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European Integration and Postcolonial Sovereignty Games

The EU Overseas Countries and
Territories

**Edited by
Rebecca Adler-Nissen
and Ulrik Pram Gad**

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9 Jurisdiction in dialect

Sovereignty games in the British Virgin Islands

Bill Maurer¹

[T]here is little enthusiasm in the territory for changing our constitutional status.
(Government of the British Virgin Islands 2008: 10)

You are speaking in a West Indian court in what is in effect a foreign dialect.
(Eastern Caribbean Supreme Court justice, to an English solicitor)

The first epigraph comes from the response from the British Virgin Islands' (BVI) government to the European Commission's Green Paper on Europe's remaining Overseas Countries and Territories (OCTs), of which the BVI, a British overseas territory (OT), is one among many discussed in this volume (British Virgin Islands 2008). It sums up the nearly universal opinion in the BVI that there is no reason to change the territory's political status. The only people who are possibly willing to broach the topic of full independence and sovereignty are often, ironically enough, British nationals or other expatriates who implicitly hold onto a modernist teleology of political development inevitably culminating in independence. Occasionally, one will hear a 'down-islander', a migrant or the descendent of a migrant from the other now-independent eastern Caribbean Commonwealth countries, speak disparagingly of BVI Islanders' continued colonial disposition. This occurs in moments of heated argument or conspiratorial tones with which a person deemed 'not to belong' to the territory (the legal and now popular expression applied to non-citizens) confides in the visiting anthropologist. The colonial status of the BVI is not an issue in elections nor is it part of any party platform. Many will still say, as they have at least since the 1980s, 'we have the best of both worlds: the US dollar, and British law and order'.²

But to conclude that sovereignty is not an issue in the BVI would be to oversimplify the situation dramatically, not to mention to distort the concept of sovereignty itself. The second quotation comes from a Jamaican justice in the Eastern Caribbean Supreme Court (ECSC) during its January sitting in the BVI. The BVI court system shares an appellate court with the other Commonwealth countries and territories of the Caribbean. Based in St. Lucia, the ECSC is an itinerant entity that travels from island to island throughout the year, hearing appeals to local High Court judgments. The next higher level of appeal beyond the ECSC is the Privy Council and/or British Supreme Court in London. In its jural structure, then,

the BVI, its Caribbean neighbours and many other Commonwealth countries still reflect the legacy of British imperialism through the plurivocality of the common law. Unlike in an American appellate court, it is routine in a Commonwealth court to hear references to cases decided in faraway lands by foreign judges. There is considerable imperial nostalgia in such proceedings, as judges, barristers and solicitors dressed in ribbons and robes (although powdered wigs are no longer worn) debate case law from Malaysia, Hong Kong, Gibraltar, Papua New Guinea, and other exotic locales, all before a symbolic representation of the Crown. In this case, a large photograph of the Queen hangs (just slightly crooked) behind the bench. All who enter and leave the courtroom bow or curtsy before it.

The young English solicitor was making an argument before the justices of the ECSC, West Indians from all over the Caribbean. A judge from Jamaica—himself a member of the Jamaican elite, a fact not merely evident from his station but also from his very light skin-tone—interrupted the clearly nervous Englishman. 'Your accent is very difficult for us to understand', he stated. 'You need to speak slowly and clearly.' He interrupted him several times, in fact, before finally commenting, the irritation in his voice quite distinct, 'You are in effect speaking in a foreign accent'.

Together, these quotations embody how the BVI both 'refuses to be decolonized' (Gad and Adler-Nissen, Introduction to this volume) and wants to have it both ways, acting in some fora or in some social and political contexts as a sovereign entity or a polity possessed of sovereign authority. Of course, that sovereignty is further complicated by the pan-Caribbean (post-)colonial context. It is a Jamaican representative of a regional Caribbean court, here affirming the BVI's distinction from Empire. The 'almost sovereign but not quite' character of the BVI benefits it enormously in a game to attract international financial capital in the form of trust and corporate subsidiary formations that have turned the BVI into one of the largest international domiciles for corporations worldwide.

The BVI is a zone of overlapping and multiple jurisdictionalities and nested, partial sovereignties that find form in formal sovereignty arrangements, identity discourses, and diplomatic practices. It is a question of looking at different levels of scale and listening to the different registers with which the BVI speaks at those levels of scale. Gad and Adler-Nissen (this volume) convincingly argue that sovereignty is not a 'thing' but rather unfolds in a series of multiple, sometimes discrete and sometimes overlapping games. These are not to be understood as games of deracinated rational actors but rather as language games of 'meaning production and praxis' (Gad and Adler-Nissen, this volume). In the case of the BVI, the *accent* and *register* of the language games crucially inflects the territory's ongoing relationship to the United Kingdom (UK) and European Union (EU). Between the most local-level scale of legislative autonomy and the highest-level scale of international governance, one finds the BVI speaking as a consolidated, sovereign entity to other sovereign states and to global institutions: the BVI enters into treaties with sovereign nations, for example, around the exchange of tax information. It does so in the context of the international effort to combat money laundering and tax evasion, thus placating higher-level organizations like the EU and the

