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ALL OFFSHORE – THE SPRAT, THE MACKERAL, ACCOUNTING FIRMS AND THE STATE IN GLOBALIZATION

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> "… [The] accountancy profession in the United Kingdom was born in the context of government regulation of an intervention in the economy, and has continued to flourish in that context. Difficulties associated with the administration of the bankruptcy laws of the State provided a powerful incentive for the formation of a professional institute. Thereafter the profession developed in the context of a market for audit services that was to become legally required, and eventually gained a legal monopoly in its provision. … So much of the work of professional accountants resides within the interstices of State interventionist policies, not only in areas such as taxation and corporate restructuring, but also in their capacity as applied economic consultants, specialists in compilation of economic data and intelligence.
>
> Even though it is difficult to understand the contemporary significance of the accountancy profession in the United Kingdom without appreciating its mutual intertwining with the modern conception of the State, the profession itself has adopted a most entrepreneurial stance. It has repeatedly done what it has not done before …" (Hopwood, 1985: 13-14).

The intertwined relationships between accounting, accountancy bodies, accounting firms and the state[1] have been an under-explored theme in the accounting literature. Accounting calculations play a major part in levying taxes, regulating property rights, managing wars, promoting financial discipline in the public sector and even persuading private capital to provide a particular kind of public accountability. The state has long used accounting calculations to manage and displace recurring crises of capitalism. It has even been suggested that "how the concept of capitalism was invented is an example of the influence of accounting ideas …" (Chiapello, 2007: 264). In short, accounting is central to capitalism as a mode of production that, in its advanced form, exists in a mutually dependent and antagonistic relationship to the state, as a medium and outcome of the formation and reproduction of capitalism.

[1] The state is best understood as an ensemble of institutional structures that have co-evolved with the contradictory pressures and demands of a capitalist economy. The government, courts, the church, law enforcement agencies and professional associations are examples of such institutional structures (Gramsci, 1971).

There is a complex and contradictory relationship between the state and the accounting industry. In the UK context, accountants have successfully mobilized powers of the state to secure markets, niches and monopolies to earn economic rents. Often the state has been instrumental in (re)formulating accounting and auditing regulation and preserving forms of self-regulation (Sikka, Willmott and Lowe, 1989). The state has used the services of accounting firms to restructure the public sector and privatize many industries. This seems to have coincided with a reluctance to expose major accounting firms to public scrutiny. For example, the state has suppressed critical reports and demonstrated unwillingness to investigate anti-social practices (Sikka and Willmott, 1995; Mitchell, Sikka and Willmott, 1998). Exceptionally, when the activities of accounting firms have threatened tax revenues and with it the operations of the state's machinery, the state has occasionally investigated and prosecuted major accounting firms (Sikka, 2008a).

Globalization has added new complexities to the relationship between the state and capital. Whilst the state is primarily confined to a defined geographical jurisdiction, capital is free to roam the world and shop for possibilities of lower costs, regulation and liabilities. Major corporations have often been able to persuade smaller states to enact desirable legislation. In turn, corporations have used this as a lever to squeeze concessions from larger states and reconfigure the economic and regulatory environment (Hampton and Abbott, 1999; Palan, 2002). Such strategies are dependent upon the availability of political and financial resources and accounting firms seem to have considerable supply of both, especially as accounting firms are a significant fraction capital and the UK state has on occasion sought competitive advantage for local firms by refusing to co-operate with regulators from other countries (Arnold and Sikka, 2001).

How relationships between accounting and the state develop are, it seems, contingent upon the formation of specific economies and, increasingly, upon institutional standardization initiatives pursued by global accounting firms and advanced capitalist states. The world of auditing is dominated by just four big firms (PricewaterhouseCoopers, KPMG, Deloitte & Touche and Ernst &

Young) whose combined global income of US$96 billion[2] is exceeded by the gross domestic product of only 55 nations[3]. In common with other fractions of capital, they too roam the world in search of opportunities to reduce their costs, increase revenues and swell profits. One, increasingly significant and growing aspect of their business concerns the provision of assistance in exploiting opportunities for profit enhancement presented by micro states commonly known as tax havens or offshore financial centres (hereafter OFCs) which offer lighter regulation, low/no tax and confidentiality. In providing a haven for capital, OFCs have rapidly grown in importance to become a "cornerstone of the process of globalization" (Palan et al., 1996: 180) and thereby introduce a new dimension and related complexities to theories of the state and dynamics of the state-accounting firm relationship.

