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Due Diligence and "Reasonable Man," Offshore

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> The way I see it, [counter-science] wouldn't just have to be secretive about *what* it did . . . it would also have to be secretive *in* what it did. It would have to use secrecy as a technique or procedure. It would in principle have to refuse all direct communication, straight off the bat, because to communicate, to put ideas into language, would be to establish a claim to *know*—which is the first thing that a counter-science would dispute.
>
> —Amitav Ghosh, *The Calcutta Chromosome*

Quantification and the "Culture" of Finance

In 1998, the Organization for Economic Cooperation and Development (OECD) began publishing blacklists of countries engaging in what it termed "unfair tax competition." The OECD is an international organization made up of representatives from 30 countries "sharing a commitment to democratic government and the market economy"; it promulgates agreements and recommendations and operates through "dialogue, consensus, peer review and pressure" (OECD n.d.). The OECD's effort against tax havens was directed at countries that assess minimal corporate and income taxes, as well as countries that provide safe havens for corporate and personal wealth with minimum regulatory scrutiny. In the world of freely mobile money, wealthy agents could, and still do, shop around for the lowest tax jurisdiction in which to place and thereby "protect" their assets. Of course, protecting private assets simultaneously drains wealth from public assets that are financed through taxes. This was precisely the OECD's point. It maintained that the lenient tax codes of some states were undermining the tax systems of others, creating a global race to the bottom that would jeopardize the public financing of government functions.

> [Harmful tax practices] affect the location of financial and other service activities, erode the tax bases of other countries, distort trade and investment patterns and undermine the

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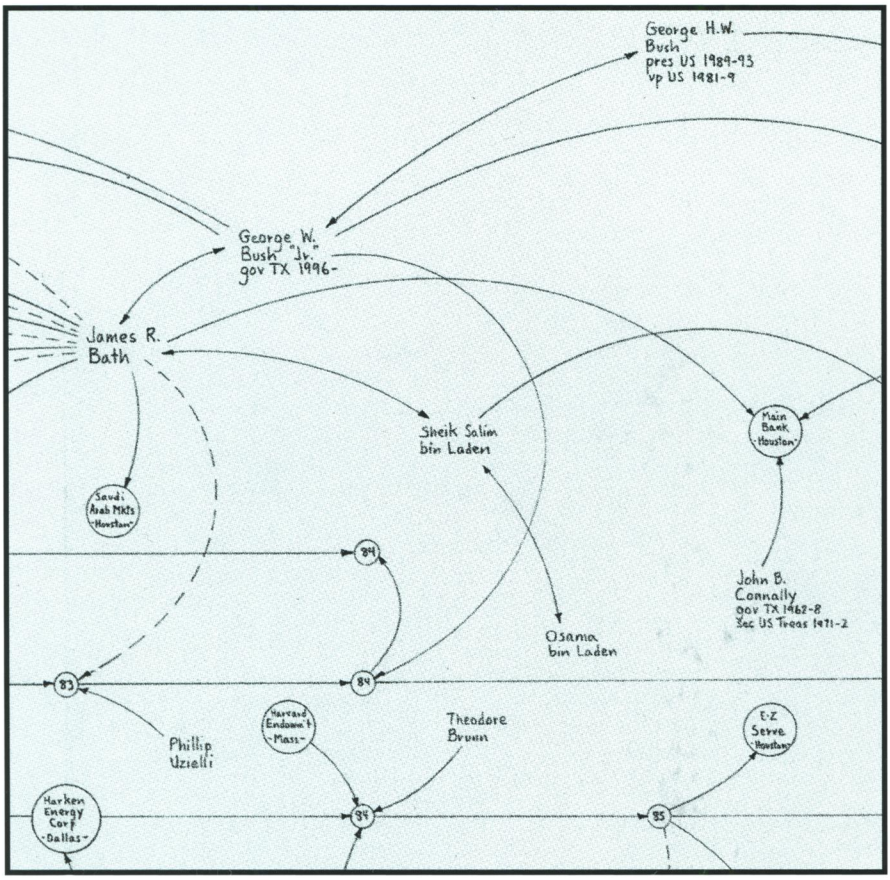


> fairness, neutrality and broad social acceptance of tax systems generally. Such harmful tax competition diminishes global welfare and undermines taxpayer confidence in the integrity of tax systems. [OECD 1998:8]

From the beginning, the issue was framed in terms of something anthropologists might call a cultural problem. The existence of "harmful preferential tax regimes," in the OECD's parlance, not only "distorted" financial flows, but it had the potential to transform "confidence" and "acceptance" and diminish perceptions of "fairness."

The cultural problem the OECD sought to address and the responses it generated from jurisdictions targeted by its blacklists require an analytical stance different from that of recent critical scholarship on contemporary forms of global money and finance. In line with other work on the transformation of the Western welfare state into a set of privatized systems for governance through the management of risk (e.g., Barry et al. 1996; Ewald 1991), scholars of new financial forms suggest that the ascendance of specific quantitative principles in contemporary capitalism is transforming social imaginaries. As Benjamin Lee and Edward LiPuma argue, "new financial instruments assume that particular forms of risk . . . can be aggregated as an abstract form, determinable by mathematical calculation" (2002:208). Taking the social statistics of 19th-century forms of knowledge and power to a new level—beyond the nation-bound form of such statistics and toward a vision of a global totality—the "contemporary objectification, calculation, and distribution of risk rely on larger and more accurate data sets and increased computer power, all driven by competition among mathematically sophisticated quantitative experts" (Lee and LiPuma 2002:209). However, such visions of global totality are precisely what tax planners want to help their clients circumvent, arbitraging opportunities for tax "minimization" by exploiting differences in national tax regimes.

Mary Poovey explicitly contrasts quantification with humanism, arguing in the case of university financing that the penetration of market values "erodes" humanity by disallowing "goods that are goods in themselves—that defy market evaluation because they are not quantifiable, thus not subject to commodification" (2001:11–12). Such arguments echo one made by Georg Simmel, for whom money's mathematical abstraction—its commensuration of all things along one scale of abstract value—creates personal freedom yet paradoxically fosters impersonal relationships. In taking as its content only "the most objective practices, the most logical, purely mathematical norms," money also bequeaths "the absolute freedom from everything personal" (1990:128). Yet the OECD effort had very little to do with quantification and mathematical abstraction; rather, it relied on "peer review and pressure." This article seeks to understand the contribution of such peer review and pressure to the global culture of finance.

In response to the OECD initiative, a new practice emerged offshore that complicates the assumed relationship among quantification, capitalism, and freedom that Simmel and others who follow in his footsteps had asserted. This new practice is something called "due diligence." The practice of due diligence enables

countries to be taken off the OECD blacklists while also instituting a new discourse of virtue for offshore finance. Due diligence is traditionally associated with corporate mergers and acquisitions. In this sense, it is a practice through which the parties to a merger spend time checking the balance sheets and legal histories of their potential partners before closing the deal. In the offshore world, due diligence involves checking the details of a person's or corporation's identities against potential wrongdoing. As I discuss below, it regrounds and recontextualizes the agent of offshore finance in a community of regard—in essence disallowing the "absolute freedom from everything personal." This development, I argue, also begs a series of questions about certain forms of inquiry in the human sciences, in particular the way ethics interfaces with social knowledge in some recent anthropological writings.

A key assumption in scholarship on capitalism and finance is that quantification is as quantification does, that mathematical sophistication reduces the world to bare numbers and all human activity to mathematical calculations of risk. In contrast, Hirokazu Miyazaki and Caitlin Zaloom both demonstrate how, for various financial traders in Japan, Chicago, and London, the numbers and the calculations do not always refer to the commodities and contracts behind them, and they are not undertaken solely for the purposes of financial risk management or profit making.[1] Zaloom finds among Chicago and London futures traders a corporeal investment in numbers, not just rational calculation. She documents the bodily practices traders develop around their work with numbers and how they develop affective relationships or a "feel" for them rather than seeing them entirely as a rational calculus. Indeed, for some, "the first step" of becoming a successful trader "is learning *not* to calculate" (Zaloom 2003:264; see also Knorr Cetina and Bruegger 2002). Miyazaki finds that among Japanese arbitrageurs, who exploit and in the process close off temporal gaps in global prices, the multiple and incongruous temporalities with which traders are involved also constitute their life trajectories; the numbers redound into their self-perceptions. Arbitrageurs come to view not only their careers but their life course itself as a process of arbitrage and even plot out other domains of their lives on the model of the numerical spreadsheet (Miyazaki 2003). Here is a case in which the mathematical models of economics and finance not only create "the economy" (Callon 1998; MacKenzie 2003) but they also author traders' personal biographies.