Organization for Economic Cooperation and Development (OECD). It also plays other international organizations against the OECD and EU in an effort to maintain its place as a centre for international incorporation. Most notably, the International Monetary Fund declared in 2008 that the distinction between 'onshore' and 'offshore' finance was meaningless, arguing that it is the activities not the places that ought to come under scrutiny. Indeed, the BVI made special note of this in its reply to the European Commission's Green Paper on the OCTs.

If we understand sovereignty games as *language* games, as discussed by Gad and Adler-Nissen (this volume), then the BVI provides a case in which accent, dialect, and register matter very much in the meaning-making and practical unfolding of such games. This is the chief claim of this chapter. The mild inflection of accent, indicating origin; the more developed distinction of dialect, creating a distinct speech community; the hierarchical relationships evident in register, marking politeness, disdain, or merely rank, generate a structured cacophony. As discussed below, they do so in the BVI in specific fora, where the history of slavery and colonization intersect with more recent labour migrations and the recent international and legal ramifications of the offshore financial services sector.

If the concept of polity can be used to describe such not-quite-sovereign entities as the BVI, 'those entities with a measure of identity, a degree of organization and hierarchy, and a capacity to mobilize persons and their resources for political purposes' (Ferguson and Mansbach 2008: 61, as discussed in the Introduction to this volume), then the BVI poses the question of how to understand a self-reflexively *involved* polity. Here, the polity finds articulation through a plurality of accents, dialects, and registers, a multiplicity of sources of authority and formal and informal political mobilization. Those voices occasionally align in paradoxical ways. A Jamaican judge, speaking below a picture of the Queen and under the authority of *that* sovereign, castigates an Englishman for speaking in a 'foreign dialect'. In doing so, he echoes the pan-Caribbean nationalism of an advocate for the expulsion of the British from the BVI.

The plurality of voices also renders it difficult to interpret local-level questions, contests, and controversies, some with life-and-death consequences. I outline five main developments in the following that help to explain sovereignty games in the BVI at the local level which simultaneously reach out to other levels of scale: shifts in the memorialization of history; changes in labour migration, and, especially, the return of BVI islanders who had left for greener pastures elsewhere in the mid- to late twentieth century; an international crackdown against offshore finance and popular and professional reactions to it; and new patterns of incorporation that have brought Chinese companies to BVI shores. The chapter first outlines the distinctions among sovereignty, polity, and jurisdiction before taking each of these five developments in turn.

Jurisdiction, sovereignty, polity

The distinction between sovereignty and jurisdiction is important, both descriptively and analytically. It is descriptively important for understanding a place like

the BVI: the BVI is a British OT with legislative autonomy and the ability to enter into international treaties with sovereign states; a jurisdiction subject to the ECSC, which exists under the British appellate court system; the home of the new Eastern Caribbean Commercial Court (ECCC), which has taken all commercial cases off the ECSC docket and consolidated another form of jurisdiction – over commercial cases heard 'at equity' and 'at law'. It is also a destination point for migrants from around the Caribbean, many of whom do not or cannot obtain citizenship and many of whose children born in the BVI have ambiguous legal status in that territory. For many years, there has been a small number of truly stateless residents, hapless victims of circumstance, colonial wars, and political reconfigurations that took place while they were crewmembers on sailing ships or otherwise in transit. Some of these people have finally obtained legal status, after many years of making an effort consciously to contribute to the life and livelihoods of the territory. Examples include the small Syrian merchant community, which maintains cramped, dusty shops full of everything you can possibly imagine, and a handful of doctors, lawyers, and other professionals. The BVI is also a place where people are constantly on the move, while at the same time there are deep eddies and side-currents of social relationships and histories keeping some people quite contentedly in place.