This chapter explores some trajectories in the relationship between the state and accounting firms by examining an episode in the auditor liability debate that gained fresh momentum in the UK in the mid-1990s. When major firms considered the UK state to be insufficiently responsive to their lobbying for the limitation of their liability, they exerted pressures upon the UK government by privately arranging for the drafting of a Limited Liability Partnership (LLP) Bill with the intention of persuading the government of Jersey, a small offshore financial centre, to enact the law so as to create a favourable liability regime. This strategic manoeuvre, we suggest, is illustrative of the "entrepreneurial stance" cited in Hopwood's quotation at the beginning of this chapter and accounting firms' preparedness to do what they have "not done before" in pursuit of a desirable environment, in this case a more benign and financially beneficial regulatory environment. It is, however, just one example of the numerous occasions on which the state has been mobilized to grant, preserve or enhance a number of privileges, including liability concessions, to auditing firms.

[2] As per the most recent reviews on their respective websites; accessed on 7 November 2008.
[3] As per World Bank (http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP.pdf).

The chapter is divided into three further sections. The following section offers a perspective on the state-capital relationship that takes account of the globalization of economic activity including the expansion of accounting services in the context of the emergence of OFCs. We then look at the state-firm relationship through the lens of debates about auditor liability. Attention is drawn to a number of liability concessions granted to auditing firms by the UK state before providing details of the way the firms mobilized Jersey in pursuit of a more advantageous regulatory regime. The final section discusses the significance of the case for the state-accounting firm relationship.

STATE, CAPITAL AND GLOBALIZATION

There are wide-ranging debates about the nature and concept of the state (Dunleavy and O'Leary, 1987; Jessop, 1990, 2002). Here we follow the assessment that "the meaning of the state has shifted dramatically over the last thirty years and that the main forcing agent in that shift has been something called 'globalization' (whatever that may mean)" (Harvey, 2006, p. xvii). Whilst the significance and extent of globalization is contested by scholars (for a discussion see Hirst and Thompson, 1996; Stiglitz, 2002; Bhagwati, 2004; Saul, 2005), there is considerable agreement over its association with the accelerating mobility of goods, services, capital, commodities, information and communications across national frontiers (Robinson, 2004). Such mobility has been promoted by a particular, neoliberal hegemony that prioritizes market-driven competition as the preferred mechanism of resource generation and allocation while admitting a subsidiary role for the state in supporting an infrastructure geared to supporting this priority (Harvey, 2000). A neoliberal order is not, then, one in which the state is entirely hollowed out (the aspiration of laissez faire liberalism). Rather, it is an order in which allocation through the market is systematically privileged, as manifest in forms of privatization and deregulation. The state is reconstructed, not dismantled, as an emphasis upon regulation to protect the vulnerable from risk is counterbalanced by its use to stimulate and facilitate private sector expansion. With this change of emphasis comes a greater preparedness to weaken regulations (e.g. credit restrictions) that protect the vulnerable when

these regulations are assessed to impede or penalize profitable private sector growth (Klimecki and Willmott, 2008).

As a consequence of demutualizations and privatizations, the contemporary neoliberal state is largely excluded from direct involvement in the productive economic sphere, although recent events have made the state a reluctant acquisitor of a very substantial part of the banking sector (Elliott and Atkinson, 2008). In principle, its role is to provide a legal and social framework that sanctifies private property; to supply public goods using private sector sub-contractors where possible; and to secure public order by dispensing bourgeois justice. Maintaining this framework requires revenues raised through taxes on wages, savings and profits as well as goods and services - revenues that depend upon the activities of private businesses as employers and also public confidence in their practices and social obligations.

The state's dependence on capital to stimulate economic activity has made capital's welfare – notably, in the form of supportive and permissive de/regulation - a central plank of domestic and foreign policies. As Hutton (1999) puts it, "The City [of London] has not just been the citadel of free financial markets; it has been the prime beneficiary of the most determined industrial policy sustained continuously by the British state in any branch of economic activity. Law, taxation, regulation and economic policy have been bent to suit its needs" (p. 61), with, it might be added, the recent socialization of its losses being the latest twist in this process (Elliott and Atkinson, 2008). The activities of the neoliberal state are dedicated primarily to stabilizing, enhancing the politico-economic context of business activity through a variety of and, ultimately rescuing de/regulatory and, when required, salvationary mechanisms.

