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GLOBALISATION AND REGULATORY AUTONOMY IN SMALL DEVELOPING STATES: THE CASE OF JAMAICAN TELECOMMUNCATIONS REFORM

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GLOBALISATION AND REGULATORY AUTONOMY IN SMALL DEVELOPING STATES: THE CASE OF JAMAICAN TELECOMMUNCATIONS REFORM

INTRODUCTION

Globalisation, it is claimed, has altered the capacities of states to regulate. Small developing countries, in particular, are said to have lost boundary control over their national economies. This, combined with policies of privatisation and public sector reform more generally, has led scholars to suggest that we are living in the age of the 'hollow', 'defective' or 'diminished' state (Evans 1997). At the same time, the term 'globalisation' has been widely applied and abused (see Rodrick 1997; Woods 2000), and debates between 'hyperglobalists', 'sceptics' and 'transformationalists' may have reached their saturation point (Held et al 1999: 1-29, Hirst and Thompson 1999: 1-18). This paper adds to the empirical work against which such broad claims can be assessed, using the example of Jamaican telecommunications. Providing and regulating telecommunications has traditionally one of the defining activities of the modern state (Grande 1994). More recently, due to economic and technological developments, telecommunications has become even more important for national economies, as well as being a policy domain in which global factors are arguably most pervasive. Jamaica has undergone a decade of regulatory reform of its telecommunications sector, culminating in a new Telecommunications Act in 2000. The case is used to clarify the ways effects attributed to 'globalisation' alter the ability of a small developing state to establish regulatory autonomy in one significant policy domain, telecommunications.

There is a spectrum of views the concerning relative autonomy of Caribbean countries seen in the wider political context. Sutton (1988) stresses the consequences of 'living in the shadow' of the US, which has resorted policies of destabilisation, assassination or even outright invasion. Others, such as Maingot (1994) offer more pluralist 'complex interdependence' interpretations of this relationship. Nonetheless, different analyses tend to converge around the view that national policy-making in the Caribbean is substantially constrained by international politics. In the telecommunications sector in the Caribbean, this has led to claims of 'tele-colonial domination by metropolitan telecommunications carriers and suppliers' and 'cultural (economic) imperialism' (Noguera 1997: 189). More moderately Skinner (1997: 194) interprets regulatory reform of Caribbean telecommunications as a 'control revolution' characterised by 'dependent incorporation which allows only the narrowest range of discretion in policy matters.'

Further contextual factors make Jamaican telecommunications regulation a useful test case to investigate the complex effects of 'globalisation' on national policy-making. First, Jamaican economic policies are influenced by the large neighbouring North American market.[1] Second, an incumbent transnational operator, Cable and Wireless, dominates the telecommunications sector in Jamaica, exercising a pervasive influence on sectoral policies and regulation. Third, Jamaican political and legal institutions, including the parliamentary system, executive government and common law system are a legacy of British colonial rule.[2] Finally, due to weak domestic administrative capacity, and also because of the conditionalities attached to aid from international lending agencies, Jamaica has been exposed to the public sector reform programmes of international organisations.

The case is also important because it has been presented as an example to other states. Since the mid-1990s the World Bank used Jamaican telecommunications as an example of how to promote private investment in regimes that have weak bureaucracies, have alternating parties in government, and which lack informal constraints on arbitrariness. (Levy and Spiller 1994, 1995; World Bank 1997). More recently, Jamaica's experience of liberalisation, and its adaptation of British 'Of-type' regulation to local circumstances has provided inspiration to other Caribbean countries, and to the wider Commonwealth developing world.[3]

The next section introduces the concept of regulatory autonomy and discusses systematically four global factors that impact on the autonomy of a regulatory regime.
The third section describes the reforms that have occurred to Jamaican telecommunications regulation. We then draw inferences about what the case can show about regulatory autonomy in the age of globalisation, locating Jamaican experience within the wider regional (Caribbean) context.

REGULATORY AUTONOMY AND GLOBALISATION

'Regulatory autonomy' broadly refers to the existence of capable and cohesive regulatory institutions and procedures, whose authority is established through formal legal and institutional arrangements and the expertise of regulators, but which is also supported by the patterns of relationships between actors within the regulatory space (for a more detailed discussion, see Stirton and Lodge 2001).[4] Regulatory autonomy highlights issues of connectiveness, embeddedness or 'governed interdependence' of regulators through links to

societal actors (see Weiss 1998:35 Evans 1995), allowing for better information flows and co-operation based on the mutual long-term interest in the viability of the market. Embeddedness implies the shared acceptance of the use of legitimate authority, allowing effective enforcement and compliance. Focusing on regulatory autonomy moves the analysis beyond formal analysis of regulatory powers of individual organisations or broad-brush attempts to match regulatory styles to institutional endowments (Levy and Spiller, 1995). This approach is inspired by the growing developmental literature on state autonomy, stressing the importance of the 'connectedness' of the state with multiple societal actors in explaining the economic transformation of states, particularly in North-East Asia (Evans 1995, Weiss 1998, Polidano 2001). Just as the development literature distinguishes between autonomous, predatory and incompetent states, the analysis of regulation contrasts 'regulatory autonomy' with the (ab)use of discretion by regulatory agencies and/or governments and capture by societal actors.