As regards the theoretical importance of the distinction between sovereignty and jurisdiction, I am indebted to an anthropologist of the Hopi (Native American) tribal court and literary historian. Justin Richland shows how Hopi tribal sovereignty is an effect of the everyday, pragmatic unfolding of activities before the tribal court that invoke 'tradition' as jurisdiction – a moment when 'Hopi juridico-political authority speaks to itself about itself' (Richland 2011: 206) and thereby constitutes 'sovereignty' as an effect of that metadiscursive practice. These are moments in the court where, for example, 'tradition' is explicitly invoked and discussed, and, in the unfolding of a series of linguistic acts, Hopi comes to be 'sovereign', even as the invocation of tradition in this manner points out the limits of that sovereignty. Richland echoes Bradin Cormack's work on the consolidation of the common law in early modern England. Noting the plural field of sometimes competing, sometimes overlapping, and sometimes semi-autonomous courts (common law courts, ecclesiastical courts, equity courts, Duchy courts, Admiralty courts, municipal courts, guild courts, market courts; Cormack 2007: 3), Cormack enquires about the importance of the 'mundane process[es] of administrative distribution and management' (2007: 9) among these courts that delimit the field of 'law' and juridical power in a manner that reveals the impossibility of 'sovereignty'. These courts operated according to spatial-territorial jurisdictionalities (maritime courts, municipal courts), temporal jurisdictionalities (market days; referring to the immediate past or to time immemorial), and generic jurisdictionalities (for 'matters spiritual or matters temporal' (Cormack 2007: 3)). From the point of view of a post-Second World War order of sovereign nation-states, it is difficult to grasp hold of this cross-cutting and overlapping field of jurisdictionality in time, space, and social relationships. However, this field is also utterly commonplace, if not banal. One can simply spend time in the city, where school

boards, zoning ordinances, and a host of other entities maintain jurisdiction over time, place, or activity (see Valverde 2008).

Jurisdiction directs our attention to 'technical application' rather than ontological investigation' (Richland 2011: 232) of the sort that questions of sovereignty tend to suggest. It also opens up sovereignty to the notion of the polity developed in this volume, and does so by emphasizing the various authorities from whom the saying of the law emanates. These may or may not mobilize different groups of people in different circumstances. The technical application of diverse and plural jurisdictionalities sheds light on the layering and overlapping of what had heretofore been deemed sovereign authority.

History, memory, politics

The past decade has witnessed increasing attention to the 'founding fathers' of BVI legislative autonomy. Commemoration has included a postage stamp commemorating members of the Legislative Council signing the International Business Companies Ordinance of 1984 launching the BVI's successful vehicle for offshore incorporations. There are new parks, statues of past leaders, and public holidays. Some of these past leaders – mocked in their day for their connection to pan-Africanism or the anticolonial movement – are now remembered for preventing the leasing out of the entirety of the island of Anegada and most of Road Town (Wickam's Cay) to a foreigner.

But nothing is ever simple here: those who spearheaded the commemoration of these leaders themselves left the BVI for education at the University of the West Indies or elsewhere abroad. They are the people 'who gone to come back'. Those who stayed behind regard them as not-quite-true BVI Islanders. There is a nascent battle for nostalgia in the BVI: those who 'gone to come back' remember a BVI connected to legacies of slavery, colonialism, and important anti-colonial leaders, and seek to articulate their own trajectories (of 'exile') to those leaders. Those who 'stayed behind' and actually helped build the territory take pride in their own accomplishments make fun of some of the more ostentatious efforts at commemoration, and organize instead things such as a celebration of the horse races at Sea Cow's Bay.

The distinction between these two loosely defined groups of BVI Islanders maps onto political party affiliation. Those who gone to come back tend to affiliate with the National Democratic Party (NDP), also a party historically seen as a party of intellectuals and advocates for immigrants. It held power once, from 2003–7, and in addition to launching some of the commemorative activities like the placing of statuary around town, it also sought to 'modernize' the BVI through things like city planning, youth services and an e-governance project. The Virgin Islands Party, the counterweight to the NDP, is a political organization that has existed since the origin of legislative autonomy and traces its roots to the founding of the territory in its modern political form. It is tied to established BVI families who have long been economic and political elites yet not had as many off-island connections. It has represented the interests of the civil service.

And while those who had left are recalling the historical memory of pan-Africanism or pan-Caribbean anti-colonial movements, they are also perceived as backed by a couple of extremely wealthy expatriates, often discussed in hushed tones. In an especially tragic affair during a recent political campaign, a person carried about in a mock coffin became a living effigy of a longstanding expatriate resident. The poor young 'actor' himself wound up dead under mysterious circumstances shortly thereafter, found in an alleyway.

The position of 'those who gone to come back' represents one inflection of sovereignty games in multiple accents and registers. Speaking with a less West Indian accent, yet addressing each other, the BVI, powerful elites, and an underclass through the register of pan-Caribbean nationalism and the African-American politics of commemoration more associated with the United States (US) than the Caribbean, those who might articulate a conventional 'sovereignty' discourse do so in a gradient of registers, none standing sovereign over the others, none speaking from a place of unambiguous 'BVI Islander' authority. They also provoke responses assuming the form of political shenanigans (and a mysterious death) in the register of still other histories.