Such mechanisms do not rely, in the first instance, upon naked coercion but instead depend upon processes of moral and cultural leadership provided by the institutions of civil society (Gramsci, 1971) , notably education and the media and extending to the legitimating expertise provided by inter alia accounting firms. That is to say, the neoliberal project requires (popular) legitimation from

below in the form of, for example, a rising material standard of living, a sense of increasing personal wealth or, most recently, an understanding that opposition to bailing out the banks with public funds would be most disadvantageous to the very people – the ordinary taxpayer – who will pay for the funding with higher taxes and/or a deterioration in public services. The project of neo-liberalism is however, endemically problematic as the state faces competing demands from constituent elements of civil society as well as from fractions of capital. Faced with numerous, contradictory pressures, responses are politically expedient rather than rationally consistent. So, on occasion, pressures from some fractions of capital (e.g. to allow markets to eliminate the weak and to avoid 'moral hazards') may be resisted in preference for policies aimed at increasing public confidence in capitalism (e.g. to place failed banks, such as Northern Rock, in public ownership).

We stressed earlier how nation states increasingly form part of an interdependent global system of states. Some commentators have argued that the contemporary neoliberal celebration of free trade, intensification of competition, lowering of trade barriers, removal of exchange controls and the accompanying increase in flows of capital and density of corporate networks heralds a slow death of the nation state (Ohmae, 1995). Yet, even in processes of globalization, states remain key actors. Attentive to the constraints of domestic politics and institutional structures, states co-operate politically and economically. Their coalition may reconstruct sovereignty but it is also intended to protect or increase their capacity to secure local capital and attract mobile capital. Forms of economic and political cooperation between otherwise antagonistic states are designed to create an environment conducive to the welfare of capital and thereby to finance the continuing supply of social order and basic public goods. Of course, these outcomes cannot be guaranteed as corporations have "no intrinsic commitment to product, to place, to country, or to type of economic activity. The commitment is to the accumulation of capital. Therefore, the capitalist will shift locus of economic engagement (product, place, country, type of activity) as shifts occur in the opportunities to maximize revenues from undertaking" (Wallerstein, 1996: 89). Nonetheless, states collectively, as well as individually, are engaged in securing and enhancing

the conditions (e.g. permissive company law and labour legislation) that improve the prospects of retaining or attracting capital investment as a condition of possibility of sustaining the economic activity that funds public goods.

One key way in which the mobility of capital is facilitated and accelerated is through policies that enable business vehicles to enjoy a relative freedom of incorporation. Such vehicles can originate in one country, but be used to trade in others. Businesses can also own vehicles in other countries and collaborate with local networks to develop profitable opportunities. This enhanced capacity to exit, with the threat of economic turbulence that accompanies it, gives corporations considerable direct and indirect influence over government policies as the prospect of possible capital flight or strikes is factored into the policy-making process. Of most relevance for the present chapter, the increased mobility and associated leverage of capital on governments has been assisted by policies pursued by OFCs.

Offshore Financial Centres (OFCs)

By the late 1990s, OFCs were estimated to hold about 50% of all cross-border assets (International Monetary Fund, 2000). Almost one-third of the world's Gross Domestic Product (GDP) and half of global monetary stock passed through them at some stage (Oxfam, 2000). OFCs have often been established in micro, often small islands, states occupying a peripheral position in global markets. Lacking significant natural, human, diplomatic or military resources to develop their economies, such micro states have opted to specialize in developing a low-tax, lightly regulated jurisdictions for *inter alia* registering companies and investing in offshore funds. Historically, these states have relied upon such industries as agriculture and tourism but these sources of income are difficult to sustain in the face of competition from low-wage developing countries. When low growth and incomes failed to meet the economic aspirations of their citizens, the response by a number of micro states has been to mobilize the asset of sovereignty with its lawmaking

powers to charge rents for sheltering capital in a haven of anonymity, low taxes and light regulation (Hampton and Abbott, 1999; Donaghy and Clarke, 2003).

Key to the success of OFCs has been the development of policies allowing non-residents to escape regulation. This has provoked the accusation that OFCs "auction off their sovereignty to the highest bidder, reaping great rewards in the process …" (Drezner, 2001: 76-77) and enact "laws with the sole purpose of getting around the laws of other countries [and] sell their sovereignty and their law to the highest bidder" (The Guardian, 2 May, 2000). In larger, established states, the neoliberal pressures to erode or sell off sovereignty (e.g. deregulation) in an effort to entice or retain capital can be somewhat mitigated by civil pressures to incorporate consideration of other constituencies (e.g. trades unions, the consumers of public services). In contrast, in OFCs such countervailing pressures are often weak, even to the point that key beneficiaries of changes in the law are permitted to draft laws with little public scrutiny (Naylor, 1987).

The legal facilities offered by OFCs are designed to be attractive to capital. In integrated world markets, businesses do not have to uproot and relocate their entire operations because most countries have accepted the principle that "legal persons could reside concomitantly in a number of jurisdictions (Palan, 2002: 72)". Once established, this principle has created "the risk that they would go shopping for the best bundles of regulation they could find" (ibid). Shopping for the best regulation deal is facilitated by networks of lawyers and business advisers who specialize in legally permissible ways of avoiding regulation (McCahery and Picciotto, 1995). Many businesses have improved and extended their regulatory options by establishing or renting residences in OFCs so as to take advantage of the diverse legal choices on offer.