The analysis of 'state capacity' traditionally emphasised the domestic linkage between state and society (see Migdal 1994). The increasing exposure to particular pressures related to globalisation, which compound the pressures on domestic institutions within a developing country, makes it necessary to move beyond a narrow 'domestic' focus. Four mechanisms can be identified through which global factors can impact on regulatory autonomy:

- Trans-national corporations, which through their dominance of key economic sectors of developing countries possess disproportionate power over national policymakers and regulators
- International organisations and 'hegemonic' states which pressurise weaker countries into adopting policies which benefit them.
- The adoption by policymakers, to a greater extent, of templates drawn from other countries, instead of innovating 'bespoke' policy solutions.
- The impact of 'globalisation ideology' and politics within domestic policy-making, tipping the balance of power among domestic elites.

These four factors are not mutually exclusive or fully exhaustive. Nevertheless, they capture the main contours of 'globalisation' discussions (for example, Garrett 1998: 790-805, Woods 2000). Approaching the problem in terms of a distinct set of mechanisms confronts face-on the complex patterns of causal relationships involved, which can lead to multiple effects in different contexts and situations (See Hedstrom and Swedberg 1998). This is an appropriate

response to the fragmented nature of the modern state, and the complex relationships between political, economic and (national and international) bureaucratic organisations. Our approach contrasts with approaches that analyse the mere shifting the boundaries between state and the market as well as those which succumb to a purely statist conception of regulatory development (Gamble 2000: 113). The ways in which these four mechanisms affect these regulatory autonomy are complex and multi-dimensional, yielding both 'optimistic' and 'pessimistic' interpretations.[5] Such an interdisciplinary approach, drawing on public administration and comparative public policy as well as international political economy literature mitigates the danger that empirical 'findings' are pre-determined by particular disciplinary research agendas.

GLOBALISATION MECHANISMS AND THEIR (AMBIVALENT) EFFECTS

The role of transnational companies

The role of transnational or (multinational) companies has been widely discussed in both the international political economy and globalisation literature, drawing attention to the exploitative role of these companies in dependent countries and their dominant position in policy-making (Hirst and Thompson 1999: 66-69). For example, Hills (1986), shows how US telecommunications and information technology businesses in lobbied the US government to sanction imports from non-liberalised telecommunications markets, thereby influencing regulatory reforms in the UK and, subsequently, in other western European states. Not only do powerful producer interests have the resources to acquire beneficial policies (see also Stigler, 1971), superior resources enable transnational businesses to 'outgun' national regulators (whether organised as ministry or semi-autonomous agencies) in any conflicts. Thus, Dunleavy (1995), predicts that privatisation and outsourcing of traditional state functions is leading to the emergence of transnational service providers whose global resources allow them to dominate national regulators or national governments, leading to a subsequent loss of regulatory and overall governing capacities.

Less pessimistic accounts emphasise qualitative differences between the involvement of transnational companies in different sectors and markets. The transnational sector may be increasingly comprised of small and medium sized enterprises operating in niche markets (Dunning 2000). Further, the presence of competitor firms provides an 'exit' option should individual companies attempt to extract rents from national governments (see Fieldhouse 1986). Equally, reduced entry barriers (for example, because of technological change as well

as developments in the international regulatory environment) challenge the position of incumbent transnational companies.

The role of international organisations and 'hegemonic states'

As with transnational companies, international organisations and 'hegemonic states' have mostly been associated with inhibiting rather than facilitating economic development in general and regulatory autonomy in particular.[6] The secretariat of the World Bank and the International Monetary Fund are said to be mainly interested in developing 'advice' conducive to the interests of funding countries, whose representatives on the boards of these organisations exercise influence proportionately to the funding they contribute (Frey, 1996). The 'demand' by recipient states for development aid is thus met by the conditional supply by donor states and their agents (the international organisations) interested in forcing open markets and the creating dependency relationships (but see Barnett and Finnemore 1999). One-size-fits-all solutions offered by international institutions also limit the discretion of national governments and regulators in the light of potential sanctions for non-compliance.

The way in which international organisations come to represent the interests of dominant member states is well illustrated by reforms of international telecommunications governance. In the mid-1980s the OECD promoted principles for privatising and regulating telecommunications industries. This was due to the demands of mainly US interests, (in the government and private sector), and led to the incorporation of telecommunications into the General Agreement of Trade in Services (GATS) The 1997 WTO agreement committed countries to progressive liberalisation of their telecommunications markets. These interests forced telecommunications onto the agenda of the OECD and WTO because of dissatisfaction with the policies of the international telecommunications authority, the ITU. Pressured by industry and pro-liberalisation governments, the ITU attempted to retain authority by reforming itself, extending membership to corporate as well as national state actors, and by creating a business advisory forum to advise the ITU secretariat and a World Telecommunications Advisory Council, comprising representatives of global telecommunications companies. (Mansell 1996; 193-199; Braithwaite and Drahos 2000: 347).

Hegemonic states do not impose their policy preferences only through international organisations. As Payne suggests, economic dependence itself creates bias towards 'compliance' with economic policy-preferences. Others claim that 'imperial states' attempt to

drive the macro-economic agenda in the world economy (Petras and Veltmeyer (2000).[7] Hoberg (1991) analyses 'sleeping with elephant' effects, ranging from the unilateral adoption of standards requiring domestic adjustment, the export of externalities (such as environmental pollution) and the impact of economic dominance.

At the same time, the activities of international organisations can be interpreted more benevolently. They provide resources and capacities to draw on international 'best practice' (in particular since the so-called 'post-Washington consensus' mood swing towards 'good governance', Higgott 2000: 148). They thereby supply domestic actors with (at least temporary) additional resources for building and maintaining regulatory and enforcement capacity (Simmons 2001: 597-8). This provides an additional dimension to national regulatory politics, arguably challenging existing domestic structures oriented in the interest of particular domestic coalitions.