Immigrant labourers and professionals

In the early 1990s, BVI Islanders were up in arms about large numbers of immigrants from other Caribbean places: 'down-islanders' from the other Lesser Antilles, Guyanese of South Asian descent, and especially Dominicans who often claimed BVI ancestry as the descendants of cane workers in the Dominican Republic in the early part of the twentieth century. The legal categories 'belonger' and 'non-belonger' dominated discussion of immigration and worked their way into common parlance ('Him na belong here!'). Calypsonians sung against restrictive immigration and work permit policies. One, Benji V, himself an immigrant, won the crown of Calypso King with a song titled, 'Where we born is where we from', proclaiming US-style citizenship by place of birth preferable to the BVI's then descent based system (Maurer 1997).

Immigration remains a hot issue. But as more and more 'down-islanders' have married into BVI families, as the Guyanese have become more established and visible (through cricket matches next to the new Government Administration Building and other activities), and as the ubiquity of the mobile phone has fostered an equal ubiquity throughout Road Town of spoken Spanish (which was only whispered in public up until the 1990s), BVI Islanders have grown accustomed to other Caribbean migrants.

Old stereotypes die hard, but even newer arrivals garner attention now: over the past five years, Filipino labourers, nurses, and accountants have arrived in the BVI. BVI Islanders sometimes call them 'Chinese' or 'Chinee'. Some also use the term 'coolie' and draw distinctions between three groups of 'coolies': Guyanese Chinese (of which there are a couple of families who have been in the territory for over 30 years), Filipinos, and Chinese businessmen and women who come to the BVI either for real estate and tourism investment opportunities or on matters

related to offshore incorporation. This last set is small but visible. Road Town is tiny. If you are on foot, even walking from your car to your office, you are visible. If you are a Filipina or Chinese woman and carrying a parasol to shade your skin, you are even more so.

There is yet another group of new arrivals: predominantly white expatriates from the UK and Canada (and some continental Europeans) coming to work in the offshore sector. There are now night spots and a restaurant or two catering specifically to these arrivals. They do not mix much socially with the yachting contingent – another large and longstanding group of white expatriates in the BVI – and they maintain some social distinctions among themselves. The lawyers and accountants tend not to mix with the ‘trust company’ people. This may have to do with occupational segregation, as the lawyers and accountants providing corporate services to the trust companies also become involved in regulatory or investigatory functions vis-à-vis those same clients. Some professionals in trust services are Panamanians who have had a longer history in Caribbean offshore finance. There have been some marriages among the lawyers and accountants between expatriate whites and expatriate West Indians. Still, one informant from England bemoaned the fact that most of his colleagues consider August Festival time, which commemorates Emancipation, as ‘just a three-day holiday’ and an excuse to get off-island.

Popular responses to the effort against tax havens

Even among the rank and file, there is a great deal of pride in the BVI’s ‘success’ as a global offshore centre. Among laypeople, offshore finance is generally assumed to be ‘offshore banking’, despite the fact that the BVI is primarily a centre for trust formation and corporate registration. Indeed, among members of the political class and financial services professionals, the fact that the BVI is a centre for incorporations, not banking like the Cayman Islands, is important in BVIlander assessments of themselves vis-à-vis their Caribbean cousins. Offshore incorporation is seen as ‘cleaner’ than banking. This is one reason why the financial services regulator is very interested in increased effort concerning public education about the territory’s role in international finance: He deplores the fact that students will say that the territory is famous for ‘banking’ and worries that this lack of understanding may one day hinder the territory’s development. The distinction between banking and incorporation matters when the BVI speaks to the EU, US and international organizations, since offshore banking generally sounds shady to government regulators and EU bureaucrats, whereas incorporation raises fewer hackles.³

Although many BVIlanders have only a dim sense of what is taking place in the office buildings throughout Road Town, they also want their children to get law degrees or accounting credentials and to work in the ‘trust company business’. People may joke that they think the trust company business is essentially a cover for money laundering but at the same time aspire to jobs in offices where you can wear nice clothes in air conditioning and – crucially – not have to serve tourists. As in many tourist destinations, the BVI tourism industry has tried to instil the feeling that ‘service does not equal servile’, but the legacies of colonialism

and racism – and the ongoing presence of ‘ugly tourists’ – makes this a difficult sell.

BVIlanders are also proud of being ‘top’ in something. One BVIlander of Dominican Republic descent whom I have known for years pointed to the recent construction of the expanded Peebles Hospital and told me that the BVI was ‘number one in finance’ and would soon be ‘number one’ in health care, too. The offshore sector, meanwhile, directly contributes 56 per cent of government revenue and likely 80 per cent indirectly.

So, it is hardly surprising that people react strongly to efforts to rein in offshore finance. Palan’s and Vlcek’s respective chapters in this volume provide the broader context. Since 1998, a variety of international organizations have attempted to spotlight unfair tax competition and create sanctions against territories deemed not in compliance with emerging international norms on global fiscal policy. These organizations include the OECD, EU, Financial Action Task Force, Financial Stability Forum, and non-governmental organizations (NGOs) such as Oxfam and the Tax Justice Network. I will not review the debate here (see Maurer 2008; Sharman 2006; Palan, Murphy and Chavagneux 2010), but I will give you a sense of how BVIlanders responded.