Needless to say, regulatory arbitrage has the capacity to undermine and destabilize the regulatory regimes developed by other states which find themselves under intensified pressures to offer regulatory concessions in order to retain capital within their jurisdiction. In the following section, we

illustrate this phenomenon by reference to the politics of auditor liability arrangements. Accounting firms in the UK have historically relied upon the state to secure liability concessions. With the intensification of globalization and the opportunities that it presents, the possibility of transferring activities to an alternative jurisdiction, in the form of an OFC, has provided an additional, potent weapon to the arsenal of accounting firms seeking to minimize their liabilities.

STATE AND ACCOUNTING FIRMS

Our analysis of the pressure exerted upon UK state regulators by the attempt to secure limited liability in an OFC is appropriately situated in a history of patronage from the UK state which has enabled accountants to secure prestige, niches, markets and eventually a state guaranteed monopoly of the external audit function. Accountants, as auditors, have cemented their social privileges on the basis of claims that their expertise mediates uncertainty and limits risks – to investors and markets as well as to employees and citizens - by preparing independent and objective, true and fair, accounts of corporate financial affairs. Auditors' knowledge claims are, however, precarious, not least because measures of revenues, costs, assets, liabilities and profits are all contested technically as well as politically and because capitalist economies are inherently prone to crises (O'Connor, 1987). As a consequence, claims to expertise are frequently punctured by unexpected corporate collapses, frauds and failures. For example, Lehman Brothers, America's fourth largest investment bank, received an unqualified audit opinion on its annual accounts on 28 January 2008, followed by a clean bill of health on its quarterly accounts on 10 July 2008. However, by early August it was experiencing severe financial problems and filed for bankruptcy on 14 September 2008 (Sikka, 2008c). Such events fuel the suspicion that auditors lack the requisite independence or the expertise to check on the `truth' and `fairness' of company accounts. The severest problem for accounting firms is that when auditing reports are seen to fail, auditors face financial claims from other fractions of capital – investors and creditors - on the grounds that their losses are, in part, attributable to auditor negligence or incompetence. If

successful, such claims reduce surpluses payable to partners as they erode both the financial and symbolic capital invested in accounting firms. Rather than leaving the resolution of such disputes to market forces or private prosecutions for damages, firms have sought to mobilize elements of the state to de/regulate the form, organization and liability of auditing firms.

As our brief overview implies, the regulation of auditor liability is a complex and contested matter. Processes of regulation face competing pressures from fractions of capital and from sections of civil society. The picture is even more complex as, in the case of auditor liability, accounting firms and especially their partners, for whom the form of regulation has direct implications for the security and expansion of their wealth, their accountability and taxation, may take differing positions on the balance of anticipated benefits and disadvantages, symbolic as well as material. The content and dynamic of the regulatory regime is, accordingly, a product of financial and political as well as ideological resources that are institutionalized and mobilized by the various protagonists who have invested their roles in divergent discourses of regulation.

The UK state has a long history of sheltering capital through a variety of corporate, partnership and insolvency laws. The Limited Liability Act 1855 was a major development as it enabled entrepreneurs to limit their losses. During the Victorian era, accountants tended to operate as sole traders and partnerships (Brown, 1905), either because they were too small or found these structures most amenable for projecting an image of integrity, respectability and reliability, as well as providing a favourable basis of taxation. In the early twentieth century, there were debates about auditor liability, but auditors generally remained content with their position (Napier, 1997). The Companies Act 1948 formally completed the qualified accountants' monopoly of the external audit function. Section 161(2) prohibited company auditors from trading through limited liability entities by stating that "None of the following persons shall be qualified for appointment as auditor of a company … (3) a body corporate …". In many ways, the legislation confirmed the favoured means of trading by accountants. Many

traded as partnerships and ‘joint and several’ liability was established as the norm where partners were liable for their own and each others’ negligence and omissions. This settlement began to come under strain as a process of consolidation and concentration – that is, the advance of monopoly capital – resulted in client companies becoming larger and auditors fearing greater financial liability from exposure from audit failures.