The role of 'policy transfer'

While underemphasized in the international political economy literature, the role of 'transfer' and of technocratic actors in diffusing regulatory templates and ideas has been a standard feature of public administration throughout the centuries and across countries (see Drahos and Braithwaite 2001). Policy transfer has recently received renewed interest in political science (Dolowitz and Marsh 2000, 1996; Bennett 1997; Rose 1993; James and Lodge 2001). In the case of telecommunications, regulatory and technological developments present particular challenges for national administrations to maintain and develop policy expertise (see Simmons 2001). 'Policy transfer' is understood here as the impact of professional and technocratic expertise on the regulatory strategies adopted in any particular state. Globalisation facilitates processes of policy learning to the extent that new technologies and new actor constellations within the regulatory space require institutional adjustment. Transfer processes occur either through the internationalisation of a 'regulatory community' or by the import of particular knowledge from selected countries. DiMaggio and Powell (1991: 69) also point to decision-making processes which motivate limited searches for seemingly legitimate or successful models in the face of genuine uncertainty instead of the exhaustive analysis and testing of all available policy options.

While the concept of 'policy transfer' emphasises the importance of technocratic actors, the decision to draw lessons represents a trade-off between reduced discovery and standard

setting and the risk of irritant effects. Mimicry of potentially legitimate or successful models may overlook the context and environment in which the lesson is applied, potentially generating unintended consequences (Teubner 1998). At the same time, 'policy transfer' might symbolically reflect fads and fashion in regulatory design without affecting underlying (power) structures. More optimistically, the ability to draw on expertise internationally (given also reduced costs of international communication) allows for professionalisation, increasing regulatory capacity vis-à-vis the international resources of transnational companies.

The impact on domestic coalitions

Despite claims about losing boundary control and state autonomy, other authors (notably, Hirst and Thompson 1999) suggest that states remain central in shaping economic policy. Domestic politics continues to shape policy choices and options (Conley 2001). Domestic politics in general, and regulatory reform in particular, are said to be driven by coalitions of economic interests (see Peltzman 1989, Wilson 1980: 357-74). Globalisation may either provides dominant coalitions with rhetoric and resources to assert their interests or tips the balance towards 'pro-liberalisation' coalitions. In the first scenario, the asymmetric distribution of costs and benefits reinforces regulatory policies that favour the regulated industries. Similarly, Migdal (1994) stresses that despite the prominent role of the state in developing countries, 'anti-developmental coalitions' (consisting of state actors and strong societal interests) collude to impede development. Similarly, despite much discussion of informatisation and globalisation, reforms may reinforce existing power relationships rather than challenge them.

By contrast, the literature on public sector reform has stressed the importance of new elites in driving the reform agenda, attempting to de-institutionalise existing arrangements. Such reform coalitions, potentially also reflecting domestic industries, (which some define as national representatives of a 'transnational capitalist class', Sklair 2000), are also often involved in articulating demands for change at the international level that face opposition at the domestic level. Rather than imposing policy change, the international dimension becomes an alternative arena for domestic reform coalitions.

The following evaluates regulatory reform in telecommunications in Jamaica. We neither claim to offer an exhaustive assessment of regulatory reform outcomes, nor do we seek to discuss comprehensively how 'globalisation' alters the dynamics between 'societal' and

'state' authority. If the four globalisation mechanisms we discuss are found to be of limited value, at least we have a basis of discarding them. At the same time, examining these factors may diversify the discussion on globalisation by avoiding a purely descriptive account or a broad interpretation as offered by 'neo-colonialist' and dependency theorists or as found in macro-debates on globalisation.

REGULATORY REFORM IN JAMAICA'S TELECOMMUNICATIONS SECTOR

During the 1980s and early 1990s, Jamaica's expansionary monetary policy led to hyper-inflation, peaking at 80 per cent in 1992. Economic and financial deterioration, provoked interest in public sector reform, particularly to attract private investment for economic development. Following an agreement between the Jamaican government and Cable & Wireless (C&W), in May 1987 the government announced the creation of Telecommunications of Jamaica (TOJ), to take over the domestic provider, Jamaica Telephone Company (JTC) and the international service provider (Jamintel). The transfer of ownership from government to C&W was undertaken cautiously by the Jamaican Labour Party (JLP). In the prospectus for the offer of 21 per cent of the shares to the public, the Government indicated that it intended to maintain a controlling 40 per cent stake in the company (Wint 1996: 56). However, a further transfer of shares to C&W was initiated under the Michael Manley's Peoples National Party (PNP) administration, allowing C&W to take control of TOJ in 1989.

The drift from public to private ownership was primarily for financial reasons, but also to import telecommunications expertise. Following the introduction of international direct dialling to and from Jamaica (in 1977 and 1978 respectively), increased demand could not be met by Jamintel (largely owned by the Jamaican government) without substantial capital investment. Similarly, demand outpaced JTC's capacity to link households and businesses to the telephone network (Ambrose et al. 1990). Although the sector was profitable, the demand for additional investment collided with pressure to reduce public spending from international lending agencies. For example, the second structural adjustment loan from the World Bank in 1983 restrained the government's discretion with regard to borrowing and capital spending.