In what follows, I provide a sketch of a new form of managing financial risk offshore that relies not on calculation but on judgment and ethical self-fashioning.[2] However, my goal is neither simply descriptive nor simply to counterpose "qualitative" modalities of due diligence with the "quantitative" ones that have received more attention. Also, I do not wish to rehearse the well-known arguments from Max Weber onward that achieving success in the domain of the economy depends on fostering one's standing within a community of regard and that the sociologist's task is to decide in which instances an ethical standard—"that specific kind of evaluating faith which claims to determine what is 'ethically good' "

(Weber 1967:7)—is brought to bear on human conduct in law or the economy. In other words, this is not an article about the sociology of trust in financial markets.

My argument is, more reflexively, about method. I am interested in how the modes of judgment being employed offshore in response to the OECD initiative resemble certain analytical strategies in the human sciences that have become popular in anthropology. Due diligence operates casuistically and in an open-ended fashion; it is not geared toward establishing truth or certainty so much as it warrants personal regard and ethical scrutiny. I argue below that it operates in a similar fashion to—indeed, it mirrors the form of—anthropological approaches to emergent phenomena that reflect on, even as they are guided by, ethical modes of inquiry, rather than more conventional forms of economic or political critique.[3] Where those conventional forms of critique would look to expose the political or economic interests that lie behind actions or the social relationships structuring fields of discourse, by pulling back the veils of ideology to reveal the truth of the economy, finance, or the global situation, this article has a more modest goal: to try to understand this similarity of form between due diligence and anthropology. In doing so, it also seeks to complicate our picture of contemporary capitalisms by drawing attention to the nonquantifiable and the ethical that lie "inside" them. Recent work on contemporary capitalisms has challenged monolithic conceptions of the capitalist economy as bounded and whole in itself and as always fulfilling its teleology: to encompass the entire world and all aspects of life. This article, thus, contributes to an anthropology of the nonquantifiable and the ethical that stand alongside noncapitalist relations and inside contemporary capitalisms in a host of contingent and multiple phenomena that renders capitalism's own stories about itself considerably less sure and solid.[4] One could argue that anthropology (as well as critical social science more generally) is also one of those ethical realms that insistently queries this triumphalist view of capitalism.

Before turning to these broader implications, I first briefly outline the response to the OECD initiative against harmful preferential tax regimes and then describe the signal innovation offshore that has emerged alongside it. My argument is not that a logic of quantification, calculation, objectification, abstraction, and risk is simply being replaced by a logic of judgment, evaluation, substantive rationality, and regard. Rather, analysts (financial and social scientific) have often seen these two poles as the only options for both financial management and critical inquiry even as they subtend one another. When critique takes the form simply of elevating one pole over the other, we might want to reconsider what it is we think we are revealing or whether revelation itself is an appropriate mode of analysis at all.

Naming and Shaming

The U.S. government under President Clinton lent its support and cooperation to the OECD program. In 2001, however, the administration of George W. Bush

considered the effort to "name and shame," as it became known, an affront to the sovereignty of jurisdictions and a form of regulatory "overreach" that has dire implications for sovereignty at home. As then Treasury Secretary Paul O'Neill put it, the Bush administration was "troubled by the underlying premise that low tax rates are somehow suspect and by the notion that any country, or group of countries, should interfere in any other country's decision about how to structure its own tax system." Furthermore, the United States, O'Neill stated, "would not participate in any initiative to harmonize world tax systems" (O'Neill 2001:1).

A host of lobbying groups, nongovernmental organizations (NGOs), and coalitions jumped into the fray. The Center for Freedom and Prosperity (CFP), a nonprofit lobbying organization based in the United States, was founded specifically to challenge the OECD initiative and to promote tax competition. It argued that tax competition should be encouraged because "it is an important check on excessive government" (CFP n.d.). The CFP claimed that the OECD initiative was an "attack" on taxpayers, free trade, sovereignty, and privacy. It charged the OECD with "empire-building." It spearheaded the formation of the Coalition for Tax Competition, which includes the Heritage Foundation, the Cato Institute, the American Enterprise Institute, and a number of other right wing, libertarian, and Christian organizations (such as the Discovery Institute, which promotes creationism in American public schools).

Parties to the controversy, however, did not line up neatly along a left–right political divide. The generally left-leaning U.S. Congressional Black Caucus joined the Bush administration in opposing the OECD initiative. In a letter archived by the CFP and signed by notable progressive congressional representatives such as Maxine Waters, Barbara Lee, and Charles Rangel, the U.S. Congressional Black Caucus expressed the concern that the OECD initiative would "impose economic harm on developing nations" and went on to promote the virtues of "the free flow of capital" in "improving economic conditions in poorer nations" by providing governments with "funds that are critically needed to provide education, health care, and social services" (U.S. Congressional Black Caucus 2001). Statements from CFP, the U.S. Congressional Black Caucus, and the Bush administration resonated with statements from Caribbean leaders such as Robert Sanders, senior ambassador from Antigua to the United Kingdom, that the initiative was "nothing less than a determined attempt to bend other countries to [the OECD's] will . . . a form of neocolonialism in which the OECD is attempting to dictate the tax economic systems and structures of other nations for the benefit of the OECD's member states" (Sanders 2001). Caribbean leaders such as Julian Francis of the Bahamas Central Bank accused the OECD of "bullying" and Ambrose George, Dominica's finance minister, called its actions a threat to the "economic sovereignty" in the region (Kelly 2000; Government of Dominica 2000–01).[5]

Sovereignty was the keyword of the OECD and its allies as well. In this worldwide upsurge of critical attention to tax havens and money laundering, the OECD was joined by NGOs such as Oxfam and Christian Aid in arguing that tax

competition was eroding the ability of states to finance themselves and, thus, was eroding their sovereignty. Seiichi Kondo, OECD deputy secretary, put it this way, in a speech in 2002:

> The OECD's project on counteracting harmful tax practices is part of a wider initiative to promote good governance in a globalised economy. Globalisation has enormous potential to improve living standards around the world. But it also brings risks, including the risk of abuses of the free market system. The activities of tax havens distort the free flow of capital and undermine the ability of governments to finance the legitimate expectations of their citizens for publicly provided goods and services. By providing a framework within which all countries—developed and developing—can work together to fight harmful tax practices, the OECD seeks to encourage transparent and fair tax competition. [Kondo 2002:1]

In its first report on the matter, "Harmful Tax Competition: An Emerging Global Issue" (OECD 1998), the OECD identified two types of harmful offshore activity: classic tax havens, with no or only nominal tax on business entities, and "harmful preferential tax regimes," characterized by "ring fencing," which separates nonresident corporate persons from domestic economies and taxes and denies to resident corporate persons the same privileges granted to foreign ones. The report also challenged the "lack of transparency" in the jurisdictions where these activities occur.[6]

In the years that followed the initial 1998 OECD report, a number of other agencies and organizations published their own blacklists of tax haven jurisdictions. By 2004, most of these jurisdictions had managed to get themselves off those lists.[7] Mark Hampton and John Christensen (2002) note that the different initiatives stem from slightly different factors and forces. The OECD effort has been aimed at tax competition, whereas the Financial Action Task Force (FATF), founded by the G7 in 1989 and now composed of 28 member states, has focused on money laundering. The EU has several projects on tax harmonization. Some of its member states such as Austria and nonmember states such as Liechtenstein have expressed concerns about those projects; both have historically been invested in bank secrecy. The G7's Financial Stability Forum (FSF) has examined the role of offshore finance in precipitating or sustaining financial crises. Roberts and Christensen also document the outpouring of concern from various sectors of civil society represented, for their purposes, by international NGOs and the mass media. As with the multilateral organizations, NGOs have slightly different stated reasons for entering the fray over offshore finance: Christian Aid is interested in economic development, whereas Transparency International is interested in money laundering and corruption.

