investigators and forensic accountants, helped fill out the picture.

The picture that came into focus showed that the structure of Chinese incorporation and the pragmatics of equity require an appreciation of how the structures and pragmatics always point toward their own contextual elements. In other words, they do not stand alone or have meaning or value in themselves. What they denote depends on the contexts in which they appear. This is a classic definition of deixis in linguistics. Contrast this situation with traditional tax evasion strategies. There, corporate structures invite—even challenge—investigators to produce narratives about them, leading investigators down blind alleys and wrong paths. The Chinese incorporations, in contrast, invite not narratology but logography: The organizational form of these incorporations creates differentials between the various levels of the organization. Changes in space and state produce transformations of value from one subsidiary to the next. The organizational form is mirrored elsewhere, as we show below: in the distinction between foreign, inbound-to-China investment and overseas, outbound investment and in the law–equity distinction.

The apparent isomorphism of form we describe below does not mean Chinese incorporations and equity proceed from some shared font of aesthetic sentiment or similar phenomenological practice. The radical–rebus, to be clear, is our discovery, so to speak: our way into understanding the aesthetics of these corporate forms. But equity was a Chinese discovery, and an accidental one. The articulation of Chinese Caribbean incorporations with equity in the BVI is an accidental convergence, a “reciprocal capture” (Stengers 2010:36) made possible by the deictic handles each phenomenon affords the other. Ours is very much an aesthetic project.⁶ Gregory Bateson argued for an approach to aesthetics that was less concerned with what a work of art might “represent” and more with what was “implicit in style, materials, composition, rhythm, skill and so on” (1972:130). Transformations are more compelling than “the message” of art (Bateson 1972:130). Bateson (1972:131) was interested in “redundancies”—repeating patterns such that knowledge of some information embedded in a work of art could allow an observer to deduce with accuracy the rest of the information. This is not a reductive conception of redundancy. Bateson stressed what he called “adaptation rather than information” as a special kind of (aesthetic) knowing.

The Cayman–BVI compound structure, the logographic quality of Chinese incorporation in the Caribbean, is not caused by a quest for equity on the part of Chinese entrepreneurs or their agents. But the structure is a complement of equity, which, in its deployment of deixis, in its status as metaphorical, replicates the pattern of the

incorporations and the radical-rebus of Chinese writing. Contemporary capitalisms may more often than not involve such singular accidents. It is precisely the “interlocking circuits of contingency” (Bateson 1972:146) that interest us.⁷

Two sidebars are needed before we get started, one on equity and one on what we mean when we say “coevolve.”

What is equity? It refers to the use of substantive principles of fairness and justice that are meant to mitigate the formal strictures of the law. Georg Wilhelm Friedrich Hegel bequeathed a definition:

Equity involves a departure from formal rights owing to moral or other considerations and is concerned primarily with the content of the lawsuit. A court of equity, however, comes to mean a court which decides in a single case without insisting on the formalities of a legal process or, in particular, on the objective evidence which the letter of the law may require. Further, it decides on the merits of the single case as a unique one, not with a view to disposing of it in such a way as to create a binding legal precedent in the future. [1952:142]

Equity came into Anglophone legal worlds via Aristotle and the canon law. Immediately after his reflection on proportional justice as a correspondence of ratios (Kockelman 2010), Aristotle provided a caveat: When universal law errs, when the adherence to a formal rule violates “decency” (*epikaia*), equity must intervene. Equity is a “correction of legal justice.” Aristotle held that the equitable is just because it is “better than the error that results from the omission of any qualification [in the rule]. And this is the nature of the decent—rectification of law insofar as the universality of law makes it deficient” (1999:bk. 5, ch. 10). In *Bleak House* (1852–53), Charles Dickens portrayed equity as a morass of conflicting and arcane principles, endless litigation, and constant deflection. As a practice to one side of the imagining and relating of the general and the particular, equity tempers law with reference to specific contextual aspects of the case, which can endlessly proliferate. It trucks in singularities, not particulars that are instances of a general case. Equity provides “justice beyond law” (Watt 2009)—and, for some, casuistically subverts both law and justice.

What do we mean by *coevolution*? The relationship between Chinese Caribbean incorporations and equity is not one of correspondence, which would assume a static relationship of equivalence (e.g., mimesis) between entities. Nor is it an emergent phenomenon of some larger-order process or structure that one could posit as giving rise to both the aesthetics of Chinese incorporations and equity. Bateson (1972) held aesthetic knowledge to be generated at the coincident interfaces between systems at different levels of scale, creating patterns both in themselves and also at the points where they intersect.⁸ Points of transit and transfer are more significant in this notion of aesthet-

ics than correspondence—metaphor, more than mimesis (Greek, *metaphora*: transit), a consideration we return to below. The corporate forms and equity are engaged dynamically and coincidentally with one another (Boellstorff 2007) because of aesthetic elements that can hook onto each other. These elements have to do with the spatiotemporal referentiality that makes something singular. This “hooking” is one reason why this particular form of Chinese corporate structure endures in the Caribbean despite the end of FDI tax preferences. The initial impetus for incorporating in the Caribbean has gone away. But the fact of initial incorporation in the jurisdiction, the army of legal and accounting professionals tasked with building, tending, and unwinding these corporate structures, and, most significantly, the discovery of equity interlocked with the aesthetic form of the rebus, replicated in the Cayman–BVI pair and in the distinction between foreign and outward investment. One could attribute the decision to remain in the Caribbean to business savvy, competitive pressures, or conscious strategy. But it was an accidental discovery that then became an opportunity. Equity was “there,” ready-to-hand, and it worked for the tasks at hand. Its discovery was a singular event. And “capitalisms,” we argue, may be agglutinations of just such singular events more than a product or any cause or system.

We first review the limited literature on Chinese enterprises’ use of offshore financial service centers. This helps explain the “whys” of Chinese offshore incorporation. We then delve into one “why” in particular—the presence of a court system in the BVI amenable to equitable arguments. We argue that Chinese use of the Cayman–BVI compound did not come about because of the courts but, rather, that the corporate structures and the courts are coincident with one another, and this coincidence has helped generate and sustain the radical-rebus aesthetic of incorporation. Next, we explore the aesthetics of firm making in the BVI historically by providing three corporate biographies as examples of three distinct patterns of incorporation. This helps demonstrate the novelty of the Chinese aesthetic form. Finally, we consider deixis in court proceedings involving Chinese companies in the BVI. Our conclusion returns to Bateson’s aesthetics, the “figure of equity,” and equity’s accidental figuration in Chinese offshore incorporation.

Round-tripping

People who watch FDI started to notice something funny in China’s FDI figures as early as 1993. Tracking the phenomenal growth in China’s FDI that followed Deng Xiaoping’s economic reforms, two World Bank economists estimated that at least 25 percent of China’s FDI in 1992 may actually have been money that originated in China, was sent abroad, and reentered China disguised as foreign capital (Harrold and Lall 1993), that is, was involved in round-tripping.