After the US Senate Finance Committee held hearings on offshore tax evasion in the summer of 2008, local websites were abuzz:

They STOLE us from our home land, CHAIN us like dogs in the bottom of their ships, THREW over the ship those of us who were to weak and sick, BRANDED us with hot iron when they sold us to the highest bidder, WIP and BEAT us to death for free labour, LEFT us to die after they made their wealth on these islands but GOD was on our side and we SURVIVE now the GREAT USA the one that we help built with force free labour [i.e. slavery, forced labor ‘got for free’] is at it again.

Now they trying to take away our daily bread, like they did with caribbean banana, so many travel restriction into their land for us and none for them into our land, the same money we make all goes back to them as we produce nothing and have to import all from them, so to all in the SENATE/CONGRESS who want to now kill the caribbean islands for the WEALTH they now have because of OFFSHORE BANKING and IBC [International Business Corporation], REMEMBER GOD DON’T LIKE UGLY AND HE IS THE ONE AND ONLY ONE WHO PROVIDES FOR ALL OF US.

God have his waY [“Y” capitalized to indicate Yahweh] to make those that benefited from free labour [i.e. slavery, labor got ‘for free’] to now pay those that work for nothing so caribbean islands reap your sweets.

Hastily, just a few days after the hearings, low-level British Virgin Islander staffers of the Financial Services Commission, the regulatory agency created to comply with OECD standards, created an impromptu float for the August Festival commemorating emancipation to promote their efforts.

Six months later, shortly after US President Barack Obama took office and the OECD stepped up its crackdown against tax havens, the echo of historical

memory was heard again: “‘Why is it that we now in the colonies, because we are still a colony, can’t have a financial center?’” [BVI Premier Ralph] O’Neal told The Associated Press in an interview in his office overlooking the slate-blue Sir Francis Drake Channel. “‘If you’re doing something and you’re saying I can’t do it, are you saying that I’m inferior?’” (Fox 2009).

And a cynical commentator on the BVI*News.com* website, soon after the G20 summit had concluded, posted the following: ‘Pack ya bags back to cutting sugar cane. Imagin we could be heading to work in the dr [Dominican Republic] like our grand parents’ (BVI*News.com*, 3 April 2009).

This comment is interesting because of its reference to the history of labour migration to the Dominican Republic, a history that was often denied or denigrated in the early 1990s, when large numbers of Dominicans were coming ‘back’ to the BVI. It also invokes the history of labour extraction for plantation agriculture and a nod to slavery.

Slavery is so present not just because of the politics of race and colonialism but also because of kinship and corporate linkages to Panama, the Dominican Republic, and the remembered history of labour migration throughout the Caribbean basin in the aftermath of emancipation. Marshall (2002) writes about the region’s circulatory and merchant elites. In the BVI, these include families who harnessed capital in the form of fishing boats and equipment to create regional trading networks in the late nineteenth and early twentieth centuries. They then became import/export businessmen who are now connected to the offshore sector by providing office space or actually offering corporate services. There is now an autochthonous cadre of trust company professionals with last names like Penn, O’Neal, Lettsome, and Fahie – all prominent BVI families. Also relevant in the context of the post-emancipation period is the circular migration to Panama when the Canal was being constructed. That migration became important around the time of the fall of Manuel Noriega, when Panamanian offshore services sought other shores and some washed aground in the BVI, where they remain.

This dense historical memory, these intertwined social relationships and meanings – this is why trust companies make some measure of sense in the BVI. A prominent Registered Agent in Road Town is a Panamanian by birth and related by oblique kinship connections to West Indian families. She has become a patron of the arts, and heralded in the press as a ‘business diva’. An elderly woman I visited in the summer of 2008 would say to me both, ‘I think there’s money laundering going on there’, and yet still be able to emplace and embrace this Panamanian and her company and its activities in terms of the long post-emancipation Caribbean story.

In the bureaucratic register of its relationship to the EU, the BVI simply asserts its desire for a level playing field: ‘The Commission has a responsibility not to seek to impose higher standards in the OCTs than in EU member states and to ensure it is properly aware of what the OCTs themselves want rather than deciding this for them’ (British Virgin Islands 2008: 5). The statement both gestures towards a desired position of equality with EU member states and a recognition of enduring colonial relations in the post-emancipation period. The implicit message is not to change that relation but simply to apply the same standards to the BVI as

to EU member states.