Table 1 shows the changing composition of the name-and-shame lists since 1998. Although the initial focus was on jurisdictions commonly understood to be tax havens or offshore financial service centers (the Cayman Islands, the British Virgin Islands [BVI], the Isle of Man, etc.), it shifted between 1998 and 2004 to jurisdictions in Africa and Southeast Asia (such as Nigeria and the Philippines) that are not conventionally lumped with these microstates. The lists have also

Table 1. OECD and FATF List of Non-Compliant or Non-Cooperating Jurisdictions

	OECD Jun 2000	FATF Jun 2000	OECD *Nov 2001	FATF June 2001	OECD Apr 2002	FATF Jun 2002	OECD Feb 2003	FATF June 2003	OECD Mar 2004	FATF July 2004
Caribbean Region										
Anguilla	X		X							
Antigua and Barbuda	X		X							
Aruba	X									
Bahamas	X	F	X							
Barbados	X		X							
Bermuda	AC									
British Virgin Islands	X		X							
The Cayman Islands	AC	F								
Dominica	X	F	X	**F		**F				
Grenada	X		X			***F				
Montserrat	X		X							
Netherlands Antilles	X									
St. Kitts & Nevis	X	F	X	**F						
St. Lucia	X		X							
St. Vincent & Grenadines	X	F	X	**F		**F				
Turks & Caicos	X		X							
US Virgin Islands	X		X							
Central America										
Belize	X		X							
Guatemala				F		**F		**F		
Panama	X	F	X							
Pacific Ocean										
Cook Islands	X	F	X	**F		**F		**F		F
Marshall Islands	X	F	X	**F	X	**F	X		X	
Nauru	X	F	X	F	X	F		F		F
Niue	X	F	X	**F		**F				
Tonga	X									
Vanuatu	X		X		X					
Western Samoa	X		X							
Southeast Asia										
Indonesia				F		**F		F		F
Myanmar				F		**F		F		F
The Philippines		F		F		**F		**F		F
Africa and the Middle East										
Bahrain	X									
Egypt				F		**F		**F		
Israel		F		F						
Lebanon		F		**F						

(*Continues*)

Table 1. Continued

		OECD Jun 2000	FATF Jun 2000	OECD *Nov 2001	FATF June 2001	OECD Apr 2002	FATF Jun 2002	OECD Feb 2003	FATF June 2003	OECD Mar 2004	FATF July 2004
Liberia		X		X		X		X		X	
Nigeria					F		F		**F		F
Europe											
Andorra		X		X		X		X		X	
Cyprus	AC										
Gibraltar		X		X							
Guernsey/Sark/ Alderney		X		X							
Hungary					F						
Isle of Man		X									
Jersey		X		X							
Malta	AC										
Lichtenstein		X	F	X		X		X		X	
Monaco		X		X		X		X		X	
Russia			F		F		**F				
San Marino	AC										
Ukraine							F		**F		
Indian Ocean											
Mauritius	AC										
Maldives		X		X							
Seychelles		X									

Key:
X = OECD "Non-compliance"
F = FATF "Non-cooperation"
AC = "Advance commitment"
*Six jurisdictions removed in 2001 due to compliance commitments
**Jurisdictions deemed "improved" from the previous year
***Grenada was placed on the FATF non-cooperation list in September, 2001

shifted from politically dependent or otherwise anomalous jurisdictions (remnants of British imperialism, on the one hand, or fragments from the world of feudal monarchies, on the other hand) to fully politically independent republics. In part, the shift is an effect of the different objectives of the OECD and the FATF, the former oriented toward tax regimes and the latter toward financial crime and money laundering. For example, Indonesia would not be considered to have a harmful preferential tax regime—no one in their right mind looking for a tax haven would put their money in an Indonesian bank—but it does have a track record of money laundering and illicit transactions. Still, these changing patterns of concern over time suggest that these lists are the product of the intersecting (and familiar) politics of North–South relations, colonial clientage, and the politics of religion currently fashionable in the United States (note, e.g., the recent addition of countries with sizeable Muslim populations).

Thus, debate over offshore tax havens has by now settled into some well-worn tracks. Commentators debated what was good or bad for the sovereign power of

states to write their own laws or protect their own revenue bases, they argued over what was good or bad for money laundering interdiction, and what was good or bad for, and about, privacy, secrecy, and the confidentiality of information. Academics, lawyers, and policy makers wondered whether the actions of the OECD represented a new form of piracy in the Caribbean, with powerful countries once again exploiting the weak and small, or whether the Bush administration's withdrawal from the OECD effort represented another instance of its much vaunted unilateral approach to international affairs. The debates tend to ignore the way named-and-shamed jurisdictions quietly changed the governance of finance to get off the blacklists.

There are hints that sovereignty was not really the main issue in the controversy sparked by the OECD initiative. Kondo, of the OECD, complained that tax havens undermine the ability of governments to provide for the public weal; but the neoliberal recasting, privatization, and outsourcing of state functions has already compromised the ability of states to function as welfare-state doctrine might imagine they should. Neoliberalism is an ideological and political project and not the natural outcome of the free play of economic forces. Our focus should be on that project and not just its apparent effects, such as tax competition. O'Neill, for his part, expressed concerns about a world government setting laws for hapless and unsovereign states; yet, in most cases, the laws at issue offshore have been drafted by former imperial powers either directly or indirectly. In the case of the BVI, laws have been drafted by the entities they are designed to regulate: multinational consultancy firms such as KPMG and PriceWaterhouseCoopers that are operating at the request of the British crown. Moreover, "onshore" jurisdictions have found themselves to be just as noncompliant with money laundering interdiction recommendations as tax havens, if not more so: in the 2000–01 FATF "self-assessment survey," Canada, Japan, Mexico, and the United States were not "in compliance" to the level that Singapore, Aruba, and the Netherlands Antilles were (FATF 2001:Annex D).

The controversy over the OECD report and subsequent efforts aimed at offshore finance transcend the left–right divide and pit different factions of the same forces of capital against one another. It is not simply a cynical debate, rife with self-contradiction. Rather, it makes explicit a certain exhaustion of a set of generally mutually exclusive utopian visions: the utopia of the freely financialized world, the utopia of the capitalist welfare state, and the utopia of universal regulation and harmonized law (see Buck-Morss 2000).[8] Each of these utopias suggests a critical language to offset the others: so, for example, the welfare-state utopia is often used to criticize the financialized utopia. In the debate over the OECD initiative, however, each utopia appeared as method and object of attack from all sides and not according to any discernable logic. This, in turn, mirrors the analytical impasse in the human sciences that has resulted from skepticism of the metanarratives informing critical inquiry: on what do we ground our critique when we can no longer appeal to these utopian visions?

The discourse inaugurated by the OECD obviates these bankrupt utopias by introducing a new term that unsettles their conventional referents.[9] This new term is "harm." The language of harm assumes that offshore havens wound rich and powerful countries by siphoning off their revenue, to the detriment of hardworking, tax-paying citizens at home. Here, harm partakes of a welfare statism that casts the state as protector and nurturer. NGO critics of offshore finance try to demonstrate the harm it causes Third World countries whose elites squirrel away their ill-gotten gains in microstates and the harm it causes microstates by limiting their options in the global economy and furthering what Hampton and Christensen call their "mismanaged dependency" (2002:1663). Caribbean leaders, for their part, view the OECD's report as interfering with the region's "recovery" from sustained and repeated—one might even say eternal—crises. In short, the debate on "harmful" tax practices was animated by a pastoral grammar: as with the Christian virtues that purportedly inspire some of the parties to the OECD debate, it is concerned with care, nurture, and, as I argue below, the disposition of the soul.

To get off the blacklists, tax havens and other shamed jurisdictions adopted a set of bureaucratic procedures that met with OECD approval. In most cases, these new procedures required legislative changes; in some, they also required restructuring regulatory agencies involved in finance and banking. Due diligence procedures formed the centerpiece of the bureaucratic effort. It is the technique held up above all others as the solution to the problems of harmful tax competition, money laundering, tax evasion, financial fraud, and the ills associated with harmful preferential tax regimes. Due diligence has emerged offshore mainly to make sure those seeking to incorporate there are, in fact, who they say they are. The assertion of identity is supposed to guard against wrongdoing.

The term bears a family resemblance to the pastoral discourse of harm and explicitly invokes ethical conduct (Foucault 1982:213–215).[10] I argue below that due diligence reconfigures the discussion over "harmful tax practices" by routing it through a species of bureaucratic review that is deemed to warrant ethical behavior. Due diligence invokes common-law notions of "reasonable man," in contrast to self-interested and rational "economic man," to assess whether or not "reasonable care" has been taken to ascertain the identities of offshore entities. This points up a problem for critical analysis of contemporary capital mobility and its sovereignties (not to mention money laundering interdiction!): when reasonable man trumps economic man, critical analysis is put in the position of revindicating economic man, thus performing the expiration of the paradigm that set the two against each other in the first place and making explicit that the two were never so separate or contradictory as we might have imagined. Traditional kinds of criticism, then, like the financial, welfare state, and world government utopias of the contending parties to the OECD debate, reveal their bankruptcy in the face of "unrepresentably complex" (Fortun 2001:18) ethical and systemic effects that we cannot comfortably map onto different subject positions, political programs, economic interests, and so on. If we try, we get "whiplashed," as a former legislative analyst put it to

me when I attempted to make such a map. To quote Kim Fortun, "globalization operates in ways pluralism cannot describe" (2001:18): The attempt to delineate the parties in the OECD debate in terms of comfortably legible categories, such as sovereignty, left or right political positions, or to gain purchase on the ethical pull of due diligence and its projects of care, fails in the face of the moving targets such objects constitute and the contexts they assume and transform.