Since the 1970s, major accounting firms have campaigned to dilute their audit liability to shareholders and other stakeholders (Cousins et al., 1999). In the mid-1980s, the state responded by granting a number of liability concessions. Section 310 of the Companies Act 1985, as amended by Section 137 of the Companies Act 1989, enabled companies to buy insurance for its Directors and Officers, which included auditors. The Companies Act 1989 granted auditing firms the right to limit their partners’ liability by trading as limited liability companies. Auditing firms received a further boost to their claims for limiting liability from the UK House of Lords’ judgement in *Caparo Industries plc v Dickman & Others [1990] 1 All ER HL 568*. This judgement established that, in general, auditors owed a ‘duty of care’ only to the company, as a legal person, and not to any individual shareholder or creditor. The UK government additionally enhanced the protection afforded to accountants and other advisors through the concept of ‘contributory negligence’ (UK Law Commission, 1993). This enabled auditors to argue that the negligence of other parties (e.g. directors, bankers) contributed to the damages suffered by plaintiffs and therefore that the damages against them should be correspondingly reduced. Nevertheless, despite these concessions, major auditing firms wanted to minimize their responsibilities or ‘exposure’, and therefore campaigned for full proportional liability and a ‘cap’ (Likierman, 1989; Big Eight, 1994).

Accounting Firms, Globalization and Offshore Financial Centres

By the early 1990s, some UK firms began considering the possibility of forming Limited Liability Partnerships (LLPs) to shield their partners from lawsuits (Accountancy, December 1994, p. 23). This was encouraged by

developments in the US where some states offered LLPs to accountants and other professionals in order to limit their liability (Alberta Law Review, 1998). In the mid-1990s, a report commissioned by the UK government (UK Department of Trade and Industry, 1996) was poised to reject some of the liability concessions demanded by accounting firms. At this time, Ernst & Young and Price Waterhouse (now part of PricewaterhouseCoopers) had, coincidentally enough, hired a London law firm, at a cost of nearly £1 million, to draft a Limited Liability Partnership (LLP) Bill that would shield partners from liability lawsuits. The government of Jersey (part of the Channel Islands) had been approached by these firms; and its leading politicians had promised to 'fast track' the law (Financial Times, 26 September 1996, p. 7). It was reported that those politicians had declared themselves to be "fighting for the City of London's business, and we are doing this to prove we can enact legislation which is in the interest of fast-moving corporations" (The Accountant, August 1996, p. 1).

Once the seriousness of the two accounting firms' intent had been clearly signalled, they moved to demand equivalent liability concessions from the UK government. Ratcheting up the pressure, they stated that if their demands were not met they would leave the UK[4] and trade through LLPs in Jersey (Financial Times, 24 July 2006, p. 9). Ernst & Young reportedly "threatened to move its [UK] headquarters to Jersey" (The Guardian, 8 November 1996, p. 21). This was perhaps the first time that accounting firms had enrolled the lawmaking powers of a smaller state (Jersey) to squeeze, or perhaps hammer, concessions from a larger state.

Why Jersey?

The choice of Jersey, a UK Crown Dependency, is unsurprising for a number of reasons. Though geographically closer to France, Jersey's main official language is English. With a population of 89,000, it is only 100 miles (160 km) south of mainland Britain and has established connections with the City of

[4] The campaign was also supported by 25 other professional groups (Financial Times, 17 April 1996, p. 8).

London. Its currency, the Jersey pound, is tied to the value of sterling. Yet, Jersey is neither part of the UK nor a member of the European Community (EC). As part of its accession to the EC, the UK negotiated a special status (Protocol 3) which enables its Crown Dependencies to trade favourably with the EC, but without adopting any of its laws or obligations (Plender, 1990). Under the evolved constitutional arrangements, the UK government is responsible for their defence and international relations and ultimately for their "good government" (Hansard, House of Commons Debates, 3 June 1998, cols. 471 and 465; 27 January 1997, col. 33).

In common with other states, Jersey can use its lawmaking powers to protect or privilege the position of elite groups – powers that extend not only to sheltering capital but also to enacting legislation intended to shield accounting firms from liability lawsuits. Since the 1960s, policies have been pursued to establish Jersey as an OFC as a means of supplementing its traditional economy based on agriculture and tourism (Hampton, 1996; Hampton and Abbott, 1999). In common with other OFCs, Jersey has sought to attract business by offering low/no tax, light regulation and business confidentiality[5]. So light is its regulatory touch that it led the Organisation for Economic Co-operation and Development (1998) to describe Jersey as a "harmful" tax haven. It had also been criticized by the UK government (UK Home Office, 1998) for the absence of independent regulation of the financial sector, inadequate consumer protection laws and lack of complaints investigation procedures. Notably, limited liability entities registered in Jersey are not required to publish audited financial statements. The very success of such policies has made Jersey highly dependent on financial services and