Another uptick in round-tripping occurred at the end of the 1990s, after the Asian Financial Crisis of 1997 and the return of Hong Kong to the mainland. By the early 2000s, FDI watchers became skeptical of “China’s star FDI figures” (de Rosario 2003), held to be key indicators of China’s economic might. By some estimates, taking round-tripping into account reduced China’s FDI figures by 50 percent (de Rosario 2003). Caribbean shell companies seemed to be facilitating investment out of and back into China (de Rosario 2003; Wu et al. 2002).

The “whys” of round-tripping remained murky. In an article that circulated among the handful of observers paying attention, Geng Xiao (2004) posited that rent-seeking and value-seeking explanations could not meaningfully be separated to explain round-tripping. Capital might have been sent abroad to escape regulation and secure greater protections for property and also to obtain value-added ancillary services that could not be delivered in China. Xiao concluded that, “on the one hand there are profitable opportunities in the PRC but one [*sic*] the other hand investors would like to keep their capital abroad” (2004:23). The motivation seemed obvious: escape the Chinese state but participate in China’s economic boom. Motivation was sidelined by the question of measurement: How could China’s FDI accurately be estimated given round-tripping? This question has occupied a number of economists and others since then (e.g., Beugelsdijk et al. 2010; Ning and Sutherland 2012).

Explanations for round-tripping assumed that Chinese entrepreneurs were seeking to avoid capital controls that restricted overseas investment or that they were seeking preferential tax treatment afforded FDI (see Vlcek 2010:127; Yeung and Liu 2008). But these explanations became inadequate after China’s 2008 Enterprise Income Tax law abolished preferential treatment for FDI. They were also inadequate in the face of the seemingly “incestuous” relationships among Hong Kong, China, and the world’s tax havens, because the same offshore centers were being used for outbound and inbound capital (Vlcek 2010:113). As Sutherland and Ning concluded, there is likely “no single motive” for the “rich and complex pastiche of Chinese” (2011:61, 44) overseas investment or FDI routed through these offshore centers.

The patterns are startling (Table 1). The BVI and Cayman Islands are consistently in the top five jurisdictions for Chinese FDI and overseas direct investment (ODI). These are, remember, Caribbean British dependent territories with populations of around 55 thousand and 25 thousand, respectively. Between 2000 and 2009 (the latest year for which data are available), the BVI was second only to Hong Kong among the main sources for FDI, and the Caymans followed only Hong Kong among the main destinations for ODI.⁹

The labeling of the Cayman Islands and BVI as “tax havens” might obscure other forms of “regulatory arbi-

Table 1: Sources and destinations of Chinese foreign direct investment and overseas direct investment

Rank order of FDI by jurisdiction, 2009	Rank order of ODI by jurisdiction, 2009
Hong Kong	Hong Kong
British Virgin Islands	Cayman Islands
Japan	Australia
Singapore	British Virgin Islands
Republic of Korea	Singapore
Cayman Islands	United States
United States	Canada
Samoa	Macao
Taiwan	Russia
Germany	Republic of Korea

Source: *China Statistical Yearbook*, 2011. National Bureau of Statistics of China.

trage beyond taxation” (Vlcek 2010:118) that these jurisdictions afford. By examining SEC filings of Chinese companies and initial public offering documents from Chinese firms operating through Hong Kong, William Vlcek and Sutherland and his colleagues showed that Chinese firms use Caribbean havens to access new sources of investment in the United States and elsewhere. Rather than for round-tripping, Chinese use of offshore centers is for capital augmentation (Vlcek 2010:128; Sutherland et al. 2011). Furthermore, in many cases, ODI is passed through the offshore centers as a means of internationalizing a firm, a kind of “onward-journeying” ODI (Sutherland and Ning 2011:44; see also Vlcek 2010:128). Many offshore subsidiaries are related to sales and marketing, not manufacturing. Sutherland and Ning (2011:61–62; see also Ning and Sutherland 2012) deduce that the use of offshore holding companies allows Chinese businesses access to new markets. Market seeking, not tax avoidance, seems partially to explain the use of offshore centers. Insofar as Caribbean holding companies permit Chinese firms to secure greater protections of property, a listing on the major stock markets, and access to new markets, they may play a “legitimate role” and not simply serve as tax havens (Sutherland and Ning 2011:63). Vlcek similarly concludes that Chinese firms may use the Caribbean havens because of “arbitrage opportunities beyond solely the taxation aspect” (2010:113). In addition, many of the companies making use of offshore centers are some of China’s “most dynamic private sector businesses” (Sutherland et al. 2010:2–3). They publicly disclose their operations, and they are publicly traded. Hence, our use of the term *entrepreneur* to describe those involved in these operations: These are not kleptocrats or the “high net worth individuals” (HNWIs) historically drawn to tax havens. They are the darlings of the U.S. press because they are the people behind some of China’s most dynamic and innovative enterprises in energy, pharmaceutical manufacturing, media, and information technology.

To repeat the striking fact discovered by Sutherland and Ning, “nearly all of China’s private companies use the [Cayman Islands] as a base for their listing vehicles” (2011:46). Incorporating in Cayman permits a firm to be listed on the Hong Kong and New York stock exchanges. Company filings are also quite revealing about another institutional aspect of this arrangement. Wuxi Pharma Tech’s 2008 filing, for instance, reads, “Our holding company structure allows our management and shareholders to take significant corporate actions without having to submit these actions for the approval of the administrative agencies in every country where we have significant operations” (Sutherland and Ning 2011:53). This is boilerplate language, found in several such filings for medical-pharmaceutical firms.

But why, then, is the radical-rebus structure of setting up subsidiaries found in both Cayman and the BVI? Beginning from the proposition that the flow of FDI from China to Cayman and the BVI “involves capital augmentation accompanied by transformational restructuring” (2010:2) to reach new markets, Sutherland et al. find that institutional and legal changes are altering the factors that led Chinese businesses offshore in the first place. In a sample of 72 firms, 62 were incorporated in the Cayman Islands, and 42 of those have at least one BVI holding company held by the Caymanian listing vehicle. Interestingly, 25 of the firms registered first in the BVI before incorporating in Cayman (Sutherland et al. 2010:13). However, “Between January 2005 and December 2009 . . . 46 of our sample firms had put in place a Hong Kong subsidiary” (Sutherland et al. 2010:17). The Form 20-F submissions state that a Hong Kong subsidiary was added because of new barriers to the formation of offshore companies and preferential tax arrangements for Hong Kong holding companies (Sutherland et al. 2010). Several firms even liquidated their BVI companies. Overall, Sutherland et al. (2010:22) find a drop in ODI flows to the Cayman Islands and BVI after 2006 and an increase in flows to Hong Kong—as if reversing the trend initiated in 1997.