Doing Due Diligence

The BVI Anti-Money Laundering Code of Practice of 1999 established due diligence procedures and Know Your Customer (KYC) rules. It is worth spelling out how it did so. First, the code made a distinction between "regulated persons" and "relevant persons" (section 2[1]).[11] Regulated persons are those who seek to conduct specific (offshore) businesses in the BVI. Relevant persons are those "carrying on" the business of regulated persons. Due diligence and KYC rules mandate that relevant persons acquire and maintain "satisfactory evidence of the identity" of the regulated persons (corporate or otherwise) who seek to conduct business in the jurisdiction (section 2[2]). Relevant persons must submit their procedures for identification, record keeping, internal reporting, and communication to a reporting authority for review. In the case of the BVI, the reporting authority is the newly established Financial Services Commission (FSC), an independent, autonomous regulatory authority responsible for all financial services in the territory. The FSC is also the liaison to the OECD, FATF, and other multilateral agencies involved in money-laundering interdiction.

The BVI Code of Practice also makes provisions for a third-party mediator between regulated and relevant persons. Dubbed an "introducer," this third-party mediator—a registered agent, for example—is most often (if not almost always) the linchpin in due diligence. The introducer quite literally "introduces" the regulated person to the territory and to the regulatory authority of the BVI. And the introducer is required to "establish and maintain identification procedures . . . as soon as reasonably practicable after contact is first made" with the relevant person (section 6[1]). On the ground, this means that the introducer is responsible for obtaining and maintaining a record of the name and contact information of the regulated person and a copy of the passport or other identifying document of the regulated person's agent (assuming the regulated person is a corporate entity). Caribbean Corporate Services, Ltd., a BVI trust company that acts as an agent for regulated persons and boasts a predominantly British Virgin Islander staff, requires a bit more information in the form of a standardized curriculum vitae (CV), along with letters of reference that adhere to the following recommended form (see Figure 1).

I am interested in the work of such letters of reference and the CV. As is probably obvious, on their face, they do little to guarantee absolutely the "actual" identity of a potential client (leaving to one side the very possibility of such identity for the moment). Even if there were no black market in identity documents,

Specimen Letter of Reference

(Writer's Letterhead)

Date:

The Directors
Caribbean Corporate Services Limited
Omar Hodge Building
Wickhams Cay I
PO Box 362
Tortola
British Virgin Islands

Dear Sirs,

Reference Mr. XYZ of (residential address)

We are very pleased with our dealings with Mr. XYZ. Our experiences would indicate that there is a high degree of integrity, responsibility and professionalism in the way Mr. XYZ conducts his business as well as his personal financial affairs. He is in our opinion of good financial standing and we believe him to be a fit and proper person to be a client of your institution.

I/We also confirm that to the best of my/our knowledge and belief the above named person does not have a criminal record, has never been declared bankrupt or been a Director or otherwise concerned in the management of a company which has been subject to an insolvent liquidation or been the subject of a Judicial enquiry.

Signed for and on behalf of:

Name:

(Authorised signatory)

Figure 1
Specimen Letter of Reference. Courtesy of: Caribbean Corporate Services Limited, PO Box 362, Road Town, Tortola, British Virgin Islands.

the cash-and-carry citizenships offered by other Caribbean countries, such as Dominica, mean that just because a name appears on an internationally valid passport does not guarantee that the bearer of the passport "is" the person therein and therefore possesses the warrant of a sovereign authority.[12] But this is, I think, beside the point. Due diligence does not operate under the sign of certainty. Rather, it proceeds via the legal doctrine of reasonable care, the care that is "due" in due diligence.

Reasonable care, established in the common law of torts, is situational, contextual, and case by case. The concept is explicitly gendered.[13] Reasonable men, as one might expect, carry out reasonable care. In a satirical essay rendered as an opinion in a fictitious case, the essayist and politician Sir Alan Patrick Herbert in the early 20th century characterized reasonable man as follows (before sarcastically dismissing the possibility of a reasonable woman):[14]

> This noble creature stands in singular contrast to his kinsman the Economic Man, whose every action is prompted by the single spur of selfish advantage and directed to the single end of monetary gain. The Reasonable Man is always thinking of others; prudence is his guide, and "Safety First," if I may borrow a contemporary catchword,

> is his rule of life. . . . He is one who invariably looks where he is going, and is careful to examine the immediate foreground before he executes a leap or bound; who neither star-gazes nor is lost in meditation when approaching trap-doors or the margin of a dock; who records in every case upon the counterfoils of cheques such ample details as are desirable, scrupulously substitutes the word "Order" for the word "Bearer," crosses the instrument "a/c Payee only," and registers the package in which it is despatched; who never mounts a moving omnibus, and does not alight from any car while the train is in motion; who investigates exhaustively the bona fides of every mendicant before distributing alms, and will inform himself of the history and habits of a dog before administering a caress; . . . who never swears, gambles, or loses his temper; who uses nothing except in moderation, and even while he flogs his child is meditating only on the golden mean. [Herbert 1935:2–3]

Herbert's morality tale has wended its way through torts classes to find a place in practitioner textbooks on the techniques of due diligence (e.g., Purcell 1973).

There is something to reasonable care in due diligence that I would like to linger over, for reasonable care and due diligence themselves constitute a kind of lingering. Although the procedures may not seem to amount to much, they have introduced what science studies scholars call "speed bumps" (see Fischer 2003:167; Latour 1991, Sunder Rajan 2002). Due diligence—including the process of review and the inscription devices required, such as the CV and letters of reference—slows things down. It now takes a little more time to incorporate offshore. Due diligence has also cooled the business of offshore incorporation; one of Gregory Rawlings's interviewees in Samoa said that OECD compliance had increased costs and contributed to an overall decline in new business (Rawlings 2003:11). At the same time, however, it has spawned a new growth industry offshore: electronic KYC databasing and data mining.[15]

In addition to the documentary requirements of due diligence, what else makes things slow down? In a field imagined to be characterized by highly abstract, decontextualized, and rapidly (almost instantaneously) mobile capital, due diligence represents an effort to ground and recontextualize offshore activity in a social reality of social connection and of regard. The letters of reference are pregiven forms, as are the CV, but they are open-ended forms. They make their own contexts; indeed, their raison d'être is to generate contexts. Contextualized persons are presumably genuine, not counterfeit persons, and the genuine is the good and virtuous. The shift from the self-interested autonomous legal atoms of "Economic Men" to the prudence and ethical scrutiny of "Reasonable Men" underwrites new practices of recontextualizing and weighing reputation that people call "doing due diligence." The activity is not about the mathematical calculation of risk or the "absolute freedom from everything personal" of which Simmel wrote; on the contrary, it is about the reenmeshing of the agent in a set of personal relationships deemed to warrant its ethical soundness. The activity is about judgment, too, not absolute certainty. Rawlings notes that in 2003, fund managers in Samoa were not required to double-check the statements of their potential clients: "Once a client has made a declaration stating whom the ultimate beneficiary is, then the fund manager is covered by law as having fulfilled their due diligence requirements" (Rawlings

2003:10). The "Reasonable Man" does not know in advance whether the regulated person is genuine or false; but he does not know after doing due diligence either; all he is certain about is that he has undertaken reasonable care with regard to the regulated person and that there may come a time again for further review.

The Bank for International Settlements in Basel, Switzerland, originally established in 1930 to manage reparation payments after World War I, is a major standards-setting institution for central banks and international organizations concerned with financial activity and stability. In 2001, the Working Group on Cross-Border Banking of the Basel Committee on Banking Supervision issued best-practices guidelines on customer due diligence.[16] The cochair of the group was the head of the Offshore Group of Banking Supervisors, and the committee of 20 had 8 members from or representing offshore jurisdictions. It took up the charge of addressing "deficiencies" in KYC policies for banks and encouraging the implementation of FATF recommendations (Basel Committee on Banking Supervision 2001:2). Unlike the FATF, however, which was primarily concerned with money-laundering interdiction, the Basel committee sought, in its words, an "approach . . . from a wider prudential, not just anti-money laundering, perspective" (2001:2) to assess the risks posed to the position of banks in the arenas of international regard. KYC procedures, the committee writes, "help to protect banks' reputation and the integrity of the banking systems by reducing the likelihood of banks becoming a vehicle for or a victim of financial crime and suffering consequential reputational damage" (2001:3).