The initial regulatory arrangements were set out in five licences issued by the Government of Jamaica in 1988. These licences gave TOJ the exclusive right to operate the wired public telephone network for a period of 25 years with an option (to be exercised by the operator) to

renew this arrangement for a further 25 years.[8] At the same time a new company, Jamaica Digiport Ltd was established, a joint venture between AT&T and C&W, to exploit Jamaican potential to provide low-cost information services (call centres) to the neighbouring North-American market.

Central to the arrangements was a simplified rate of return mechanism, which provided a source of funds for cross-subsidising investment in the development of the domestic telephone network.[9] The set after-tax return (of 17.5 to 20 per cent on equity), guaranteed by annual tariff adjustments by the Minister of Public Utilities, was financed almost entirely from international services, particularly settlement fees provided international telecommunications operators paid C&W for terminating inbound traffic to Jamaica.

However, there were some difficulties with regard to the extent of the 'exclusivity' provided under the 1988 licences. Cable & Wireless later claimed that, read as a whole, the licences created a legitimate expectation of an exclusive right to provide telecommunications.[10] The legal basis of this is tenuous. While the Telephone Act 1893 Act gave the government authority to establish a monopoly over the local wired telephone network, there are problems in any wider interpretation.[11] The Act is silent with respect to customer premises equipment (CPEs) and international services, never mind services not envisaged in 1893, such as data transmission, storage and retrieval and other value added services or fibre-optic transmission. C&W's cellular service, furthermore, was provided under authority of a wireless communications licence some claimed was issued for the provision of 'wireless in the local loop', which was crucial to the expansion of the public telephone network, given Jamaica's geography.

Meanwhile, Jamaica's worsening financial situation compelled the government to sell its remaining holding in TOJ. In order to secure a high price for the sale of its remaining 20% of shares (in 1990) the Prime Minister, Michael Manley agreed (in a letter dated 2 November 1990) to make the necessary amendments to the Telephone Act and the licences. A Bill was introduced in 1993 guaranteeing the company exclusivity in all areas of telecommunications traffic in, out and through Jamaica. These proposals met with great hostility in many quarters, forcing them to be sidelined until after the election of 1997. Following the election, a new ministry was created, the Ministry of Commerce and Technology (MCT), headed by a reform-minded minister, Philip Paulwell.

Continuing legal uncertainty, new actors, international constraints and commitments and technological change increasingly threatened C&W's exclusive status and encouraged the operator to renegotiate arrangements with the government by the late 1990s. In 1997, a new regulator, the Office of Utilities Regulation (OUR), was established. The initial idea of a regulator had been part of the privatisation plans for the electricity sector, where World Bank support was linked to the creation of a stand-alone, preferably sector-specific regulator. Although World Bank funding for energy was withdrawn after the sale of the electricity operator, the Jamaican Public Service Company, was abandoned in 1996 (but undertaken in 2001), the OUR was established along the lines of British regulatory bodies (but with cross-sectoral responsibility for telecommunications, energy, water and aspects of public transport). However, the legislation impeded the exercise of regulatory authority. The Office of Utilities Regulation Act 1995 established jurisdiction over 'approved organisations' specified in the Act or in secondary instruments. Neither the 1995 Act nor delegated legislation identified any of the utilities as 'approved organisations'. The OUR advised itself that it had authority only to act in an advisory capacity, with decision-making authority in telecommunications remaining with the Minister. Despite early recognition of this anomaly, legislative amendments were only made in 2000.[12]

Early attempts at liberalising telecommunications were pursued through the Fair Trading Act 1993, which established a combined competition and consumer-protection regulator, the Fair Trading Commission (FTC) but also provided third-party rights of action. The FTC reached a settlement in 1993 with C&W opening the CPEs market. In 1994, pressurised by the Fair Trading Commission and from Infochannel (which wished to provide Internet services) C&W agreed to permit Internet Service Providers (ISPs) to interconnect with the public telephone network. In 1999, the FTC and C&W agreed a settlement on C&W's advertising. The FTC took the view that matters purportedly covered by the 1988 licences were for Parliament to deal with, and declined to challenge them explicitly.

Technological developments also allowed consumers increasingly to bypass the C&W network to make international calls. In 1998 the Minister for Commerce and Technology issues five VSAT licenses to ISPs. Some of them used their equipment, with the aid of voice over Internet protocol (VOIP) to offer call-back services, bypassing C&W's international gateway, while interconnecting with C&W's domestic network. C&W contested the licences,

claiming (as discussed above) that their licences implied a right of exclusivity.[13] Proceedings were also initiated (unsuccessfully) against operators who were using VOIP to provide international 'call-back' services bypassing the C&W international gateway.[14]

Finally, international constraints further challenged the 1988 arrangements. The government, with C&W's approval, acceded to the WTO Agreement on Telecommunications, marking a broad commitment to liberalise telecommunications.[15] This commitment was concretised in a 1998 statement of policy on telecommunications (Ministry of Commerce and Technology, 1998) which set out a framework for implementing the Jamaican government's obligations under the WTO Agreement. This included the introduction of competition in wireless services (including 'wireless in the local loop' as well as cellular services) and in value added network services (also interpreted broadly), although no timetable was set for implementation. Among the reasons for this shift in policy was to unlock the (perceived) potential for attracting investment in information technologies and telecommunications in 'Free Zones' (Government of Jamaica, 1996).