Yet the Cayman Islands and the BVI remain in the top five jurisdictions for incoming and outgoing investment capital. Chinese entrepreneurs still speak of setting up “a BVI” in the BVI—a British Virgin Islands Business Company, the main type of international holding company one can create there. We argue that a particular aesthetic process was set in motion by the Chinese entrepreneurs who originally built these offshore structures. With the financial crisis and the shift back to Hong Kong, another set of processes is coinciding with that aesthetic, namely, the “stirring of equity” (after Watt 2009)—about which, more below.

Sitting in Pussers pub in Road Town, an accountant and Maurer mulled over the Chinese organizational charts. In what sense were these companies “present” in the BVI, they wondered, when all they do is incorporate there, the

work of registration usually carried out by agents working for one of several large international trust company and law firms? Occasionally, one encounters businessmen and women from China who have arrived in the BVI wandering befuddled around Road Town. For two women Maurer met—neither of whom spoke very much English—coming to Road Town provided the opportunity for a brief vacation and a chance to practice using a handheld translation computer. But they were really, really jetlagged. Maurer recalled the words of his earlier informant: Why do they bother?

There is a symbolic draw to the place. People speak of the “brand” of the BVI—“brand-name British!” Maurer was told, on several occasions. Warranted or not, the very name of the territory conveys stability, legitimacy, and not a little bit of imperial nostalgia (Maurer 1997; Rosaldo 1989).

Quite by accident, however, Chinese entrepreneurs discovered a pragmatic draw: In the setting up and, especially, the winding down of offshore companies, any disputes that may arise are now heard before the ECCC in Road Town. This could be seen as regulatory arbitrage. But arbitrage suggests finding a lower common denominator, as it were. Here, we suggest, the draw was not the finding of a lower denominator, not the logic of mathematical ratios—Aristotle’s conception of proportional justice—but the practice of transiting across a differential. Chinese entrepreneurs did not seek out a court, but the court and their corporations help create each other’s contexts. The Cayman Islands may be China’s Delaware, but its Court of Chancery resides in the BVI.

Toward equity

The Eastern Caribbean Supreme Court (ECSC) has, since 1967, served as the Court of Appeal and High Court for the Organization of Eastern Caribbean States (OECS),¹⁰ the decisions of which can be further appealed to the High Court of Justice of England and Wales. In 2009, the ECSC created the ECCC, to be located in the BVI, and construction on a new court building was completed in Road Town later that year. Some of the funding for the new building came from the successful prosecution of a huge Russian money-laundering case that was busted by BVI-based fraud investigators. The ECCC hears all commercial cases from the OECS member states; the decision to locate it permanently in the BVI was due to the large number of companies registered there. The ECSC is an itinerant court that travels from jurisdiction to jurisdiction during the year: When it sits in St. Lucia, it hears capital cases, cases involving disputes between local businesses or merchants and clients, protracted inheritance disputes, and so on. When it sits in the BVI, however, the bulk of the cases are related to the offshore sector. A few colorful property disputes may be heard or arguments over contracts between local merchants and clients. But the docket is full of commercial cases involving multinational

players. For this reason, the ECSC set up the separate commercial division, the ECCC, in the BVI. When ECCC cases are appealed, they are heard again by the ECSC. When the ECSC is in session, cases thus move back and forth across Road Town between the ECCC and the ECSC, scores of barristers, solicitors, and clerks transporting boxes and boxes of files and binders from one courtroom to the other.

The ECCC building sits directly across from the ferry terminal and adjacent to Sir Alva Georges Square. The square is bounded by the historical Administration Building (now mainly occupied by the Post Office and the Department of Complaints), Police Headquarters, and a tourist bar overlooking Road Harbor. When the government moved into a large, modern building a short walk away on Wickam's Cay, a spit of reclaimed land built up with banks and trust company office buildings, the center of activity in Road Town shifted away from its colonial origins and toward its new commercial center. The placement of the ECCC in the old colonial center can be seen as a reference to the territory's founding and enduring commitment to one aspect of the legacy of British rule: law or, more specifically, equity. For, like the Chancery Court of Delaware, which facilitated that state's achievement of becoming home to over 50 percent of all U.S. companies and 63 percent of the Fortune 500,¹¹ the ECCC frequently hears arguments invoking equitable jurisdiction in the cases that come before it. Equitable jurisdiction occupies the ECSC when cases from the ECCC are appealed to this higher court, often en route to the U.K. High Court.

Law and equity have been unified since the British High Court of Chancery was merged with the courts of law by the Judicature Act in 1873, which took effect in 1875. In the common law tradition, equity bequeathed to law such devices as trusts, estates, and injunctions. Disentangling equity from law requires a time stoppage and winding back to an imagined 1872, before the Judicature Act. Observers of offshore finance will recognize, whether from a scholarly, fraud detection, or "asset planning" perspective, that stopping, winding back, and restarting time or times in different cycles and through different places is a signal technique afforded by equity in the creation of trusts.¹² Intertwined trajectories of time and space in some offshore architectures make them fantastically difficult to untangle. That is the point. But not in the Chinese cases: With a court of equity close at hand, it turns out there is no need to conceal anything at all.

Equity's entrance into English legal history is somewhat mysterious, but scholars point toward the Norman Conquest and the medieval articulation of the common law as opposed to a "patchwork of tribal customs applied unevenly" (Hudson 2007:14). Despite the unification of jurisdiction under the Crown, application could still be made to the king when a court's decision was deemed "unfair or unjust" (Hudson 2007:14). Initially, this provided a royal

check on the growing power of the courts. Over time, as the number of petitions increased, the king empowered a lord chancellor to hear them (Hudson 2007:15), and the Courts of Chancery were established as a separate system. Equity grew in the Courts of Chancery, themselves indicative of the proliferation of jurisdiction in the medieval and early modern periods (Cormack 2008).

By Dickens's time, however, Chancery had become associated with corruption, favoritism, and forum switching. As Dickens himself asserted, "Equity sends questions to Law, Law sends questions back to Equity; Law finds it can't do this, Equity finds it can't do that; neither can so much as say it can't do anything, without this solicitor instructing and this counsel appearing" (Hudson 2007:17). Dickens was writing at a time when reformers were seeking to rein in the jurisdictional complexity and perceived irrationality of Chancery (Hudson 2007:17). They only partially succeeded with the Judicature Act. Judicial discretion remains a live issue in the courts. Equity is still called on "to enliven the common law" (Mason 2005:17).

Literary scholars and others have, meanwhile, been drawn to a reconsideration of equity, in light of critiques of legal formalism brought by critical legal studies, deconstruction, and pragmatist approaches to the law. Indeed, not a few note that Oliver Wendell Holmes's legal realism is infused with the spirit of equity (e.g., Watt 2009:13): If "the life of the law has not been logic: it has been experience" (Holmes 1909:1), then experience must cultivate an "equitable art of reading beyond the letter" (Watt 2009:5) of the law, toward a sense of a justice yet to come that cannot be captured by the law (Derrida 1990). The English jurist F. W. Maitland wrote that, although the common law, as a "self-sufficient system," could have "got on fairly well" without equity, it would nonetheless be "barbarous, unjust, absurd" (2011:19).