[5] Its light regulation had drawn criticisms from international regulators. For example, the New York Assistant District Attorney investigating frauds at the Bank of Credit and Commerce International (United States, Senate Committee on Foreign Relations, 1992; Arnold and Sikka, 2001) complained that, "My experience with both Jersey and Guernsey has been that it has not been possible for US law enforcement to collect evidence and prosecute crime. In one case we tracked money from the Bahamas through Curacao, New York and London, but the paper trail stopped in Jersey and Guernsey ……. It is unseemly that these British dependencies should be acting as havens for transactions that would not even be protected by Swiss bank secrecy laws" (The Observer, 22 September 1996, p. 19).

correspondently vulnerable to capital flight. Perversely, if also predictably, Jersey has found itself exposed to the very forces that, as a tax haven, it has sought successfully to harness. Jersey has, in some circles, acquired a reputation for offering its "legislature for hire" (Hampton and Christensen, 1999). At any rate, it has sought to diversify its economy by offering LLP legislation with the hope that "its implementation in due course would encourage leading accounting and solicitors firms to be registered in Jersey …" (The Accountant, November 1996, p. 5).

Doing Business with an OFC

We have noted how the development of LLP legislation in Jersey was stimulated by the interest of UK based accounting firms rather than from any firm located in Jersey. The proposed legislation had to be scrutinized by the Jersey parliament whose institutional structures present their own challenges. The 53 part-time members of Jersey's single chamber of parliament are directly elected by the public. Members of parliament meet for about 3-7 days a month and generally lack the organizational resources and political will to scrutinize the executive effectively. In the absence of political parties, it is extremely difficult to develop a coherent programme of reform let alone to subject the executive to close examination. The difficulties are compounded by weak local trade unions, a lack of pressure groups and a media that rarely questioned government policies. Indeed, until, the late 1990s, the Island's main newspaper, *Jersey Evening Post*, was owned by a leading politician. Before 2005[6], Jersey did not have a formal cabinet, prime minister, chief minister or president. The island was governed by series of Committees (e.g. education, health, housing, finance and economics, etc.), each chaired by a President, which performed the functions normally associated with government ministries. A report reviewing Jersey's machinery of government noted that "many decisions are taken by a small number of Committee members, perhaps only the President, or by the chief officer under delegated powers, and that other members are passengers, perhaps voluntarily, or

[6] For post-2005 reforms see States of Jersey, 2000 and 2005.

perhaps because they are starved of information necessary for them to make informed decisions, or perhaps because they are overwhelmed by the masses of paperwork prepared for their meetings" (States of Jersey, 2000, para 4.2.7). Prior to 2005, almost all the legislators were members of one or more committees and thus effectively members of the government. There were no equivalents of the US Senate hearings or the UK Parliamentary Select Committees to scrutinise legislation, government policy or the executive. During the 1990s, there was not even an official written record of parliamentary debates on major Bills. There was, and is, no official opposition in the Jersey parliament; and it is exceptional for members of one committee to criticise another. In short, given the combination of physical location, economic dependence and political disorganization, it is not difficult to appreciate why an OFC with Jersey's profile would be attractive to accounting firms seeking help in extracting limited liability concessions from the UK government.

Networks have been found to be central to facilitating the mobility of capital (McCahery and Picciotto 1995) and their role was not insignificant in the Jersey case. In pursuit of their strategies of enlisting the Jersey 'sprats' to catch the UK 'mackerel', Price Waterhouse and Ernst & Young hired Ian Greer Associates, a prominent political lobbying firm with considerable connections with Jersey policymakers (The Observer, 6 October 1996, p. 1). As early as 6 June 1995, Mr. Ian James, a partner in the Jersey law firm of Mourant du Feu & Jeune, had met the Director of Jersey's Financial Services Department (JFSD) to discuss the proposals developed by a London law firm, Simmons & Simmons, acting on behalf of Price Waterhouse and Ernst & Young. The Director of JFSD subsequently discussed the proposal with senior politicians and law officers (Sikka, 2008b). After further informal discussions, Messrs Mourant du Feu & Jeune formally wrote to President of the Jersey's Finance & Economics Committee on 19 October 1995. The five page letter (for an extended extract see Cousins et al., 2004, pp. 28-29) stated,

> "My firm has been working with the UK partnership of Price Waterhouse (PW) and English solicitors, Slaughter and May, to find a