Professional reactions

BVI Islanders also imagine themselves as the good – or at least, less bad – part of the offshore world. This has come about because of the recent crackdowns. ‘With more than 800,000 regulated entities [here], things are bound to happen’, I was told by a forensic accountant who was involved in busting one of the biggest fraud cases the BVI had ever seen. For those in the regulation and investigatory community, the BVI is a far better place to nab fraudsters because the new compliance regime has made the work easier and because the lack of international attention to ‘onshore’ jurisdictions – particularly Delaware, Oregon, and Kentucky – has made investigating activities booked in those states difficult. One accountant rolled his eyes when describing the futility of pursuing any cases involving these US states.

The new compliance regime, I was told, makes things ‘easier’. One fraud investigator used to seek out ‘show assets’ – the fancy yacht, which would lead to the mistress, which in turn would convince the wife to open up about matters such as her husband’s business affairs. Today, so much information is on the record that the investigator can usually forego the cloak and dagger aspects of his work.

As noted earlier, the BVI is not a banking centre but an incorporation centre. This also makes things ‘easier’, I was told, from a regulatory compliance and investigatory perspective: no anonymous accounts, just difficult-to-track incorporations, all interconnected in fantastically complex ways. People are still doing bad things with these structures, but the ethical issues are bracketed in the industry. I am often given a ‘compared to what?’ response when enquiring after the effects of tax havens on financial stability, revenue policies, or social welfare. Most people I have interviewed – who almost always talk off the record – express unease with the mobility of capital and its attendant moral valences but do not see what the BVI is providing as any worse than anything elsewhere. Some adopt a harm-mitigation perspective: better to have it (whatever ‘it’ is) take place in a ‘well-regulated’ jurisdiction (their terms) than somewhere completely off the map.

In 2008, BVI investigators cracked a massive fraud case involving a Russian telecommunications minister. The government confiscated \$45 million and fined three funds \$2.5 million each. It was seen as a major demonstration of the solidity and soundness of the BVI’s new regulatory regime. The newspapers noted the irony that, in the same week that the UK had issued a report criticizing the BVI as vulnerable to fraud, BVI investigators succeeded in bringing criminals to justice and landed the biggest recovery of assets and fines in the Commonwealth’s history. The BVI and Bermuda split the funds, representing a windfall for the BVI amounting to roughly 10 per cent of the territory’s entire budget. Some of these funds, appropriately, were used to construct the new Eastern Caribbean Commercial Court building.

But local politics intervene. BVI Islanders not directly involved in the offshore sector did not remember much about the case just one year later, except that there had been a whiff of scandal about the disposition of the funds and allegations that

they benefited an NDP politician (although no one could really say how).

This is upsetting to the investigatory community: 'this was a major, major victory for fraud detection and investigation and criminal proceedings in the BVI and the offshore generally . . . They should have made a much bigger deal of it'. This interviewee's sense is that the media and government downplayed the victory because it might suggest that the BVI is full of criminals.

People have this attitude of, oh no! There's nothing untoward going on here. But of course there is! There are a million companies here. There's nothing wrong with saying that there may be bad things going on, but the point is to show that you can do something about it.

The larger questions about the offshore world and financial globalization are bracketed here. The technical matters more than the ontological: big questions get deferred while a legal and accounting victory is celebrated by those directly involved. Still, they feel that the general public remains uninformed about the magnitude of what happened: 'People should be justifiably proud that they have an amazingly well-regulated system here and it worked.' In this instance, what could have been cause for a 'national' celebration or the consolidation of the polity around the offshore misfired. Instead, people recall party politics and elite infighting and questions about the disposition of a lot of money. In this case, it is expatriates who feel pride in the BVI. The BVI in which they invest their sentiments here is a regulatory apparatus in which they directly participate.

The new regulatory regime depends on the adoption of Tax Information Exchange Agreements (TIEAs) with other countries. One indicator of compliance with the new international regime is the signing of 12 such treaties. However, this is seen to have created a conflict between the regulatory officials and the government officials who negotiate these treaties and market the jurisdiction. Gregory Rawlings (2007) has argued that the role of international law through TIEAs represents a reassertion of sovereignty for offshore jurisdictions. This is true. At the same time, however, TIEAs have revealed a fracture of jurisdictional authority between the regulator and the government. In the BVI, these are lexicalized as such: 'the regulator', 'the government', and 'the industry'. As the government seeks to create these treaties, the regulator worries that things are moving too fast. The industry, meanwhile, lives with the uncertainty about the agent who speaks the law – the regulator or the government. This instability in the locus of *juris dictum* could be said to characterize the formal sovereignty of the BVI today, even as local meaning-making and identity discourses more complexly infold and involute that locus.

In addition, the establishment of the ECCC in the BVI is already having a number of symbolic effects. It harmonizes with existing local understandings of the BVI as a place of 'law and order'. It places the BVI on the map of chancery courts or courts of equity globally, next to Delaware and, more recently, Qatar and Bahrain. Indeed, the BVI court was always explained to me as being 'like Delaware's Chancery Court' and sometimes as potentially entering into a field of

competition with the Gulf States.