Organizational chart aesthetics

To an anthropologist, Maitland's reference to barbarism recalls Lewis Henry Morgan's stages of ancient society and the 19th-century ethnological obsession with the organization of social relations, imagined through their mapping on a kinship chart. The organizational charts included with Form 20-F at first reminded us of Morgan's typologies of kinship systems. We are dealing with another kind of chart, but the analytical problem is much the same.¹³

The organizational chart is a peculiar kind of thing. It is the trace of a bureaucratic process that calls it forth; it is supposed to be a reflection of a "structure" that exists among differently positioned agents, themselves generators of that structure by way of the actions they undertake—actions asserting ownership stakes, actions asserting value and transformations of value from one place or one species to another; it is supposed to elucidate past actions and to

be a charter for future action. It is also an aesthetic object. It can be pretty or pleasing; it can confound or frustrate (see Sawyer 2004, 2006).

The chart has its origins in the coordination and management of organizations operating over a wide geographic area. Henry Varnum Poor, founder of Standard and Poor's rating agency, was captivated by the charts made by the Erie Railroad's general superintendent, George McCallum, in the 1850s. McCallum had successfully integrated telegraph communications into the management of the rail lines. This made them safer and more efficient. McCallum originally used a tree-and-branch diagram to represent his reorganization of the Erie Railroad, with the president and board of directors at the root, operating divisions as the branches, and local units as the leaves (Chandler 1956:148). The basic principle was one of subsidiarity: There was to be a clear chain of command, and each subordinate was, in McCallum's words, to be "accountable to, and . . . directed by their own immediate superior only; as obedience cannot be enforced where the foreman in immediate charge is interfered with by a superior officer giving orders directly to his subordinates" (Chandler 1956:148). The whole thing was dependent on filing reports on specified forms, which provided data for statistical analysis and later refinement of administrative process. McCallum also devised a sumptuary code: Every employee was to wear a uniform with an insignia specifying his grade.

Organizational charts for management purposes tell stories that proceed according to a logical and hierarchical structure. There is order and sequence.¹⁴ People draw them to map hierarchies of command, capital, and other resources. Organizational charts in places like the BVI historically have attempted to confound that storytelling while also inviting storytellers—fraud investigators, say—into a game of catch-me-if-you-can. The Chinese form frustrates this game: One can grasp it at once, and there is no story to be told (see Figure 1). When a fraud investigator looks at a Chinese chart and says, "There is nothing there," he is immediately apprehending a structure with no mysteries to untangle. Even if he has questions, they evaporate as soon as he reads Form 20-F.

Some charts show subsidiary structures that exemplify McCallum's original idea: Subsidiaries exist to handle business in geographically or functionally distinct units. These are the charts describing companies using their offshore vehicles for market seeking. Some charts show subsidiary structures that exist purely for the purpose of mergers, acquisitions, or international financing. These are the charts describing companies using their offshore vehicles for capital augmentation. But there are a few that point toward another history, that of the use of offshore structures to conceal beneficial ownership, to hide flows of funds, or some other probably nefarious purpose.

To understand the coincidence of Chinese incorporation and equity, its aesthetic novelty, one needs a sense of the "typical" uses of offshore structures, before Chinese ones appeared. Below, we outline a classic money-laundering architecture, the kind built to confound. We then discuss a case in which the structures created for one kind of business operation were purchased "off the shelf" by a Chinese entrepreneur who latched this existing offshore structure onto new enterprises. Finally, we describe a more typical Chinese case. The point is to show how the first invites narrative, the second perplexes narrative (it looks like one thing at first but turns out to be another), and the third obviates narrative and instead paints a radical-rebus logogram.

Three corporate biographies

Walter Anderson. Telecommunications entrepreneur Walter Anderson is a man who clearly comprehends the potential of space for all manner of ventures. His financing of outer-space exploration has been supported by his business endeavors located in the offshore space of the BVI. Offshore incorporation can depend on the befuddling of spatial, temporal, and ownership relations. Rather than pointing toward its contexts, the structure Anderson made confounds context. It consists of deictic relationships for purposeful misdirection, as if using the word *there* to point observers away from "here" and to lead them down blind alleys.

In 1983, Anderson formed Mid-Atlantic Telecom. After growing his telecommunication empire for over a decade, he came under investigation from the Internal Revenue Service, which strove to determine whether Anderson was disguising his earnings through intricate offshore structures in the BVI, Panama, Amsterdam, and England. These investigations culminated in Anderson's arrest on February 26, 2005 (Department of Justice 2005). He was indicted for tax evasion and related charges, including defrauding the District of Columbia by failing to pay over \$200 million in taxes owed to the federal and district governments.

By 1992 Anderson had realized that the merger of Mid-Atlantic Telecom with other companies would result in substantial tax liabilities, and so he formed an offshore corporation in the BVI with which to receive and disguise this income: Gold and Appel Transfer, S.A. According to the U.S. Department of Justice (2005), Gold and Appel was owned by another BVI company, Icomnet, previously formed by Anderson. Icomnet functioned alternately as a parent company and as a subsidiary of Gold and Appel and had been established by another prestigious Panamanian firm with Panamanian and U.S. political ties, Morgan and Morgan.¹⁵

But Anderson strove to obscure his ownership of Gold and Appel. He hired a trust company to serve as Gold and

Appel's registered agent and sole director (Baker 2007). Anderson was believed by prosecutors to have granted himself an exclusive option to purchase Gold and Appel shares for a nominal sum, ensuring sole ownership. In the process, neither the option nor Anderson's name was recorded in the BVI's public records. According to prosecutors, this was one of Anderson's strategies to hide his ownership yet maintain complete control.

Anderson further obscured his ownership of Gold and Appel with another offshore corporation, Iceberg Transport, S.A. (hereafter, Iceberg), formed in Panama. The U.S. Department of Justice (2007) claimed that, under his alias of Mark Roth, Anderson contracted with a trust company in Liverpool, England, to form Iceberg as a bearer share company. Anderson received the shares via his alias from Panama through a mailbox in Amsterdam. Because ownership is determined by whoever holds physical control of the actual share certificates, Anderson was the owner. Yet Anderson directed transfer of shares of Gold and Appel to Iceberg and claimed that Iceberg (whose owner was in actuality Anderson) owned Gold and Appel.

Anderson created these offshore entities to use the earnings from merger activities with three telecommunications companies for investment in other business ventures. "Between October 1992 and July 1996, Anderson transferred his ownership interests in three telecommunication companies—Mid-Atlantic Telecom, Esprit Telecom, and Telco Comm—to Gold & Appel and Iceberg Transport" (U.S. Department of Justice 2007). From 1995 to 1999, Anderson used the assets of Gold and Appel and Iceberg (which included the profits from the three telecom companies) for investments that eventually generated more than \$450 million in earnings for the two enterprises.