The committee drew a clear line of causation from reputational risk to other interrelated forms of risk but gave priority to reputational risk in the report, seeing it as the linchpin of other forms of risk: "Reputational risk poses a major threat to banks, since the nature of their business requires maintaining the confidence of depositors, creditors and the general marketplace" (2001:4). Reputational risk, the report continues, refers to "the potential that adverse publicity" will negatively impact "confidence in the integrity of the institution" (2001:4). This is a form of risk that cannot be managed through quantitative calculation; instead, it is managed through the evaluative procedures of due diligence. Thus, it replicates the work of the CV and letters of reference on another level of scale. Care for the reputation adheres both in the institution offering offshore financial services and the entity that seeks to use those services. Reputational risk adheres also in the jurisdiction within which financial activity takes place. Here, then, the work involves mitigating reputational risk through evaluative, not quantitative, procedures stitching together welfare-statist concerns over the negative effects of tax competition with those seeking to foster and deepen such competition.

The report of the Basel committee recommends procedures for setting up customer acceptance policies and for customer identification and pays special attention to people it terms "potentates" in the first draft of its report but whom it renames "politically exposed persons" (PEPs): former or current heads of state or other public figures who might "expose a bank to significant reputational risks"

(Basel Committee on Banking Supervision 2001:10). "Accepting and managing funds from corrupt PEPs will severely damage the bank's own reputation and can undermine public confidence in the ethical standards of an entire financial centre" (Basel Committee on Banking Supervision 2001:10). The report also stresses that any intermediaries or "introducers" should be scrutinized, as well, to make sure that they are "fit and proper" and that the introducers are also "exercising the necessary due diligence" (2001:9).

Doing due diligence in the Basel report and in Caribbean practice, thus, sets in motion the reasonable, the fit, and the proper in an international arena of regard warranted by care. And it is to be done at every level of scale, because reputational risk adheres to every party involved in a banking transaction as well as the states within which such transactions take place. It thereby has the potential to undermine the confidence subtending the international financial system itself. Due diligence all the way down.

Review

Due diligence reminds me of review in another domain, one that is also based on the particulars of a person's identity, references, and CV. The academic personnel review process in the university, like due diligence, is about a particular kind of recontextualization, reputation, and regard. It also replaces certainty with scrutiny. "Putting the screw in scrutiny," as they say, entails "checking the particulars": Are items properly recorded on a CV and on a standard form called an Addendum to the Biography as required in the review for promotion of faculty on most campuses of the University of California system? Do items listed on the addendum actually exist? To arrive at a judgment, the reviewer does not consider the material reality of the items so much as the consistency of their recording on the CV and on the addendum. "If it is confusing, then I get suspicious." If there is a discrepancy, then the reviewer might question the materiality of the item and bring it to bear on the case: The reviewer will either look at the item, if it is present in the file, or request it, if it is not.

Note that the meaningful "content" of such items is not particularly important at this point and that their existence is only at issue if their recording on the addendum causes the reviewer to suspect, as Heidegger put it in relation to counterfeit coin, "there is something not quite right here" (Heidegger 1949:294). Heidegger argued that the distinction between the genuine and the false depends not on the process of discovery and adjudication of a thing's reality but rather a thing's agreement with what we already in advance "really" mean when we call something true or real. It is not the thing that is of interest but the moral weight of the proposition. And this interest generates a specific return: the effect of the real inhering in the thing.

In jurisdictions with "introducers," the people doing due diligence evaluate documents on the basis of whether an introducer is known and valued. The introducer, in turn, makes a claim to a regulated person's value based on the latter's

reputation and regard. In a personnel file, letters from external evaluators take on more weight if the letter is from someone who is familiar with the personnel review system and can, therefore, be trusted to make appropriate judgments about a candidate's relative standing in relation to that system. Letters acquire additional weight when they are "evaluative and analytical," meaning that they address the work of the candidate in a manner that generates confidence that the letter writer has actually carefully read and thought about the work. This is an important point: What the evaluator actually says about the work may be less crucial to the outcome of the review than that the evaluator says it in a manner that is "evaluative." Criticisms of a candidate's work, rendered in evaluative and analytical language, may help the candidate more than "testimonial," "puffery," or "praise." Scathing criticisms devoid of evaluative language can be dismissed as ad hominem. A frank evaluation warrants the moral authority of the evaluator, as well as of other levels of review, and a higher level of review can use the evaluative nature of the letter to be "reasonably" certain that the candidate "merits consideration" for advancement or promotion.

If I have slipped easily between the language of academic personnel review and due diligence, it is because the two practices share a form. Note the recursivity of review, like the recursivity of due diligence, which uses ethical modes of knowledge to guarantee adherence to an order of conduct that in turn assays a customer's or candidate's reputation and warrants a bank's or university's ability to generate confidence. This sharing bespeaks an "ethical plateau" (Fisher 2003:30) in which certain domains of knowledge and practice exceed the tools one might once have used to analyze them. Due diligence is situational; although there is a standard form, the form is open-ended, it proceeds case by case, and it is concerned primarily with reputation and the recontextualization of regulated persons in a social and moral space of regard. Indeed, this is the main reason behind Luxembourg and Switzerland's separate criticisms of OECD dogma: according to Luxembourg, the OECD report "lends credence to the so-called criterion of reputation—a criterion without any objective basis" (OECD 1998:74); for Switzerland, people's desire to decontextualize themselves may have "legitimate" basis given their own evaluation of their personal, political, economic, or moral situation—eerily, albeit unintentionally, recalling the origins of Swiss secrecy in wealth expropriated from the Jews by the Nazis. Both Luxembourg and Switzerland put forward a world—disingenuously, perhaps, but again we are left with the problem of adjudicating propositions and their realities—in which "Economic Man's" decisions ought to be of no concern to "Reasonable Man."

In the process of review, facts are less important than their ethical warrants. The ethical warrant here is not just a simplifying technology (after Luhmann 1998) that helps some actors know whether other actors can be trusted. For one thing, the work of a CV and letters of introduction is to visibilize natural persons—human agents—while invisibilizing corporate persons; thus, it attempts to ground corporate agencies in human beings even if such humans do not, strictly speaking,

have any control over their corporate actions.[17] For another thing, review in any of its forms, from due diligence to academic personnel, reiterates a certain kind of knowledge: ethical and casuistic, not ontological and certain. If anything, then, review recomplexifies. The future cannot be known, and so due diligence relies on forms of knowledge that are situational and always understood to be partial and provisional and based on the moral weight of its own propositions. They can be continually revised, and in some cases, regulations demand that they be continually revised. Due diligence works with the networked complexity of fact and value, reality and its evaluation, while ungrounding ultimate claims to the "real" and putting in abeyance the desire to stabilize the personhood of regulated persons. To fulfill that desire would be to slow offshore finance to a halt—not a speed bump, but a speed trap catching everyone. The knowledge produced through review cannot strive for a total view of the picture, as if taken from a position above clients' financial practices but, rather, muddles through and alongside those practices. KYC recognizes such knowledge can never be "fully" attained, and not simply because identity as such is always in motion. Duly diligent knowledge is asymptotic, its reasonableness approaching but never quite meeting the curve of truth. "Reasonable Man" gives scrutiny, not certainty, and although scrutiny magnifies the force and weight of a judgment (similar to Archimedes's lever), certainty as such dissipates in the endeavor.[18]

If I have slipped here all too easily between the language of review and the language of certain movements in the human sciences, it is because the two practices share in the deconstructive claim that facts are the effect of ethical engagement. It has been analytically generative since Weber, if not Aristotle, to point out that facts are always matters of judgment. There is nothing new here, except perhaps the ethnographic discovery of review and reasonableness offshore.[19] Anthropologists and others have been exploring ethics as a sort of third space, performing a critique that is not strictly or merely political or economic but explicitly engages the connections and disjunctions between these, the ethical, and the conduct of life. Take two rather different recent texts. Paul Rabinow wants to return to method the ethos whereby knowledge has consequences for the ethical standing of "the subject who receive[s] it" (Rabinow 2003:8). Michael Fischer writes of an "ungrounded way of acting . . . a form of life, a sociality of action that always contains within it ethical dilemmas" (Fischer 2003:9–10). I suggest that due diligence is the form of this ethical practice, offshore. It is not concerned about the economic motives of its regulated persons or their politics; and it does not demand "accuracy" in reporting. Instead, due diligence gathers material for a process of judgment that will allow one to be reasonably certain that one has taken reasonable care and reasonable steps ethically to warrant a regulated person's identity. This is the kind of knowledge that KYC produces and that, reflexively, loops back to the subject of knowledge to warrant its reputation in the arena of international financial and regulatory regard. Due diligence reroutes knowledge and obviates the discourse on

sovereignty via the ethical. It is casuistic in that it eschews definitive conclusions in the name of both facilitating practice and being subject to renewed review at some unspecified point in the future, given changing conditions or reconfigured personalities.