Furthermore, the US Federal Communications Commission Benchmarks Order of 1997 reduced unilaterally the settlement rates paid by US carriers for the termination of international calls from US $0.575 to US$0.19 per minute (still comfortably above cost) by 1 January 2001. The US Court of Appeal upheld this Order.[16] This decision threatened to undermine the financial basis of the post-privatisation regime which had been based on the assumption that the incumbent could cross-subsidise the upgrading and expansion of the (unprofitable) domestic telephone system out of profits on international services. Apart from motivating a rate review in 1999, the FCC Benchmarks Order increased pressure to renegotiate the terms of engagement between C&W and the government.

Thus, legal and technological uncertainty, combined with shifting political preferences and changes in the wider international regulatory environment encouraged C&W to reach an accommodation with the Jamaican government in 1999 (Cable & Wireless Jamaica, 1999). The agreement contained detailed drafting instructions for new legislation, enacted as the Telecommunications Act 2000. While the Act allowed for a three-phase transition towards a liberalised market over three years, (the Act restricted the international bypass of the C&W network along the lines practised by VSAT operators). Authority was granted to the OUR as the regulator of C&W as well as over new entrants.[17] Provision was made for interconnection

between different providers/carriers, and for the sharing of universal service burdens among providers through a universal service levy. Additionally, liberalisation was being accompanied by re-balancing of tariffs, which was likely to result in significantly higher domestic tariffs.

The Telecommunications Act 2000 was meant to shore up C&W's position in law. Nonetheless, ambiguities remained, and legal challenges against C&W continued.[18] Arguably, while the Telecommunications Act 2000 did not end legal uncertainty, it improved matters for C&W because further challenges were likely to be commercial disputes between companies, rather than politically salient battles between C&W and the government. Supporters of the deal suggested that it offered a necessary compromise between pro-reform interests and C&W, and pointed to C&W's commitment, in return, to introduce 217,000 lines in Jamaica. A commitment was also made to upgrade the telecommunications infrastructure in the Montego Bay Freezone Digiport as well as to invest in scholarships and infrastructure for IT developments.

REGULATORY AUTONOMY, GLOBALISATION AND SMALL DEVELOPING STATES

Jamaican telecommunications reform seems to offer a surprising example: a small state, dependent on external private investment for its telecommunications service, manages to overcome the resistance of the incumbent monopolist and to establish a programme of liberalisation, in a manner that broadly attracted support and strengthen the authority of the regulator. This section discusses ways in which the four globalisation mechanisms affected regulatory autonomy in the Jamaican telecommunications sector, concluding with a broad discussion on the applicability of this case study to wider debates on regulation in small developing states in the shadow of globalisation.

Transnational companies

The position of C&W offers evidence less of outright domination or colonialisation than of fragile dominance. The 1988 arrangements could be interpreted as demonstrating dominance of an international operator vis-à-vis a government dependent on private investment. The licences prima facie went well beyond 'conventional' exclusivity agreements between governments and operators. For others (such as Spiller and Sampson 1996) the legal 'hardwiring' of regulatory arrangements into license obligations were a means for

government could establish commitment necessary to secure private investment. Both these interpretations have difficulties accommodating within their accounts the progressive unravelling of the 1988 'settlement'. Strategic action by the FTC and the MCT (in encouraging alternative suppliers) and changes in the international environment (the Benchmarks Order) combined to dissipate C&Ws monopoly rents. Furthermore, the government aimed to expose C&W to competition from other international (although smaller) operators.[19]

In parallel with these developments was a significant change within C&W, leading to a shift in priorities away from an interest in becoming a global player in residential voice telephony towards business and data-rich markets which were regarded as more profitable. Relinquishing the monopoly on the Jamaican market provided an opportunity to reduce its obligations in costly and unprofitable services in the medium-term.[20] This shift was accompanied by an increasing centralisation of operational and strategic decision-making in London (with some speculating about an intention to sell-off all Caribbean operations), leading to a reduction in autonomy of the local C&W business which opposed liberalisation.

Despite the changing environment, the terns of the 1999 agreement allowed C&W to control the pace of liberalisation. For example, it included detailed drafting instructions for the Telecommunications Act, limiting opportunities for bypassing its international gateway. This shored up the remaining tariff imbalance, obviating the need for full re-balancing and an end to cross-subsidisation at least in the short term.[21] Constraints were also placed on the regulatory agency to prevent regulatory ‘drift’ and action to speed up liberalisation. Every OUR rule required parliamentary approval.[22] In addition, the Act reserves to the Minister for Commerce and Technology, important licensing functions (Part III of the Act) as well as the right (common to most countries) to issue directions ‘of general nature’ to the OUR (Section 6).

International Organisations and ‘Hegemonic States’

The involvement of the World Bank mainly occurred during the early stages of the establishment of the OUR. Its contribution was to place privatisation on the domestic agenda, in particular because of its policy of no longer funding governments for the generation of electricity. This was supported by aid agencies, in particular USAID, which advocated

privatisation. Furthermore, the OUR continued to receive support from British and Canadian aid agencies.

For some, 'technical assistance' to establish and sustain regulatory independence and 'credibility', represented the promotion of the agenda of international business and organisations. Thus, these policies could be classified as conditional support, in that the Jamaican government would not have received support had it chosen alternative policies. However, such an interpretation would require evidence of a far more detailed blueprint for the creation of regulatory arrangements. Instead, international and national donors set only very broad policy parameters leaving national policy-makers with considerable autonomy. One example of such national discretion is evident in the creation of a cross-sectoral regulatory authority despite the World Bank's 'best practice' recommendation in favour of sectoral regulatory bodies, (irrespective of country size).