> method of obtaining some limited liability protection for the partners' personal assets without completely restructuring PW's business … the most favoured solution would be the introduction of Special Limited Partnership Law in Jersey which would give the partners of a partnership registered under that law limited liability whilst permitting them to take part in the management of the Special Limited Partnership. … PW's objective therefore is to find a means by which its partnership can have limited liability whilst retaining the characteristics of a partnership. … *PW's executive are satisfied that Jersey has all the necessary characteristics which makes it a suitable jurisdiction in which to register their UK partnership if appropriate legislation was passed by the States within the course of the next year*. ….. We are therefore seeking support of your Committee for the introduction of a Special Limited Partnership Law in Jersey during 1996. We appreciate that this is a very short time scale and that there are many other legislative matters which have a high priority for the States of Jersey. We would therefore propose that, based on a draft law prepared by Mr. David Goldberg QC for PW, this firm in close co-ordination with the Financial Services Department, will work with PW and Slaughter and May in order to prepare a draft law for consideration by your Committee during December this year with a view to it being debated in the States in January/February 1996. We would also propose that we would prepare any necessary subordinate legislation required in connection with the Special Limited Partnership Law. … my firm is also instructed by the UK partnership of Ernst & Young. … if the Committee is willing to proceed with this proposal that the States of Jersey's PR firm, Shandwicks, are instructed to coordinate the publicity together with PW's own PR people" (emphasis added).

This letter formally set Jersey's legal processes in motion. On 11 December 1995, the States of Jersey announced that the Finance and Economics Committee was working to introduce LLP legislation. Price Waterhouse and Ernst & Young announced that they were cooperating with the Jersey authorities to draft a new partnership law (Accountancy Age, 14 December 1995, p. 1 and 3). The Jersey government was assured that the law drafting work would be undertaken entirely at the expense of Price Waterhouse and Ernst & Young (Sikka, 2008b). The level of secrecy surrounding the draft law was reflected in the way that Jersey's Law Society, which traditionally comments on draft laws, was initially denied the opportunity to comment, though subsequently it was given a very short period to do so.

On 21 May 1996, Jersey finally published a much delayed 62-page draft Bill on LLPs (Limited Liability Partnerships (Jersey) Law 199). The Bill diluted the

principle of ‘joint and several’ liability and individual partners would not be personally liable for the liabilities of the LLP unless they actually caused the loss in the course of their work. The key features of the LLP Bill were that it required LLPs to have only a registered office address in Jersey. In this way, they could benefit from the LLP legislation without an agent or a partner operating in Jersey. The LLPs only needed to file an annual return and there was no need to publish audited accounts. Firms registering as LLPs could conduct, audit, insolvency, financial services (as regulated in the UK by the Companies Act 1985, Insolvency Act 1986 and the Financial Services Act 1986) and any other kind of business. In Jersey, there was no dedicated regulator and no policies or procedures for investigating the conduct of errant auditors. LLPs registered in Jersey were to be exempt from all corporate/income taxes. The Jersey government reportedly hoped to levy £10,000 for an initial LLP registration and £5,000 annually thereafter (The Accountant, August 1996, p. 1).

In line with Jersey’s normal legislative processes, senior politicians expected the Bill to be passed quickly and quietly. Unexpectedly, it encountered resistance and delay (see Cousins et al., 2004 and Sikka, 2008b for some details) and became “one of the most turbulent political debates in living memory” (Financial Times, 26 September 1996, p. 7). A senior partner of Price Waterhouse expressed dismay at this turn of events, “Earlier in the year [1996], we were roundly assured that the draft law would go to the States of Jersey Parliament in March/April, be nodded through, spend the summer with the Privy Council and be back in Jersey in time to be implemented in the statute book by September. Well, here we are in September and the Jersey Parliament is still arguing over its details” (Accountancy, September 1996, p. 29). The LLP law was eventually passed on 24 September 1996, followed by a further delay of nearly two years [in May 1998] before the insolvency provisions were enacted and an Ernst & Young senior partner announced that, “Having worked closely with the States of Jersey and Price Waterhouse to bring about the LLP law, we are pleased to see it finally being enacted” (Accountancy Age, 29 May 1998, p. 1).

During the three year period (1995-8), Ernst & Young and Price Waterhouse continued to ratchet up the pressure on the UK government with threats to move their operations from the UK to Jersey (for example, see Financial Times, 8 December 1995, p. 1 and 15; The Times, 14 December 1995; Financial Times, 25 September 1996, p. 11; Accountancy, November 1996, p. 19 Accountancy Age, 4 July 1996, p. 1; 12 December 1996, p. 3; 23 April 1998, p. 3; Accountancy Age, 28 May 1998, p. 1; 4 June 1998, p. 9;). The impact of these threats was, however, dampened by doubts about the feasibility of their implementation. For it is unlikely that the firms could have relocated their operations from the UK without major ramifications for tax, employment and contractual matters (Sikka, 1996; Sikka, 2008b). Nonetheless, the threats to move to Jersey were interpreted by commentators as "a cosh with which to threaten the [UK] government if it fails to come up with a workable LLP law" (Financial Times, 11 June 1998, p. 11). Price Waterhouse and Ernst & Young "argued behind the scenes that the move to Jersey was a stick to beat the then Tory government and Labour opposition into agreeing that a UK-wide LLP Law was necessary. If that failed, they were serious about a move … PW insiders say it still wants a UK LLP law and the threat of Jersey move is still a good stick to beat them with" (Accountancy Age, 4 June 1998, p. 9).