The ECCC is also leading some in the regulatory community to imagine a world 'after' the offshore. The BVI could become a centre for arbitration rather than a centre for incorporation. The fact that the financial crisis that began in 2008 has led to an increased number of offshore insolvencies will – people believe – fill the docket of the new court and provide fee income for lawyers for at least a decade. In that time, according to this particular future fantasy, the BVI will have been able to diversify beyond trusts and 'asset protection' and towards being a 'beacon' for private international law; which incidentally is all about jurisdiction.

New patterns of incorporation

The ECCC is state-of-the-art. It is in a modern building in the heart of Road Town featuring new furnishings, high-end telecommunications, and teleconferencing capabilities. It contrasts with the old Supreme Court chambers, which are in the original Legislative Council building, a colonial-style structure somewhat in disrepair, nestled at the end of a busy road adjacent to a high school. The Queen watches over sittings in the old building. A large, flat screen monitor takes her place in the new building. Said one informant, 'It's like you're transported to England' when you sit in on a case at the ECCC. Said a staff member of the ECCC, while giving me a tour and gesturing to the monitor, 'We had Beijing here last week'. The ECCC itself embodies the complexity of space, polity, and jurisdiction in the BVI.

Observers of the offshore situation have noted new forms and patterns of incorporation in the Caribbean centres. About 10 per cent of Chinese companies registered with the US Securities and Exchange Commission, including some of the leading lights in China's new telecommunications and energy industries, are actually incorporated in the BVI or Cayman Islands. Observers initially assumed that these incorporations were vehicles for 'roundtripping' of capital: routing through the Caribbean offshore in order to reinvest in a Chinese enterprise as 'foreign direct investment' (FDI) and thereby subject to more favourable treatment by the Chinese authorities.

In 2008, however, China removed the FDI tax preferences. And yet Chinese companies continue to make use of Caribbean offshore shell corporations. Adding to the puzzle is the fact that most of the architectures they create in the Caribbean appear to be utterly straightforward: a Chinese company is owned by a BVI company is owned by a Cayman Islands company. For forensic accountants and financial fraud investigators working in the Caribbean, there is nothing to disentangle here, none of the complex relationships of part-ownership or interlocking subsidiaries that loop back upon one another that have characterized offshore incorporation for tax evasion or 'asset planning' purposes to which they have become accustomed. Said one such professional, given the straightforwardness of the offshore structures being set up: 'You have to wonder why they bother'.

William Vlcek has shown how this pattern of Chinese incorporation re-centres the Caribbean as a semi-peripheral mediator between traditional 'core' European and North American countries and an emerging China (Vlcek 2010). Sutherland,

Matthews, and El-Gohari (2009) find that both institutional arbitrage and the quest for American investment capital may propel Chinese offshore incorporations. Tax minimization through the Caribbean offshore thus seems to be less a motivating factor than property rights, investment seeking, and institutional arbitrage. Chinese incorporations in the Caribbean also confound assessments of FDI into China, a fact that has important political and economic implications in China itself.

Let me add two other possibilities. First, people are drawn to the 'brand' of the British Virgin Islands for the simple reason that the name of the territory includes the word British. This confers stability, legitimacy, and not a little bit of imperial nostalgia (Rosaldo 1989). The businessmen and women behind these structures – and their lawyers and accountants and the international contacts of their lawyers and accountants – began seriously exploring the Caribbean offshore centres immediately before the transfer of Hong Kong to China. The British Virgin Islands provides the Union Jack. And – not to put too fine a point on it – imperial whiteness. This represents another involution of the already-complicated racial politics and sovereignty games of the BVI and the wider Caribbean, an involution indexed in BVI Islanders' talk about the 'Chinee' on-island today.

In addition to the symbolics of empire, there is also the pragmatics. As Vlcek argues, Chinese entrepreneurs and their agents are also drawn to the BVI and Cayman Islands for the protection of property and legal flexibility afforded by the common law. They also want the chance to have any legal proceedings that might result from their affairs heard before a court that will entertain arguments of equity. With the establishment of the Eastern Caribbean Commercial Court in Road Town, Chinese businesspeople can engage in a kind of institutional arbitrage for access to an equity court like Delaware's Court of Chancery but outside of the jurisdiction of the US.

One final note: a survey of trust company service businesses and offshore law firms in the BVI today reveals connections to Singapore, Hong Kong, the Gulf States, and the UK. A 1990 snapshot reveals a different pattern: a dense network of linkages, via Panama, into South America, and via the Channel Islands and Bermuda, the UK, and continental Europe. The geography – and jurisdictionality – of the offshore is being reconfigured. 'India will be big', said one informant. This new geography of offshore flows may represent a shift from tax evasion and estate planning by wealthy Latin Americans and Europeans to agents from the BRIC countries (Brazil, India, Russia, and China) playing a slightly different game: a new class of super-rich hiding money offshore, but also a new trajectory of global incorporation seeking access to law, seeking the *jurisdiction of equity*. The BVI offers just such jurisdiction.