Techniques of Self-Fashioning

In doing due diligence, people are not simply verifying the identity of a client. They are engaging in a form of practice that always has the potential to fold back on itself and is provisional, probabilistic, and open-ended. Indeed, the ends are never really known in advance. You can never tell where knowing your customer might lead, either now, or in the future, or in pasts laundered yet still possibly recoverable or recontextualizable. The discourse on sovereignty that seemingly frames and spurs the debate on harmful tax competition allows this work of recontextualization to muddle along. It attempts to bring clarity to what is always already essentially murky. But as it does so, and as those involved in due diligence—participants and analysts alike—realize they are all enmeshed, if asymmetrically, critical analysis becomes a matter of "being well versed in" this enmeshment "rather than being able to simply illuminate and clarify a reality that is uncontested or unproblematic" (Fortun 2001:54; see also Fischer 2003:169).

Due diligence and this form of critical practice do not seek coherence but care. Practitioner journals are rife with suggestions and curious images about the proper dispositions a duly diligent person must cultivate to achieve "what's reasonable" (see Figure 2). "Deal making is glamorous; due diligence is not" (Cullinan et al. 2004:96), but those doing due diligence have the comfort that they have entered into a "virtuous circle" of knowledge creation, critical self-reflection, and practice that activates and actualizes value—"any value"—in a cycle of "continuous improvement" (Rhodes et al. 2003:303; see Figure 3).

Due diligence requires reasonableness, and reasonableness is an "art." It "is not a scientific concept. It's meaning cannot be discovered through empirical science" (Strahlendorf 2003:23). But that does not mean it is not "objective": there is still a "standard" somewhere. The standard is recursive, however: it is "the minimum set of standards for the reasonable person" (Strahlendorf 2003:24):

> He or she is neither the bloodless paragon of logic that is Spock on *Star Trek,* nor is he or she the emotional semi-hysterical Dr. McCoy (Damn it, Jim. I'm a doctor, not a magician.). Think of the well-integrated Captain Kirk who listens to the advice of both halves of human nature and by end of the show manages to do the right thing in the circumstances. . . . The reasonable person is mature, sane, sober, well-informed, calm, well-intentioned, open-minded, wise in a practical way, and is not under the spell of some consuming ideology or bias. [Strahlendorf 2003:23–24]

The reasonable person, too, it is important to note, is not the "average person." "If that were the case, the reasonable person would be a scientific concept. All one

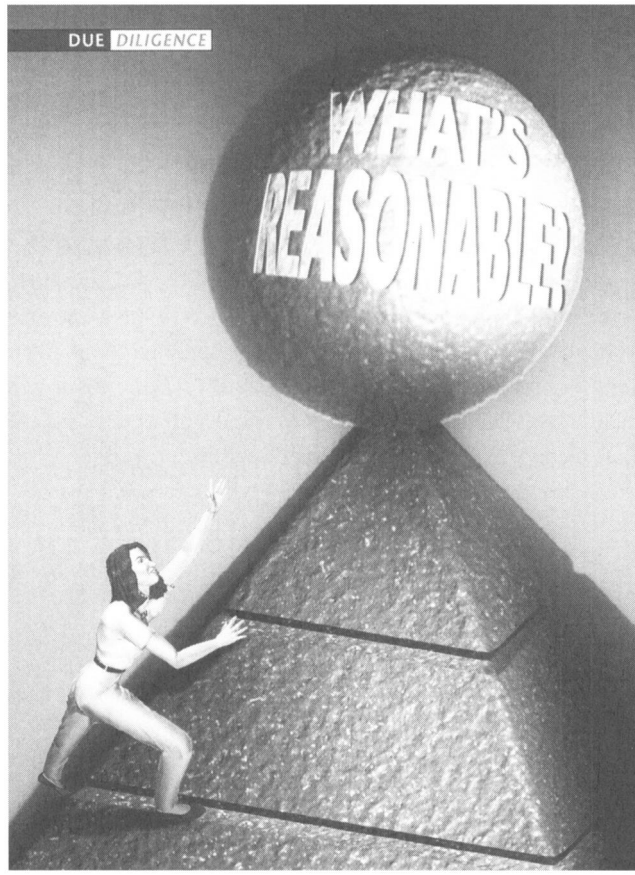
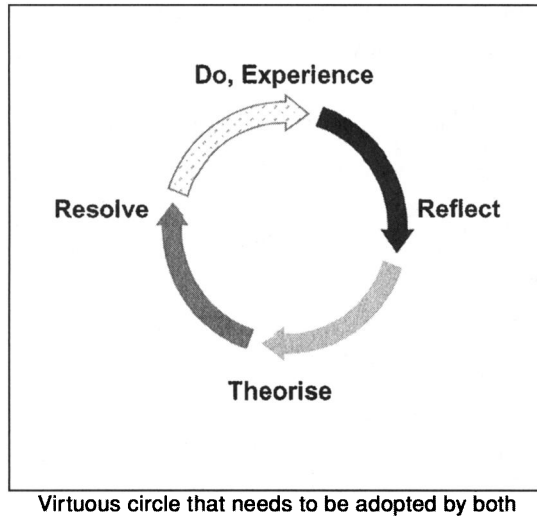


Figure 2
Striving for Reasonableness. Courtesy of: OHS Canada and Emanuele Taroni of Getty Images, from Peter Strahlendorf 2003:22.

would have to do is perform a statistically sound survey and adopt the practices of the average person" (Strahlendorf 2003:24). Reasonableness, accordingly, is not about probability or the statistics subtending governmental projects of the 19th and 20th centuries, but about foreseeability, which "depends on the knowledge and experience expected of the person in question" (Strahlendorf 2003:28). And this is not the person of quantitative risk assessment, then, but a person who continually asks, " 'Who am I?' or perhaps, 'Who do I purport to be?' " (Strahlendorf 2003:26).

One can almost hear Michel Foucault: "For an action to be 'moral,' " he writes, "it must not be reducible to an act or series of acts conforming to a rule, a law, or a value" (Foucault 1985:28). Rather, it must be carried out in relation to one's self, in a process of the formation of the self as an ethical subject. This is a continuous effort. Due diligence, too, proceeding through the virtuous circle of reasonableness, only



Virtuous circle that needs to be adopted by both partners to ensure a successful collaboration

Figure 3
The Virtuous Circle, from Rhodes et al. 2003:303. Courtesy of: PA Consulting Group.

ever knows one sure thing in advance: its own revisability. It is never the last word; it always begs more words. The Basel committee recommends continual assessment of clients; people are changeable beasts and reputational risk is ever present and can appear at any moment. Although seeking to establish identities, the committee's recommendations unground identity's putative stability: just because a client is reputable today does not mean he or she will generate confidence tomorrow. As an open-ended knowledge form, due diligence is always working in the tracks of its own possibly false or misdirecting claims.

I have been circling around the ethical conundrums of due diligence and critical analytical practice to convey their movements and muddlings. I have been resisting the pull of forms of knowledge that would have me chart due diligence and the OECD debate into familiar categories and positions and would have me "discover" nothing other that what has already been known (see Ghosh 1995:217). Instead, I have sought to stay true to the whiplash. Not to keep secrets but not to reveal truths either. Rather than debate truth and falsity offshore, I have tried, in Sperber's (1975:34) words, to "extend the symbol[s]" of due diligence (Strathern 1988:17). The extension of the symbols creates a parallel knowledge to that of the people whose words and texts impinge on the setting down of my own. The form of the analysis is recursive and processual, and, just as in the conversations it "reports," it returns back to its beginning point after detours through that which it and its subjects has blocked from view, like reasonableness, which "is an idea that is worth contemplating on a continuing basis" (Strahlendorf 2003:29). Is this the only stance possible in assessing new forms of capital offshore? Or are stances and

assessments themselves symptoms that we have reached, with offshore finance, the ethical plateau of reasonable care?

Judgment, Ethics, and the Last Word

I have not without reflection been consistent in referring to "Reasonable Man." "Reasonable Man" is a famous figure from the ethnographic canon, one who sits at the fulcrum of the very problem of ethnographic knowledge. Max Gluckman argued in *The Judicial Process among the Barotse of Northern Rhodesia* (1955) that Lozi judges, like their counterparts in the English common-law tradition, do not establish truths based on "finding that 'such-and-such is what happened,'" but by "the assessment of what happened in terms of both legal and moral norms" (1955:82). Citing Alan P. Herbert's satirical essay on the "Reasonable Man" that I quoted earlier—and which, recall, is a farcical account of the impossibility of there being "Reasonable Woman"—Gluckman is "embolden[ed] . . . to assert" that just as the "Reasonable Man" is "the central figure in all developed systems of law," he is also "equally important" in "simpler legal systems" (1955:83). He goes on, "We have indeed already met the Lozi reasonable man in every case cited, in the guises of the impartial father-headman, the respectful and helpful son, the loving brother, the polite teacher, and the reasonably faithful husband" (1955:83). The debate between Max Gluckman and Paul Bohannan (1957) in legal anthropology hinged on whether the Western anthropologist could use Western norms and standards, of the "Reasonable Man," for example, in assessing other people's social processes. Gluckman argued that people faced with similar problems come up with similar ways of dealing with them; Bohannan argued that the concepts people use are prior to their engagement with such tasks. The argument ran up against the familiar anthropological conundrum about how natives think: just like Euro-Americans, or incommensurably different? Here is another exhausted paradigm to lie alongside those revealed in the debate over the OECD initiative.