Anderson also created a couple of charitable foundations through which to funnel his funds. In 1993 he formed the Smaller World Trust in the BVI, a charity established with the goals of promoting world peace, space exploration, and family planning. However, after learning about U.S. federal investigations of his affairs, Anderson moved Smaller World Trust to Panama and renamed it Smaller World Foundation, as he claimed that a Panamanian foundation "would be less likely to be intimidated into giving up its assets to the IRS" (Hilzenrath 2005). Anderson argued before his trial that the millions in assets that the United States claimed belonged to him actually were owned by Smaller World Foundation. Iceberg was, incidentally, also an asset of the Smaller World Trust, and under that assumption, a transfer to Iceberg would be tantamount to a transfer to the Smaller World Trust. During a hostile takeover of another telecom company (Total-Tel USA), Anderson struck a deal with the company's outgoing CEO in which he bought stock from the company for \$16 a share, yet close to the signing of the deal, Anderson diverted responsibility for the purchase to yet another tax-exempt charitable foundation, the Foun-

ation for the International Non-Governmental Development of Space, or FINDS (Hilzenrath 2005). In 1998, FINDS lent \$1 million to Anderson's Gold and Appel and, in 1999 and 2000, provided grants of over \$1 million for research on technology to keep the space station Mir from gravitating back to Earth. After his arrest, Anderson claimed that his holding companies were ultimately owned by Smaller World Foundation.

On September 8, 2006, Walter Anderson pled guilty to two counts of federal tax evasion and one count of defrauding the District of Columbia. On March 27, 2007, he was sentenced to 108 months in prison (U.S. Department of Justice 2007). His was the largest personal income tax evasion case ever brought by the Department of Justice. The court ordered that Anderson pay more than \$22 million in restitution to the District of Columbia government.

Greater China Media and Entertainment. AGA Resources Inc. (hereafter, AGA) was incorporated in Nevada in 2006. For its first six months of existence, AGA was engaged in exploration for gold. AGA's mineral claims arose from kinship ties: Jacqueline A. McLeod, the wife of AGA's secretary, treasurer, and director, James W. McLeod, held one mineral claim in trust that was operated for the benefit of AGA (StockPatrol.com 2006). The one property consisted of a claim in British Columbia. The chief executive officer of AGA was Zhang Jianping, a citizen and resident of Vancouver who had emigrated from China.

During the second quarter of 2006, AGA hired a geologist to obtain and test mineral samples from the British Columbia property. The results came up negative: There was no gold. AGA then purchased core-drilling equipment to acquire and test more samples, which also proved fruitless. AGA decided in July 2006 to abandon its search for gold (SEC 2008).

A new director was appointed to AGA: John Hui, who was born in Hong Kong and educated in the United Kingdom and North America. Hui had previously worked as the founder and director of a publicly traded company in China, acquiring business experience in media and telecommunications, and had served as a member of the U.S. Chamber of Commerce in southern China (SEC 2007). Just prior to the cessation of mineral exploration, AGA signed an agreement with Triumph Research Limited (hereafter, Triumph), a BVI company whose headquarters were in Hong Kong, and Beijing Tangde International Film and Culture Co. Ltd. (hereafter, Tangde), a mainland Chinese company. According to the agreement, AGA issued 3,209,000 shares of common stock in exchange for all of Triumph's issued and outstanding shares of common stock, by which Triumph became a wholly owned subsidiary (SEC 2007).

Triumph and Tangde entered into a joint venture in which Triumph was supposed to invest RMB 5.1 million (\$644,859 at the September 30, 2006, exchange rate) and

control 51 percent ownership of the joint venture (SEC 2008). Triumph also held three directors' seats out of five on the board of the joint venture, including that of chairman. Tangde invested RMB 4.9 million in the joint venture and controlled 49 percent of the ownership. The joint venture was intended to invest mainly in the media and entertainment industry in China.

However, the joint venture never received Triumph's promised capital contribution. As a result, it failed to engage in any business activities in China, and AGA's ownership stake in Triumph, as the 51 percent joint venture partner, had little or no value. Triumph had no assets other than its rights under the Tangde joint venture agreement. Triumph and Tangde signed a cancellation agreement for the joint venture effective August 24, 2008.

It is not clear whether the initial Nevada operation or the subsequent Chinese joint venture was for legitimate purposes or for the purpose of concealing assets. The Nevada company and the joint venture did not ostensibly bear fruit. That is not suspicious in itself, but given the Nevada origins of the whole enterprise, the failure raises a red flag.

On August 9, 2006, AGA changed its name to Greater China Media and Entertainment (GCME). It has since pursued joint ventures with other Chinese companies. In March 2007, GCME set up a wholly owned subsidiary in China. Through this subsidiary, it engages in its film and television production activities in China. As of February 11, 2008, GCME's subsidiary, Racemind HuaDing, had signed 20 contracts with companies such as Siemens, Microsoft China, Johnson and Johnson, and Reuters and had been involved in the production of various Chinese films and television series (Xinhua-PRNewswire 2008). GCME's mission is now to "achieve the scope of success of *Universal Studios* within the Chinese film and television industry" (GCME 2011, emphasis added).

GCME is interesting because its origins lie in a Nevada corporation involved in mineral exploration, and Nevada has long been a favorite of those seeking to hide or launder assets. It had an overseas Chinese connection, pointing toward possible round-tripping opportunities. It was then repurposed to serve as a vehicle for joint ventures in China, but they never materialized. An investigator might be suspicious of this structure at first, given the involvement of the Nevada company and the weirdness around Triumph and Tangde. But, reorganized as GCME, the BVI-China structure reproduces the now-familiar radical-rebus pattern with a Nevada instead of a Cayman company at the top.

CASH. This last case illustrates the straightforward manner in which one Chinese joint venture was established in the BVI. The joint venture comprised various Hong Kong and mainland Chinese companies, some of which were founded in the BVI. The purpose of creating the joint ven-

ture (a company named China Able Ltd.) was to acquire, own, and hold property in China. It may sound complicated, but it actually is just the radical-rebus compound (this time, with Bermuda instead of Cayman companies).

Celestial Asia Securities Holdings (CASH) is a growing Hong Kong-based financial services firm. It has been providing financial services in Hong Kong for over 30 years and is listed on the Hong Kong stock exchange. CASH owns various subsidiaries whose activities produce domestic space and virtual space. One of CASH's subsidiaries is CASH Retail Management Group, whose companies, PriceRite and LifeZtore, provide goods for the home: furniture and housewares. Another subsidiary is Moli Group, a service provider of online entertainment, whose headquarters are in Shanghai. Moli Group creates massively multiplayer online role-playing games whose names—*Cabal* (a product no longer offered) and *King of Pirates*—conjure up images of conniving and plundering. Yet CASH's offshore and onshore activities are hardly secret or even that complicated.