Similarly, the WTO telecommunications agreement is best understood as providing opportunity for the Jamaican government to signal commitment towards a (rather unspecified) liberalisation of its telecommunications market rather than as an international imposition. It allowed the government to place itself on a potential (not unintended) collision course with C&W. The chief aim of the US, as noted earlier, was to shift the decision-making away from the ITU, which was perceived, by some to be 'too ready to be concerned with social, distributional and development-related issues' (Mansell, 1996: 206). The US wanted to locate international governance of telecommunications within a set of institutions that encouraged liberalisation and provided procedures to tackle market discrimination. Their chief concern during the WTO negotiations was mainly to protect its satellite personal communication industry and to demand liberalisation in the markets in Asia-Pacific rather than the Caribbean.

A more directly 'coercive' impact was the decision of the FCC to unilaterally impose new accounting or 'benchmark' rates for all international calls originating in the US. This was a response to complaints by US operators who were forced to pay nearly $6bn per annum to foreign operators as part of a traditional accounting rate system which did not reflect cost of services. The traditional accounting system required that imbalances between the number of incoming and outgoing calls were settled by the originating carrier with the greater degree of traffic agreeing a payment to the other carrier. This system had increasingly led to payments

from those countries with liberalised services to those which continued to maintain national monopolies (Braithwaite and Drahos 2000: 336). The FCC's decision was directed in particular against the ITU whose original competence, as already noted, included international rate-setting. The unilateral FCC decision eliminated, over time, the main source of C&W's profitability in Jamaica (and the wider Caribbean) and its basis for the cross-subsidisation of local services. Nevertheless, while the FCC decision and its impact on Jamaica can be seen as a 'sleeping with an elephant effect' in reality it only marked a further on-going erosion of the traditional international accounting system, which had been challenged by competition from private operators, call-back providers and providers of Internet telephony.

Policy transfer

As already noted, the British development department, DFID, and the Canadian agency (CIDA) supported the development of the OUR. DFID support, which provided financial support for a regulatory expert from the British telecommunications regulator (Oftel), was arose from the original decision by the Jamaican government to model the OUR on the 'British' approach of having a Director General rather than a collective regulatory commission. This structure and, more importantly, the application of price controls reflected the regulatory lessons which the World Bank advocated in the early 1990s. The application of 'price cap' is an example of Jamaica being receptive to the spread of international 'good practice' in telecommunications regulation. Since 2000, the OUR has been transferring lessons on dispute resolution and consultation from Canada, thus potentially preparing the agency to conduct its business in a less informal 'British' and a more 'North American' (supposedly more) open consultative style. Arguably, this shift of style was related to the opening up of the market to new entrants, requiring a different type of consultative arrangement.

The OUR developed its own capacity for analysis and benefited from being a 'second learner', allowing it to learn from states which had reformed regulation earlier. Such effects were evident in the multi-sectoral design of the OUR, which did not follow the World Bank's advocacy of sectoral regulation. Furthermore, the OUR had access to a substantial degree of international expertise.[23] These consultancy contracts gave the OUR additional credibility vis-à-vis C&W and other potential international operators. As well as 'importing' regulatory

expertise, the OUR's multi-sectoral organisation was increasingly regarded as a potential 'model' to be transferred to other small and developing countries.

At the same time, however, while the OUR followed the British regulatory patterns in its organisational and regulatory approach, this occurred without much reflection on other 'liberalisation' stories (apart from some influence from North American experiences given the technical support provided by Canada's development agency). Similarly, no regulatory community emerged across the wider Caribbean. While some attempts were made to arrange for a Caribbean-wide approach to telecommunications policy and regulation through the creation of the Caribbean Telecommunications Union, these initiatives did not establish a cross-national regulatory network which shared expertise across jurisdictions.

Domestic elites

While many accounts have pointed to the ideological underpinnings of the 'global' theme of privatisation and regulatory reform, the Jamaican case is best understood as a 'pragmatic' rather than a 'tactical' (i.e. vote-enhancing) or 'systemic' (economic order altering) policy (see Feigenbaum, Henig and Hemnet 1998, Kalyvas 1994). Due to fiscal crisis, and the need to demonstrate financial restraint to international donors, the Jamaican government depended on private investment for the modernisation and extension of the public telephone system. The Jamaican government arguably stumbled towards privatisation with little evidence at the outset of the intention to transfer full ownership or a controlling interest to the private sector. Furthermore, it was a one-time 'democratic socialist' prime minister, Michael Manley, rather than the 'pro-market' JLP who transferred control of TOJ to C&W. At the same time, given the pragmatic nature of the privatisation process, it is debatable whether the regulatory reforms in telecommunications led to destabilisation of old elites, the assertion of certain reform coalitions within ruling elites or the maintenance of old elites.

Changes in technology and in the international regulatory environment diminished opportunities to benefit politically from the local monopoly. C&W's position was further undermined by the demands of potential private investors in wireless and value-added services. The sale of a private monopoly offered maximum returns to the Government and C&W, and allowed for the rapid extension of telecommunications provision across Jamaica. This initial settlement was challenged by the need to form further bargains, this time with the

providers of mobile services, which would only enter the Jamaican market if the government was committed to regulatory independence and 'fair' interconnection between networks.