Conclusion

The sovereign voice, the sovereign register that the BVI uses when speaking to the EU or multilateral organizations, is one among several in a set of language games that has other points of gravity, some local, some connected more to the Commonwealth, others to pan-Caribbean nationalism or the US. The fact that the BVI adjusts the register of its sovereignty games in relation to these different centres

of gravity – and that sovereignty as such does not always have the greatest pull – precludes the analytical understanding of sovereignty as an either/or. As noted earlier, there is a productive (and now lucrative) instability in the locus of *juris dictum* in the BVI: much like the medieval polities described in the Introduction to this volume, the BVI participates in 'non-exclusive forms of territoriality' (Rugie, as quoted in the Introduction to this volume) and overlapping authorities that crisscross the islands, like the cross-cutting currents that swirl around them. Local meaning-making adds to the impossibility of pinpointing that locus.

The BVI appears as a set of overlapping, never-quite meshing jurisdictions, each experienced by different people differently, for different purposes, according to different temporalities and different contexts. These different jurisdictions also render open-ended the congealing of any sort of polity – understood by Ferguson and Mansbach as an entity 'with a measure of identity, a degree of organisation and hierarchy, and a capacity to mobilize persons and their political resources for political purposes' (2008; see also the Introduction to this volume). While the BVI might speak with one voice to the EU, it does so – as in its response to the Green Paper – by touting the efforts of a super-wealthy expatriate to promote environmentally sustainable tourism or by demanding a level playing field in the domain of international financial regulation.

The meaning-production and praxis of the polity (see the Introduction to this volume) operate in the BVI in the domain of jurisdiction – not as spatial jurisdiction or the geographical boundary of sovereignty, but literally as the ability to speak the law, in which language, on whose terms, in what accent, dialect, or register it can be spoken. As is evident in the judge's comment to the lawyer, this is a specific kind of language game in which multiple modalities of speaking vie with one another, often in the same mouth: in register of strategic essentialism located in the BVI itself; in register of pan-Caribbean anti-colonial nationalism; in register of Englishness, of the Crown, of the stability and solidity of the Union flag and British law and order – and finding that this polyglot can be a good business proposition for the Chinese.

Notes

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- 2 This comment was made to me during fieldwork in the early 1990s.
- 3 There is more moral opprobrium towards individuals who seek to evade taxes through offshore bank accounts than to corporations seeking the same through offshore incorporation but in the name of 'competitiveness' or in the name of getting out from under 'oppressive' regulatory 'burdens' in their home country.

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10 French concepts of state Nation, *patrie*, and the Overseas

Ulla Holm

France has no equal because the Overseas are part of France.

(President N. Sarkozy's New Year's speech to the Overseas, 9 January 2011)

Commemorating the centennial of the conquest of Algeria in 1831, a huge colonial exposition was held in Paris in 1931 which glorified the French position as the world's second largest overseas empire. The event represented the zenith of the concept of *la plus grande France* (Greater France). The image of a France of 100 million inhabitants, spread across five continents was represented as forming the national republican conscience – the hexagon constituted a mere twenty-third of this empire. The French empire was thought of within the frame of the nation-state, thus expanding the principle of the indivisibility of the national territory to the entire empire (Girardet 1972: 186). At the same time, however, the copy of the beautiful temples of Anghor Vat and the exotic clothing of people from the Overseas should demonstrate that the enlargement of the French nation-state also left room for different cultures. Hence, the diversity of the empire and unity of the enlarged nation-state were represented as living peacefully together.

The concept of 'Greater France' (Aldrich 1996; Wilder 2001) thus had a built-in ambiguity regarding the relationship between the French state-nation and its empire. On the one hand, the concept pointed to the colonies as integral parts of the nation-state and as necessary in order to maintain the French position amongst the great colonial powers of Europe – especially Great Britain, which was the world's premier maritime power. On the other hand, the exclusion of the natives from the French political order established the empire as something outside France. Hence, 'Greater France' epitomized 'the distinction between metropole and colony, modernity and tradition, subject and citizen' (Wilder 2001: 218–19).

Eight decades have passed between the colonial exposition in 1931 and 'the Year of the Overseas' in 2011 (see below). Wars, decolonization, and the foundation of the European Community (EC) and European Union (EU) have marked the complicated French relationship to the Overseas in this span of time. A gradual French loss of influence on the European arena has taken place due to the waves of EU enlargement. France needs the Overseas in order to demonstrate that France