On June 27, 2007, the companies Marvel Champ, Nanyang Industrial, and Fit Team formed China Able Ltd. in equal shares. Marvel Champ, created in the BVI, is owned by CASH Financial Services Group (65 percent), a nonwholly owned subsidiary of CASH, and an independent third party (35 percent; Nanyang Holdings Ltd. 2007). Nanyang Industrial (China) Ltd. was incorporated in Hong Kong and is a wholly owned subsidiary of Nanyang Holdings Ltd. (Bermuda), a property and securities investment company also in garment and textile production. Fit Team, created in the BVI, is owned by Van Shung Chong Holdings Ltd. (50 percent), incorporated in Bermuda, and an independent third party (50 percent). The purpose of China Able is to acquire, own, and hold property through its indirect wholly owned subsidiary, Changyu, which was incorporated in China.

Why would anyone create such a structure or do so in the Caribbean? If, at first, it was because of preferences shown to FDI or for purposes of capital augmentation, the practice now endures, we believe, because of its accidental convergence with equity. This is significant for how this kind of structure now routes and transforms value. An aesthetics of jurisdiction works together with this corporate aesthetics.

Equitable arguments and the aesthetics of jurisdiction

Simon Chesterman argues that certainty of title—supposedly one of the central requirements of capitalism (e.g., de Soto 2000)—was one of the "primary factors influencing the ossification of equity through the eighteenth century" (1997:355). He was responding to the anxiety that the availability of equitable jurisdiction for commercial cases introduces too much "uncertainty, doubt

and dispute" (Chesterman 1997:356). For Chesterman, however, equity permits a transformation in justice itself. Allowing judicial discretion and what he terms "politico-moral categories" like unconscionability to temper the common law supplements law and introduces it to a new logic. For Chesterman, this is the logic of the supplement. Equity's supplement opens a "space of indeterminacy" (Chesterman 1997:358). One might say it obviates the Aristotelian arithmetic of proportionality and commensuration with a more "impossible" mathematics of decency, care, and responsibility.

Chesterman thinks equity's fusion may represent a "new ethic of *responsibility to justice*" (1997:364) in a Derridean sense. He explicitly contrasts this ethic to *laissez-faire* (Chesterman 1997:365). Others are less sanguine (Fortier 2011; Piska 2010), and it is easy to see this indeterminacy as an ideological cover for a kind of "anything goes" courtroom governed by whim, power, and wealth, not law. Gary Watt's perspective is similar to Chesterman's. Drawing on Aristotle's (1999:bk. 5, ch.10) discussion of the leaden ruler, Watt writes that such a tool "explains how equity corresponds to law" because it takes "the classic image of legal order—the straight line, the even edge, the measuring rule—and bends it a little" (2009:156).

Architectural metaphors are at the heart of equity but also at the heart of the corporate structures we are describing here, and probably elsewhere. *Corporate structures, corporate architectures, financial architectures*—these are commonplace terms. There are also transit metaphors. Especially prominent is the use of the term *vehicle*. Architectures are in places and also define places; transit carries things from one place to another and through a place.

The linkage of architecture and transit in a way constitutes the quintessential metaphor, the term *metaphor* deriving from the Greek stem *φέρειν*, "to bear, carry," "after μεταφέρειν to transfer."¹⁶ Watt writes, "Metaphor is not so much a ferry as a bridge bearing constant streams of two-way traffic—it is the span of the metaphor and the tension it maintains between the abstract and the tangible that makes metaphor so powerful" (2009:151). In effecting this transit, metaphor "transforms or translates both" the abstract and the tangible (Watt 2009:144).¹⁷ Note the similarity to equitable jurisdiction. Equity, says Watt (2009:135), is not similar to metaphor but functionally identical with metaphor.

We hear examples of the tension between the abstract and the tangible in appellate civil and commercial cases in the BVI courts. This tension is primarily figured through deixis, and at multiple scales, creating a redundancy in pattern much like that of the corporate structures that so puzzled Maurer's informants. Picture the courtroom scene. A row of four or five West Indian judges face the bar. Behind them, a slightly off-center framed picture of the Queen. At the bar, learned counsel in ribbons and robes (but no longer

wigs) argue over the status of corporate entities whose names often confuse the judges, the audience, and even the lawyers themselves, since they are often identical save for a marker of the site of registration. In one sentence, there will be references to "Smith Co. BVI," "Smith Co. China," "Smith Co. Caymans," and so on. Counsel will sometimes abbreviate, substituting only the jurisdiction for the subsidiary and anthropomorphizing the locale ("BVI's shares were not owned by China").

Like the Chinese pattern of incorporating in the Cayman Islands, then BVI, then China, deixis in the BVI courts occurs in two subsidiary tiers. The first tier has to do with the invocation of equity and the application of equitable principles in the give and take of argument. At this level—call it the "radical"—one stakes a claim to use equitable arguments in whatever proceedings may follow. The second tier has to do with what equitable relief can do, how it can effect transformations in space, time, and state. At this level—call it the "rebus"—equitable relief is brought to bear on a case and, like a BVI corporation, directly animates a set of subsidiary actions or relations.

First tier: Equity's entry into an appeal is almost always metalinguistically marked by spatiotemporal reference: One "goes to" equity. The following is a snippet from a case involving the disposition of shares in a BVI company whose ownership status was in doubt:¹⁸ "It goes to a justice argument: whether it is fair and just. Investors were told the BVI company was a subsidiary of the investment company, and the judge ignored that. For eight years, the company was proceeding as if it was owned by a BVI company. You can see the injustice of that kind of situation [for the investors]." In the application of equitable principles in the give and take of argument, deixis establishes the context of the dispute, the disposition of the parties, the qualities of the entities and actors involved. In Watt's terms (heuristically), this is the "real" matter of the case, its "tangible" aspects.¹⁹ "The only point to be conceded is that it is *fair* that there be no disposal of shares pending the outcome of the appeal. We do not concede that there is an *intent* to sell the shares of [the BVI company]."

Second tier: The relief equity can afford is almost always marked by deixis. What happens next is determined by this reference. In an appeal that sought to "hold the ring," that is, to freeze shares and assets in time to prevent a shareholder from running off with funds from a joint venture gone bad, lawyers argued over whether the ECSC had jurisdiction to grant injunctive relief. One party sought an injunction to prevent the other party from disposing of assets before the case could be concluded. "We are seeking to preserve the subject matter of the appeal such that it's *there* at the end of the day . . . [Person A] owned shares as a matter of *fact* but not as a matter of *law*."

In the case at hand, if it had been determined that there were no longer shares in a BVI company, then the

subject matter of the appeal—the BVI company's shares—would have disappeared and, with them, the basis of the appeal itself. Asserting presence in spatiotemporal coordinates (“there,” “as a matter of fact”) is part of equitable jurisdiction that warrants its application. These are arguments about how argument will proceed. Learned counsel attempt to convince honorable judges to permit a preferred way of proceeding, not to establish matters of fact but to ensure the stability of entities and actors in space-time such that the substantial elements at issue in the dispute will not change state—or escape the state!—before the argument about matters of fact even begins.