External constraints strengthened a reform community within the two parties, the bureaucracies and the regulator, at least in the telecommunications domain. The negotiation of the liberalisation process allowed regulators to establish their credibility by signalling their independence and authority apart from government. Within the government, attempts were made to insulate the reform community from the more traditional elements of Jamaican bureaucracy and politics. This included the shift of the telecommunications portfolio away from a PNP minister who showed a marked lack of enthusiasm in regulatory independence (and for liberalisation in general), and the appointment of a reform-minded minister to lead the new MCT. A second element of this 'insulation' strategy concerned the role of the Office of the Prime Minister (OPM) and the Cabinet Office in driving the reform process 'from the centre'. Throughout the reform process the OPM intervened in turf-fights between the sectoral ministries and the OUR in support of reform. The success of the 'regulatory coalition' was also evident in the defeat of C&W's attempt to eliminate telecommunications from the OUR Act. This was regarded within the OUR as an attempt to establish a 'capturable' sectoral regulatory framework. Despite the powerful position of C&W in the process and the existence of international, (partly self-imposed) restraints, there is some evidence that regulatory reforms in Jamaica were promoted by a domestic pro-liberalisation coalition. This coalition, consisting mainly of politicians and officials as well as some countervailing economic interests, argued that economic dependence on declining sectors and tourism was insufficient to reduce social tension and to adjust the economy towards promoting information technologies. On the other hand, the Telecommunications Act undermined the domestic VSAT operators. Arguably, the government issued VSAT licences in 1988 to place further pressure on C&W, only to eliminate their access to international markets through the provisions restricting bypass, at least for a time.

CONCLUSIONS: ESTABLISHING REGULATORY AUTONOMY

The literatures on globalisation and on regulation have often assumed a dominance of business over national regulatory institutions. While regulatory reform in Jamaica is ongoing, and telecommunications in general might be regarded as a 'special' sector, the evaluation of respective globalisation mechanisms here suggests that the emerging picture is a mixed pattern between increasing autonomy and continuing (if changing) challenges to the

regulatory regime. The Jamaican case, especially when seen in comparative perspective, reflects the considerable difficulties involved in establishing autonomy, while avoiding a slide into scenarios, such as a rent extracting predatory regulatory agency or a captured 'incompetent' authority.

The adaptation of regulatory templates to local conditions, the (long delayed) creation of regulatory authority as well as the institutional insulation of the Jamaican 'reform community' suggested a deeper commitment towards embedding regulatory reform. Similar tendencies were also evident in terms of competence-building. The inclusion of international expertise and support as well as the development of the authority and expertise of the regulatory office tentatively suggests a process of increasing bureaucratic/regulatory autonomy which was also respected by the regulated companies. Whether, these competencies will remain sufficient in the face of challenges from the better resourced transnational service providers in the long term, remained , at the time of writing, to be seen. Furthermore, the uncertain interpretation of the distribution of regulatory authority between OUR, C&W and the ministry pointed to substantial conflict and possible challenge in the courts. Moreover, the bureaucratic autonomy may be endangered by the anticipated social tension, especially concerning rate-changes. While there has been little conflict over rate-rebalancing, prolonged riots in 1999 which followed an attempt to increase petrol taxes, cautioned regulatory decision-making against adversarial approaches against incumbents and moderated government demands for an immediate end to C&W's privileged position. Thus the Jamaican case reveals a consistent, if fragile trend towards 'regulatory autonomy', in particular in terms of a change from close ministry-local subsidiary of transnational company relations towards a regulatory space which was characterised by various operators, a government interest in attracting new foreign investment and a new and separate regulatory authority.

Taking a wider perspective, the Jamaican case-study offers important lessons for the comparative analysis of regulatory reform in small and developing states. Although some in the Caribbean telecommunications sectors (in particular, interviews in Barbados and Trinidad) argued that Jamaica had been 'taken to the cleaners' in its accommodation of C&W, for others it represented a necessary compromise, in order to secure the legitimacy of the reforms. By way of contrast (and by late 2001), in Trinidad and Tobago, the Telecommunications Service of Trinidad and Tobago (TSTT) had been able to defend its

exclusivity successfully, even though it had achieved substantially lower levels of teledensity (around 30%). There, reform has been bogged down by political wrangling, legal challenge of the outcome of a cellular license auction, as well as pervasive 'scorched earth' tactics by TSTT. The refusal by the Government of Trinidad and Tobago to reach a 'Jamaican-style' accommodation with TSTT (of which Cable & Wireless plc owned 49%) was one factor which impeded the establishment of a Telecommunications Authority, envisaged by 1992 legislation, but never proclaimed.[24] Similarly, in Barbados, C&W Bartel was effectively able to restrict bypass of its network by Caribnet, a (now defunct) ISP. More recently, C&W has reached an accommodation with the Government of Barbados, similar in many respects to the Jamaican arrangements (Barbados Ministry of Industry and International Business, 2000). In that case, however, the one-stop-shop regulator, the Fair Trading Commission has yet to demonstrate technical capacity to deal with an entrenched incumbent with a network of 83 per cent teledensity across households. The importance of keeping the incumbent 'on board' is also demonstrated by the example of Dominica where, in spite of a decision against C&W by the Privy Council in the Marpin[25] case discussed earlier, Marpin had still not managed to restore access to the public telephone network.

More broadly, the Jamaican case suggests that globalisation need not necessarily reduce the potential for establishing regulatory autonomy, but rather offers both resources and constraints for national authorities. Whether regulatory autonomy was established and sustained was, furthermore, mostly a consequence of complex relationships within the regulatory space, ranging from relationships between government, regulatory and C&W to relationships between telecommunications operators between each other and in relation to the OUR.