Tiresomeness is an important aesthetic form here. Consider "Reasonable Man" and reasonable care standards in the common law. They are by definition the standards of no standards.[20] They are of necessity endlessly open-ended and subject to eternal revision, approaching but never reaching ideal truth. "Reasonable Man" can change his opinion after considered reflection. Reasonable care depends on the case at hand. This is why "Reasonable Man" and reasonable care can be so attractive. But they are also only "reasonably faithful," as Gluckman unwittingly pointed out: they cheat (like Captain Kirk). Although claiming open-endedness, they are bound by their embodied subjects. The doctrine of reasonable care took on special significance in controversies over railroad crossings. In the case *Grand Trunk Railway of Canada v. Ives* (144 US 408, 12 S. Ct. 679, 36 L. Ed. 485 [1892]), the U.S. Supreme Court held that:

> There is no fixed standard in the law by which a court is enabled to arbitrarily say in every case what conduct shall be considered reasonable and prudent, and what shall

> constitute ordinary care, under any and all circumstances. The terms ordinary care, reasonable prudence, and such like terms, as applied to the conduct and affairs of men, have a relative significance, and cannot be arbitrarily defined. What may be deemed ordinary care in one case may, under different surroundings and circumstances, be gross negligence.

The U.S. Supreme Court here ruled that when reasonable men could not easily come to an agreement over what constituted reasonable care, only the exhausting deliberations of the jury could resolve the matter—at the point when the jury itself becomes dissipated.

In volume two of *The History of Sexuality,* Michel Foucault documented his theoretical shift first from studying "games of truth . . . in their interplay with one another" to studying "games of truth in the relationship of self with self and the forming of oneself as a subject" and then to an inquiry into "the history of desiring man" (Foucault 1985:6). Writing this history, Foucault noted, required inquiry into the "hermeneutics of the self" (1985:6), the "arts of existence" (1985:10) by which "desiring men . . . make their life into an oeuvre that carries certain aesthetic values and meets certain stylistic criteria" (1985:11). It is by way of such aesthetic values and stylistic criteria that the "Reasonable Men" doing due diligence evaluate the "desiring men" seeking to incorporate offshore.

If we turn for a moment to those "desiring men" offshore, we can track a movement parallel to a history of economic development. In the BVI and much of the Anglophone Caribbean, offshore finance was one outcome of a struggle between merchant elites and agricultural-industrial-state sector elites. Where mid–20th century economic development strategy emphasized government-supported investment in production through laws called "Pioneer Industry Acts," the financial paradigm interdigitated with merchant elites' circulatory imaginaries. In those imaginaries, "desiring man" was also "Satisficing Man," a complex adaptive corporate person whose identities were fragile, ephemeral, untraceable, or dispersed, in the name of mobility and secrecy, and not necessarily always optimality (Maurer 1995). Pioneer Industry Acts sought to institute liberal legalism and its forms of person and property. When they were supplanted by International Business Company acts (which inaugurated one of the most common corporate vehicles for offshore finance), liberal forms of person were subverted by impossibly complex identities and properties made problematic by secrecy and speed.

International Business Company acts had a corollary, however, in the form of Mutual Legal Assistance Treaties. Such treaties represented similar, although not identical, measures as the efforts of the FATF to counter drug activity and money-laundering offshore. Mutual Legal Assistance Treaties give the United States and the United Kingdom the authority to "cooperate" with the efforts of Caribbean countries to interdict drug activity and money laundering, generally by giving their agents sovereign power to enforce U.S. and U.K. law. International Business Company acts and the triumph of offshore sovereignties, thus, in the same stroke represent the failure of the sovereign paradigm, just as Caribbean

states abrogate their authority over their sovereign islands and waters through Mutual Legal Assistance Treaties with powerful metropolitan countries.

The efforts of the OECD to counter harmful tax competition represents, in this version of the story, a slight plot twist, replacing crime with harm and introducing a pastoral grammar to what had been a language of neocolonialism. The plot twist also allows our "Reasonable Man" to enter the stage, alongside the "Satisficing Man" of offshore finance, and to do so with a chorus, as it were, in the form of an imagined community of regard.

Gluckman's "Reasonable Man" is also a "Kantian Man." For Kant, certain judgments are what he called "reflexive" when "they are made in the absence of a rule.... The imagination becomes free at the same time that the understanding becomes indeterminate" (Smith 2003:316). What stitches together reflexive judgments, however, is the transcendent idea of 'reason', made apparent to humans in the world of things.

In contrast to the "Kantian Man," however, imagine the community of regard, or the jury, or the review panel; imagine its aesthetic form and its arts of existence. That community of regard continues along in the making of knowledges that asymptotically approach truths. Because the charge to KYC is without end, the deliberations of these reasonable men are, in theory, also without end. Like juries, however, their passions fade, their stomachs growl, their heads ache, and they reach an assessment, a review, an evaluation that is made to stand for now, not forever. This is, after all, the essence of casuistry. This reasonable man is a "Dissipative Man"—he tires out after a while, "reasonably faithful" to the truth, but that is all one can reasonably expect. This idea of reason, then, far from Gluckman's universal but not subject to Bohannan's relativizing critique either, is a movement, made real in its becomings and always made from and making new problematics that coemerge and trundle along their own parallel and intertwining paths (Deleuze 1994:168–211, see also Smith 2003).

In making the claim that the idea of reason in due diligence is not the universal standard of Kant but an emergence along parallel tracks to forms of ethical inquiry, I also make a claim about the manner in which we conceive of ethics. Alasdair MacIntyre argues that, in Foucault's genealogical method, truth is always "an unrecognized exercise of power in the abasement of the self or of others" (MacIntyre 1990:205).[21] MacIntyre worries that the genealogical method nonetheless has to rely on language that presupposes the very "ascriptions of both identity and continuity to persons" that the genealogical method was meant to problematize (1990:205). In effect, MacIntyre argues, the genealogist has laundered his or her intellectual currency and in the process reveals his or her own putative stability as a subject. "If the genealogist is inescapably one who disowns part of his or her own past, then the genealogist's narrative presupposes enough of unity, continuity, and identity to make such disowning possible" (1990:214). Where MacIntyre sees genealogy and his own form of universal reason and virtue ethics in terms of mutual and unending "hostilities" (1990:215), however, I prefer to think of the

way the two subtend one another, much as quantitative and qualitative forms of risk management collude in the creation and regulation of finance.

The problem, at least for offshore finance, is that one desperately wants easy answers, even if they are rendered according to an apparently complex aesthetic. This is why the drawings of Mark Lombardi have become so appealing (see Figure 4). Lombardi was an artist who obsessively combed newspapers and other public sources for information on criminal and corporate networks. He traced out patterns of interconnection onshore and offshore; many of the nodes are important personages—PEPs in the phrase of the Bank for International Settlements. We are told that after September 11, 2001, an FBI agent came to the Whitney Museum of American Art to study Lombardi's drawing, *BCCI-ICIC &FAB, 1972–91 (4th version),* looking for "clues" about terrorist financing (Hobbs 2003:11). But because one never knows the nature of the connection indicated on the drawing by the line and because one should never accept that the nodes are the solid, unproblematic personages of liberal legalism, one will probably never find "answers" as such in Lombardi's drawings. Lombardi himself dissipated in the effort, in his own suicide.