Conclusion: “Capitalism” and subsidiary formation in equity

You can play a little game with EDGAR Online: Any time a Chinese company is mentioned in the *New York Times*, look it up in the SEC database. Take Sinovac, China's leading manufacturer of H1N1 vaccine, mentioned in the *Times* on August 20, 2009. You will discover that it is registered in the Caribbean commonwealth of Antigua and Barbuda. You will also learn that it was once an online gaming company. Well, no: Looking more closely, you will find that it was a biotech company in China, which bought an online gaming company in Antigua and restructured itself to be a subsidiary of a Hong Kong company which is, in turn, a subsidiary of the Antigua company. And you will find that it did not really buy an online gaming company in Antigua but, rather, the shell company in Antigua through which the gaming company used to operate. Or maybe never did operate. It is difficult to say. What is clear, however, is that Sinovac is not so straightforwardly a “Chinese” company, as you might have been led to suspect.

Do the same with SunTech, cited by Thomas L. Friedman in his September 27, 2009, column as a leader in a clean energy, and again in a April 19, 2011, article on solar panels built to float on water (Woody 2011). SunTech is a Cayman company, which owns a BVI company, which, in turn, owns a series of subsidiaries in China and elsewhere. It is a simple structure. A previously existing Chinese company, Wuxi Suntech, was reorganized under a new BVI company, Power Solar System Co. Ltd., or SunTech, in 2005 “to raise equity capital from investors outside of China.” SunTech Cayman Islands was incorporated shortly thereafter to serve as a listing vehicle for its initial public offering (SEC file number 001–32689). The temporal sequence of the history of incorporation and subsidiary formation is thus the reverse of what appears on SunTech's organizational chart, which places the Cayman company on the top, at the start of the spatial sequence from which the company's operations supposedly flow.

What does our little game matter for understanding contemporary economic formations? for aesthetics? for an-

alytical approaches to that phenomenon anthropologists have called “capitalism?” Isabelle Stengers writes of a “reciprocal capture when a dual process of identity construction is produced; regardless of the manner, and usually in ways that are completely different, identities that coinvent each other integrate a reference to the other for their own benefit” (2010:36).

In the case of Chinese incorporations in the BVI, there is reciprocal capture between the spatiotemporal relations of Chinese firm formation, on the one hand, and the pragmatic relations of equity, on the other. Neither anticipated the other; their engagement was coincidental, the “interlocking circuits of contingency” (Bateson 1972:146) bringing the two into relation. But the relations brought into relation with one another are not referential in the conventional sense. They do not stand for an object or entity, a truth or law. Rather, they afford one another deictic handles that permit each to grasp the other, so to speak, each pulling the other into it in a new form. This is neither the outcome of a directed process nor an imminent cause nor a dialectic. It is not an emergent process. It is also not simply a contingency.

The organizational charts share equity's deixis, or spatiotemporal self-referentiality, that which makes equity most like casuistry. This is consequential for understanding what the firms and charts do and how they do it, namely, how they institute a transformation in value by depicting changes of state—changes of the state of capital and changes of state from one geopolitical venue to another: China, the Cayman Islands, the BVI, Hong Kong. Like metaphor itself, they institute new transits across space and semiotics, inaugurating unexpected forms of value.

Walter Anderson's tax evasion structure confounded spatial and temporal relationships, and that was the point: Using a series of nested offshore trusts and other entities in a complicated impossible architecture permitted Anderson, for a time, to conceal his beneficial ownership and to send investigators on a goose chase around the world. At first blush, GCME might seem similar: What was initially a mining exploration outfit transformed itself into a media conglomerate. Something fishy going on? Only if you see the initial Nevada company as a cover for something else—which, indeed, it may have been. Getting past the Nevada portion of the story and the first joint-venture interlude, however, everything falls into place: Overseas Chinese entrepreneurs seeking opportunities in China engage in joint ventures routed through the Caribbean and Hong Kong. Although the Nevada piece points geographically in several directions at once—to Nevada, to China, to British Columbia—the rest of the structure is a straightforward capital-augmentation and market-seeking strategy.

If, initially, some Chinese businesses sought to take advantage of tax preferences for FDI, some also initially had

a much more complex form than necessary, because they took over existing structures and repurposed them to new uses. BVI trust services providers offer “aged shelf companies,” empty shells incorporated years ago for some other design but now inactive, ready to be used for a new purpose. Maurer’s informants in the BVI indicate that it was only after a period of engaging in this activity that Chinese businessmen and their agents may have realized that they could do things much more simply. It is difficult to verify the historical sequence here, but one possible story is this: Chinese capitalists with connections to the diaspora start by repurposing existing structures. Trust and corporate management professionals offshore notice. The latter then realize that they can market simpler structures to Chinese capitalists, and those not linked to the diaspora then start getting into the act too. What begins somewhat ambiguously and is ambiguous in itself (Hsu 2006) later gets really, really simple.

The analytical language best suited to describe this scenario is one with it, though it may not be adequate to it—which simply suggests another mode of knowledge or, better, a mode not of knowing but of composing, of becoming-with (as one composes an argument in equity, or one composes an offshore architecture with ready-to-hand shelf companies, or one composes a radical-rebus).²⁰ Absent a “common cause,” the coevolution of Chinese incorporations and equity is not an “abstract class of events” but dependent on coincidental coordinations in space-time (Witmore 2001:32) of equity, on the one hand, and Chinese incorporations, on the other. Not a contingent articulation, then, but Bateson’s interlocking circuits of contingency, coinciding. Aristotle would call it an “accident” and thereby banish it from metaphysical speculation (Witmore 2001:28). As Michael Witmore notes, however, this exclusion of accidents served, for Aristotle, to “isolate” them and to “limit their disruptive power” (2001:28). For, if accidents are not exceptions to the rule, then there is no way to “anchor human knowledge”—or much else for that matter. But what if these exceptions are the rule? Or, if there are not rules but coincidental situations, temporalities of becoming-with logographically, not a world of kinds and purposes but of tokens and spatiotemporal persons, tenses, places (Levinson 2004:100)? This is the world of cases, not laws. Of equity.

Now, we do not intend to indulge in anthropological relativism here, to suggest that “the Chinese” have different grammatical categories, logocentric writing, or forms of deixis and that, therefore, the structures and charts need to be understood in “their” terms rather than ours.²¹ The charts could just as easily fit within an Anglo-American or Euclidean set of coordinates. For us, the important distinction is not between “Chinese” and “Anglo-American” deixis but between a logographic modality of apprehending and inhabiting these structures and charts and a nar-

ratological one. These different modalities are equally accessible to everyone involved: the lawyers, accountants, and analysts in China, the BVI, the U.S. academy, or anywhere else. There may be incommensurable “cultural” difference, but it does not matter in this instance for the operations of organizational form or for theoretical inquiry. A notion of unbridgeable cultural difference is not necessary to grasp that becoming-with logographically is not the same as becoming-with narratologically (see Haraway 2008; Tilley and Bennett 2004).