Finally, by moving the analysis towards the impact of a clearly defined (arguably limited) set of globalisation mechanisms, it has been suggested that any analysis of the impact of globalisation on states and societies has to take into consideration the decentring of national states and societies. The state itself is a set of coalitions which potentially involved both public and private actors (in particular in the developing world). Apart from this internal 'de-centring', the state is also 'de-centred' through the shift of regulatory standard-setting authority to the international level. The 'de-centring' of the state is further facilitated by the internationalisation of society, such as the internationalisation of business activities and service providers. Finally, while the dependence on international markets and a reputation for

‘credibility’ constrained the scope for national policy-makers in maintaining autonomy (i.e. a policy contradicting international trends would have had negative repercussions for Jamaica but only very limited effects on the international system), at another level, the exposure to globalisation allowed for considerable discretion and allowed Jamaica to establish a certain, though perhaps fragile, degree of regulatory autonomy. This conclusion is far removed from monochrome claims of ‘tele-colonial domination’, pure hegemony by international dominant states due to dependency effects or the will of transnational capitalist classes.

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[1] Payne (2000) characterises the asymmetric linking of the Caribbean and US political economies as 'Caribbean America'.
[2] Subramaniam (1977) provides an interesting study of the transplanting of institutions throughout the Commonwealth.
[3] The East Caribbean micro-states adopted, after sustained negotiations, a similarly phased approach towards liberalisation (*Financial Times*, 9 March 2001).
[4] The concept of regulatory space originates with Hancher and Moran (1989) and is developed by Scott (2001)
[5] We exclude technology as a globalisation factor in this analysis. Although it forms a crucial background variable, technological change alters the institutional resources of actors and the persuasiveness of particular regulatory design ideas. The approach developed here allows the analysis to go beyond a purely functional analysis in which regulatory regimes are understood to adapt unproblematically to the requirements of an altered environment.
[6] We define hegemony (in a restrictive sense) as a particular set of geo-political conditions that results in dominance by one particular state or section of a state over other states, while possibly still allowing the latter some discretion.
[7] Payne (2000) also cautions against the assumption that hegemonic states are unitary, the US has to be regarded as a fragmented entity of competing and contested agendas.
[8] One licence was issued under the Telephone Act 1893, dealing with wired telephony. Four licences were issued under the Radio and Telegraph Control Act 1973 dealing with possession and operation of communications equipment.
[9] Such investment, even in unprofitable domestic services, arguably allows the monopolist even greater profits (given that network externalities lead to an even higher demand for the termination of international inbound calls), provided that the cost of borrowing is less than the allowed returns on equity up to the point where monopoly rents are fully extracted (Averch and Johnson 1962).
[10] Minister of Commerce and Technology v. Cable & Wireless Jamaica Ltd. Suit M089/98
[11] But see the decision of the Privy Council in Cable & Wireless (Dominica) v. Marpin Telecoms and Broadcasting Ltd and another [2001} WLR 1123, particularly the dicta of Lord Cooke cautioning against judicial deference in scrutinising exclusivity arrangements in the light of constitutional protection of free speech, given the common financial interest of the government and the operator in establishing exclusivity.
[12] The position was resolved (with respect to telecommunications) by the Telecommunications Act 2000 and (with respect to the other utilities) by the Office of Utilities Regulation (Ammendment) Act 2000, The absence of regulatory authority had also an impact on funding since OUR was to be financed through levies on 'approved organisations' which C&W declined to pay.
[13] Minister of Commerce and Technology v. Cable & Wireless Jamaica Ltd. Suit M089/98.
[14] See Infochannel Ltd. vs. Cable & Wireless Jamaica Ltd. Suit E014/99.
[15] The Jamaican government committed itself to new legislation which reflected 'technological advances' and 'pro-competitive practices', but honoured its exclusivity agreement until 2013. It was indicated that following an agreement with C&W, an improved commitment would be submitted.
[16] Cable & Wireless plc, v. Federal Communications Commission and United States of America, 344 U.S. App. D.C. 261; 166 F. 3d 1224.
[17] The spectrum, carrier and service provider licenses were auctioned to two new mobile carriers – Mossel (trading as Digicel) and Cellular One (Caribbean), a subsidiary of the US firm Cellular One. US$ 47.5m and US$45m were paid by the respective firms for the spectrum rights.
[18] Infochannel Ltd. v. Cable & Wireless Jamaica Ltd. Suit No. C/L I.038/2000 [17.8.2000]; Infochannel Ltd. v. Cable & Wireless Jamaica Ltd. S.C.C.A 99/2000 [20.12.2000]. Infochannel claims a 'grandfather' right to continue to bypass the C&W international gateway under section 85 of the Act.
[19] The 'pulling power' of the Jamaican government should not be overestimated, the auction only attracted two serious contenders for the two licences.
[20] In May 2000 C&W announced the discontinuation of the service of wiring consumer premises and providing handsets (Ministry of Commerce and Technology 2000).
[21] Myers (2000) provides a sophisticated analysis of the OUR's universal service and re-balancing strategies.
[22] The agenda-setting power of the OUR was nevertheless safeguarded. The affirmative resolution provision was likely to enhance the politicisation of rule-setting rather than maximising control on the OUR by C&W's lobbying of parliamentarians.
[23] As did telecommunications operators, including C&W.
[24] At the time of writing, a new Telecommunications Bill is before theTrinidad and Tobago Parliament.
[25] Cable & Wireless (Dominica) v. Marpin Telecoms and Broadcasting Ltd and another [2001] WLR 1123