Of particular note, the extended media exposure of the limited liability issue had the potential to damage claims that the UK state favoured business-friendly policies. It is probable that this served to concentrate the minds of politicians. At one stage, the UK government promised equivalent legislation "within a week" (Financial Times, 28 June 1996, p. 22; 24 July 1996, p. 9) and then "at the earliest opportunity" (Hansard, House of Commons Debates, 7 November 1996, col. 617). A consultation document on creating limited liability partnerships was issued (UK Department of Trade and Industry, 1997) followed by a Bill (in 1998), parliamentary scrutiny (in 1999 and 2000) and an Act[7] (Limited Liability Partnerships Act 2000) which came into existence on 6

[7] The history of the UK LLP legislation is yet to be written.

April 2001. The UK legislation[8] was "warmly welcomed" by Price Waterhouse (Accountancy, December 1998, p. 124) and an Ernst & Young senior partner was claimed the credit for these developments: "It was the work that Ernst & Young and Price Waterhouse undertook with the Jersey government …… that concentrated the mind of UK ministers on the structure of professional partnerships. ……The idea that two of the biggest accountancy firms plus, conceivably, legal, architectural and engineering and other partnerships, might take flight and register offshore looked like a real threat …… I have no doubt whatsoever that ourselves and Price Waterhouse drove it onto the government's agenda because of the Jersey idea" (Accountancy Age, 29 March 2001, p. 22). What, then, of the take-up of LLPs in Jersey? On 28 November 2000, the President of Jersey's Finance and Economics Committee told parliament that "At the time the law was passed, there were reasonable grounds for supposing that the registration of LLPs could bring substantial benefit to Jersey. In the event, despite the passage of the legislation, no LLP has been registered" (Jersey Evening Post, 29 November 2000). The Jersey 'sprat' had served its purpose now that the UK 'mackerel' had been landed.

SUMMARY AND DISCUSSION

The state is at once a powerful sponsor and a prime target of the dynamic forces of capitalism and globalisation. It underpins property rights, commands a monopoly of the means of violence and is at the centre of processes of contestation and settlement that are more or less conducive to capital retention, attraction and accumulation. The relationship between (fractions of) capital and the (elements of) the state is complex and certainly not fixed. In the UK, accounting firms and accounting bodies have been adept at mobilizing the state to secure and expand markets for their services and to shield them from critical public scrutiny relating to allegations of audit failures and money laundering (Sikka and Willmott, 1995; Mitchell et al., 1998). Not only are these firms and bodies formed `in the context of government regulation' but, as our case study of auditor liability has shown, they have

[8] There are some differences between the Jersey and UK LLPs (for further details see, Sikka, 2008b).

`continued to flourish in that context' (Hopwood, 1985: 13). .Notably, accountants have repeatedly secured concessions by diluting the redress available to injured stakeholders without any equivalent *quid pro quo* (i.e. without increasing auditor obligations or widening the scope of company audits). Through a `mutual intertwining with the modern conception of the State' (ibid: 14), accounting bodies and firms have helped cement the UK state's reputation for providing business-friendly policies, and these concessions have boosted accounting firm surpluses and shielded their partners from lawsuits.

In the case examined in this chapter, leading accounting firms seized upon a convenient OFC, in the form of Jersey, as a lever with which to exert pressure upon the UK government to yield liability concessions. This case indicates how the global regulatory landscape is being altered by the growing indirect, as well as direct, use of OFCs. More broadly, it illustrates how OFCs are significant nodes in the global economy where their unchecked expansion and accessibility exerts comparatively veiled as well as more overt effects upon the regulative capacities of larger states. A significant impact of OFCs is upon the ability of states to track and tax flows of capital which, in turn, reduces the revenues available for spending on public goods, such as health and education. Our case study has shown how the existence of a welcoming OFC enabled accounting firms, as a fraction of capital, to press the UK state for a favourable recalibration of the balance of the risks and rewards pertaining to liabilities arising from their audit business. Persistent lobbying, backed by a substantial (£1m) investment in a threatened transfer of business out of the UK, has had the desired effect of preserving and enhancing the rewards flowing the accounting firms as liability risks previously privatized within partnerships have become socialized through their transfer to every taxpayer.

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