The charts’ straightforwardness is an aesthetic effect of their being logographic, their visual elements arranged to permit those invested in them to “grasp certain relationships visually at a glance but not to describe them with words with anything like equal precision” (Drake 1986:136; see also Thrift 2009:122).

If conventional tax evading structures challenge you to create a narrative, the Chinese structures stop you in your tracks. “Why bother?”—why do the Chinese entrepreneurs create such structures, and why should we bother, as analysts or investigators, to sort out what is going on behind these charts? In creating a differential between the different levels of the organization, the subsidiaries and the boxes and lines inscribe ordinality, which produces a change in state from one entity to the next. The effect is transformational: “Chinese money” turns into “foreign direct investment,” a Chinese company turns into a BVI company, and a Caymanian company becomes a door to U.S. investment.

Equity too is about the here and now, not the eternal or universal. It trucks in gradients, thresholds, and levels of degree, not ratios or equivalencies. It necessarily circumscribes itself in and directs others toward its particular coordinates in space-time. This is why it can drive jurists crazy: The specificity of the case can seem to trump the application of the rule. But equity must always be bound to the “here” and “now” of the case at hand, for, should it reach beyond the particulars of one case toward general principles, it would risk becoming lawlike, universally applicable, and thus risk the kind of sedimentation that can lead to injustice. Equity, like the diagrams, the logographic representations of Chinese incorporations in the Caribbean, depends on deixis that coordinates space-time accidentally. Ethnography is similar in this respect, even if we anthropologists often deny it, an enterprise tied to the singularity of fieldwork, the role of happenstance, and the redirections at midstream.

Notes

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1. They are not really “multinational enterprises,” because they are mainly used for investing domestically in China. Thanks to Dylan Sutherland for making this point.

2. Our thanks to Gregory Rawlings for insight into China's taxation regimes.

3. Maurer has long-standing field research experience in the BVI. Martin has conducted research on film production firms and corporate and professional mass media linkages between Hong Kong and Hollywood. Field research in the BVI in the summers of 2008 and 2009 and in the winter of 2011 focused on changes in financial services in response to international crackdowns against tax havens (Maurer 2008) and on equitable jurisdiction in the Eastern Caribbean Supreme Court (ECSC). It involved courtroom observations and the creation of a database of about 180 court judgments.

4. Their activity offshore may also obviate recent European–U.S. efforts to curtail offshore finance (Sharman 2006). Insofar as these efforts have been preoccupied with tax evasion, transfer pricing, or secrecy, they will have little to say about the corporate architectures being built by Chinese entrepreneurs.

5. In off-the-record comments, Maurer's informants contrasted equitable approaches to law with technical approaches. We cannot provide further detail, as informants specifically requested that the content of their comments remain off the record.

6. We lean throughout on Marilyn Strathern's work on relations and aesthetics, especially, but not exclusively, Strathern 1991.

7. Recent anthropological works on Chinese capitalism suggest aesthetic processes related to what we recount in this article. See, especially, Anagnost 2004, Yang 2000, and Zhang and Ong 2008.

8. See Boellstorff 2007 on the interlocking systems of the Maya and Balinese calendars.

9. Nargiza Salidjanova (2011:20) notes that, in 2009, the Chinese Ministry of Commerce changed its methodology for calculating FDI to try to account for the actual source of funds, regardless of whether they passed through offshore centers. This methodology provides the following ranking of FDI sources: Hong Kong, Taiwan, Japan, Singapore, United States, South Korea, United Kingdom, Germany, Macau, and Canada. Compare Table 1. Our thanks to an anonymous reviewer for this reference.

10. The OECS consists of Antigua and Barbuda, Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and, as associate members, Anguilla and the BVI. Note that the Cayman Islands is not a member state. All but the BVI use the Eastern Caribbean dollar (the BVI uses the U.S. dollar). Anguilla, the BVI, and Montserrat are dependent territories of the United Kingdom. Dominica is a republic, but the others are under the sovereignty of the British Crown.

11. For more on Delaware's status as home to U.S. businesses, see State of Delaware, Department of State, Division of Corporations n.d.

12. See, for example, Hudson 2007 on estoppel and Rawlings 2005, Palan 2003, Roberts 1994, and Maurer 2001 on offshore incorporation.

13. We are obviously indebted to work on “market devices” by Michel Callon and his circle. See Callon and Muniesa 2005 and Muniesa et al. 2007. We also offer this article as a contribution to the emerging anthropology of finance that queries some of the verities of the “market devices” approach, for example, Riles 2010.

14. They tell ordinal stories. See Guyer 2010 on ordinality.

15. These Panamanian ties are not without their own fascinating history: People working in Panamanian firms active in the BVI come from families with long-standing ties to trade networks around the Caribbean. There is a direct link between historical patterns of trade and labor migration and contemporary configurations of offshore finance in the BVI.

16. *OED Online*, s.v. “metaphor,” <http://www.oed.com/view/Entry/117328>, accessed April 3, 2012.

17. Watt notes, “The Latin for the Greek metaphora is translation” (2009:144, n. 47).

18. Even though the proceedings are open to the public, we are only using snippets of cases here and conceal the identities of the parties involved. We do this because, at the time of writing, these cases were ongoing, and also to simplify the presentation. These snippets come from unique cases Maurer observed, but the language and argumentation are rote, replicated in numerous settings. They are drawn from a database Maurer compiled of about 180 cases and firsthand observation during the January 2011 sitting of the court in the BVI.

19. See Maurer 2005 on abstraction, adequation, and the problem of the real in law and money.

20. We dally with an argument about singularity as opposed to particularity. Particulars are seen in reference to a general, but singularities “don't add up” (Law 2011:501) into a (picture of) a whole. Again, think *Bleak House*. Paul Kockelman (2006:100) posits value formation in singularities that are not tokens of a type, that cannot be replicated, yet paradoxically depend on their being replicated. In our case, however, we may have instances of tokens that cannot be types—a becoming-with of “thises” and “thats” without “dogs” or “cats”—just tokens, no types. The dog and cat come from a seminar with Kockelman at the University of California, Irvine, April 28, 2011. The argument here is also indebted to Haraway 2008.

21. Linguists have long been interested in deixis. Deixis is interesting in part because it so nicely demonstrates the principle of relativism. In his studies of Hopi, Benjamin Lee Whorf (1972) drew attention to the “locators” that established the Hopi spatial system: pronouns, prepositions, place terms, and cases that map Hopi concepts of origin, place, and destination (see also Malotki 1983).

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Bill Maurer

Department of Anthropology and School of Law

University of California, Irvine

3151 Social Sciences Plaza

Irvine, CA 92697-5100

wmmaurer@uci.edu

Sylvia J. Martin

Fulbright Scholar

Visiting Faculty of Social Sciences

The University of Hong Kong

sylvia.martin@fulbrightmail.org