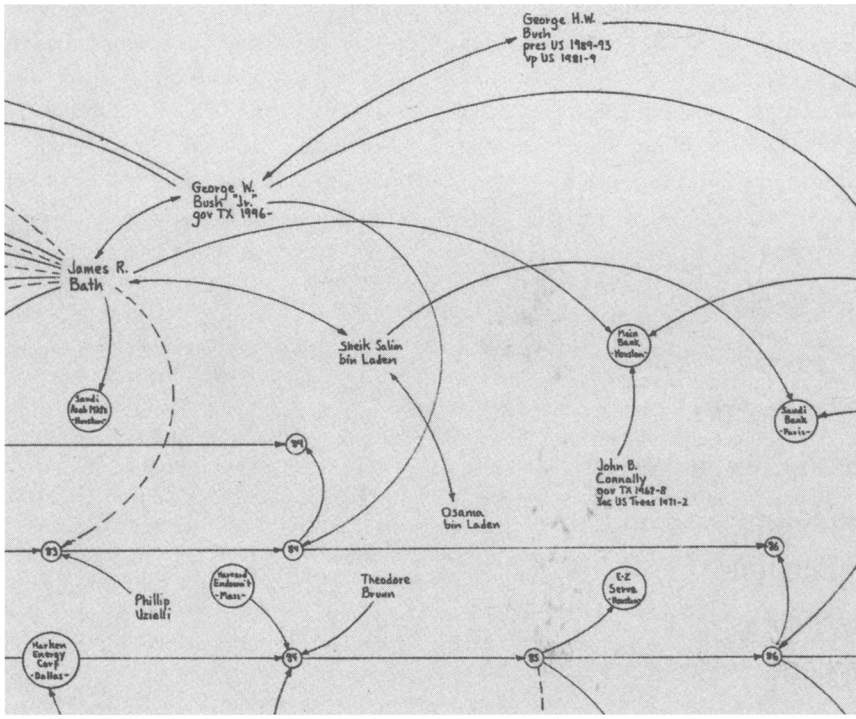


Figure 4
Mark Lombardi, *George W. Bush, Harken Energy and Jackson Stephens c. 1979–90, 5th Version*, 1999, detail. Private Collection. Courtesy of: Donald Lombardi and Pierogi Gallery.

At the same time, however, Lombardi's drawings, like reasonable care, make new amalgamations, new assemblages, new knots, and new ultimately dissipative practices. Deleuze writes, of Foucault's notion of a *dispositif,* "it is a tangle, a multilinear ensemble" (1992:159). It is not a system or a whole, or something that can be grasped by way of its contexts or its grounds. Precisely because it cannot be grasped as a whole or in terms of its grounds, it compels an aesthetic of the "Reasonable Man," seeking not certainty but rather engaging in the embodied activity of scrutiny. This "Reasonable Man," I suggest, differs from Gluckman's in that it places the question of the universal standard in abeyance, or to one side, and moves along doing due diligence in the meantime. Perhaps reasonable care, then, is not simply a new pastoral grammar of governance. Perhaps is it not just the opposite pole of a mode of governance and finance that operates according to depersonalized calculation and universal abstraction. Perhaps, it is, in addition, a "going parallel and becoming plural" (Rotman 2000:78), multiple mutual emergences that tire yet trundle along with the worn-out utopias of the age, all mutually contradictory yet co-occurring.

Lombardi gives us a certain enjoyment—we think we have discovered something when we look at his elegant diagrams. All we find there, however, is the sustenance of our own ideal(ist) projects, the denial of the asymptotic relation between reasonable care and truth in the clean lines and clear nodes of the network he traces. I suggest a mode of analysis that will allow us to feel the exhaustion, to admit the tiresomeness, and to throw up our hands and make a cut through the dense lateralizations of knowledge the offshore affords without allowing us the comfort that we have found the first, the last, or even the correct word.

Notes

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1. See also Guyer 2004 for a nuanced explication of distinct and often incommensurable logics of quantification involved in monetary conversions and the importance of looking at the moments when such logics hook together. Quantification is never simply one thing, as it were, but a concatenation of practices of enumeration and scale that sometimes do, and sometimes do not, articulate as neatly as one might suppose.

2. On offshore finance generally, see Caulfield 1978 for an early treatment as well as Hampton 1996; Hampton and Abbot 1999; Hudson 2000; Maurer 1997; Rawlings 2004; Roberts 1995, 1999; and van Fossen 2003.

3. A recent collection of articles in *American Anthropologist* (107.1) considers the limits of conventional political economic criticism and the pull of ethical modes of anthropological reasoning for understanding emergent phenomena; see Choy 2005, Fischer 2005, Fortun and Fortun 2005, Maurer 2005, Sunder Rajan 2005, and Zhan 2005. See also Petryna 2005.

4. See, for example, Gibson-Graham 1996 and Mitchell 2002 on the internal heterogeneity of that which we often shorthand as *capitalism.*

5. See James 2002 for a further discussion of these comments.

6. Two OECD member states, in protest, appended lists of concerns about the report. Luxembourg challenged the report's assumption "that bank secrecy is necessarily a source of harmful tax competition" (OECD 1998:74); Switzerland defended the value of the "confidentiality of personal data" and noted that the report was in conflict with Swiss secrecy laws (OECD 1998:77). Alongside sovereignty in the sense of a state's autonomous authoring of law and a state's obligation to the public weal, Switzerland and Luxembourg, thus, introduced a third kind of sovereignty, the sovereign proprietor of his or her or its own affairs and personal data.

7. Susan Roberts (2003) and Mark Hampton and John Christensen (2002) have documented the ins and outs of the naming and shaming game, and I will not repeat that work here.

8. Ronen Palan (1998, 2002) argues that tax havens are "not perversions of the principle of sovereignty as much as they are a direct outcome of the conflicting principles of national sovereignty in the age of mobile capital" and any effort to rid the world of tax havens would require multilateral action to such a degree that it would not only limit but "effectively spell the end of" nation-state based territorial sovereignty (2002:173).

9. On symbolic obviation, see Wagner 1978:31.

10. *Family resemblance* is Wittgenstein's metaphor for "a complicated network of similarities overlapping and criss-crossing: sometimes overall similarities" but no underlying, unifying essence (Wittgenstein 1953:aphorisms 66, 67). Wittgenstein develops the metaphor in relation to the concept of number.

11. Statutory Instrument No. 48 of 1999, for the Proceeds of Criminal Conduct Act (No. 5 of 1997).

12. Grenada suspended its economic citizenship program after September 11, 2001. Dominican citizenship can be had for an investment of $150,000 plus fees; citizenship in St. Kitts-Nevis can be purchased for an investment of $35,000 in cash and $250,000 in real estate.

13. It also, thus, calls to mind the gendered masculinities of offshore finance documented by Susan Roberts in the Caymans (Roberts 1999) and in work on finance more broadly, from the early modern period (Ingrassia 1998) to the present (de Goede 2005).

14. On reasonable man's gendered instantiation, see Schlanger 2001.

15. Although the OECD debate sparked new due diligence and KYC procedures, it also halted others, namely, the issuance of "bearer shares" in offshore corporations that provided another means of anonymity and secrecy offshore.

16. "Best-practices" is a keyword of neoliberal governance through managerial accountability. Recent work on audit cultures (e.g., Strathern 2004) is useful in bringing out its relationship to the collaborative and interdisciplinary projects in which many anthropologists are currently involved as we are drawn into contexts in which we must enterprise-up our scholarly activity. This refigures anthropology's relationship to activism and advocacy (a relationship that obviously lurks in the background of this article).

17. I am grateful to Annelise Riles to pointing out the importance of the obviation of the natural and corporate person here.

18. I would like to thank Stefan Helmreich for the mathematical metaphor, and for encouraging me to think about "Reasonable Man" via "Dissipative Man, in a bar somewhere, confused about the check" (e-mail to author, March 6, 2004). See Rotman 1993 on dissipative counting, proving the practical limit of the infinite.

19. And yet, as an anonymous reviewer reminded me, "some of the most imaginative thinkers in our fields . . . are precisely those that have had the most trouble getting through these review processes."

20. An anonymous reviewer cogently remarks that the OECD member states most opposed to tax havens—Germany and France—have long rejected the kinds of arguments from tradition, custom, and precedent that underlie the common law. Thus, there may be connections to explore between common-law conceptions of the reasonable man and common-law tax havens.

21. I would like to thank Saba Mahmood for leading me to MacIntyre.

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ABSTRACT *In the wake of an international crackdown against preferential tax regimes, Caribbean tax havens and other jurisdictions have adopted "due diligence" procedures to manage financial and reputational risk. Due diligence*

relies on qualitative forms of evaluation and defers grounded and definitive knowledge claims through continuous peer review. In doing so, it mirrors certain forms of ethnographic practice at a number of levels of scale. This article tracks the shifts in financial regulation from crime to harm and from certainty to scrutiny and reflects on their implications for ethnography—as a limited and open-ended process of evaluation warranted by qualitative forms of judgment. It seeks to complicate our picture of contemporary capitalisms by drawing attention to the nonquantifiable and the ethical that lie "inside" them. Where conventional forms of ethnographic critique might look to expose the political or economic interests behind actions, symbols, or social relationships, this article has a more modest goal: to try to understand the similarity of form between due diligence and anthropology. [finance, Caribbean, ethnography, ethics, peer review, law]