Domestic Liberalisation as Global Regulation: the Cases of Fuel Economy and Online Gambling Regulations

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Abstract

Globalisation is sometimes taken as a synonym for market liberalisation, and it is said that power has flowed from states to markets. Whether happening as a result of undeniable 'forces' or some hegemonic consensus, there is agreement on the left and right of politics that this is a reality. This paper examines how market liberalisation actually produces two countervailing forces in respect of regulation. On the one hand, domestic deregulation enhances market power and the discretion of market actors. Yet on the other hand, states with effective market-friendly regulations are able to influence outcomes beyond their borders. The cases of fuel economy and online gambling regulations are used to illustrate these points. In the former case, Japanese and European industry-driven regulations are being 'exported' in the attributes of the products of their car industries, producing pressures for harmonisation in other markets. In the case of online gambling, UK market-friendly regulations are likely to be 'exported' to the European region and beyond because of market liberalisation principles embodied in European Union institutions. While seemingly unrelated cases, what they thus have in common is that domestic liberalisation coupled with globalisation is creating opportunities for global regulation.

Introduction

Globalisation may be defined and analysed from many perspectives. However, at its core the term implies the retreat of the state. All the other implications of globalisation - political, social, cultural etc. - flow from the assertion that markets are now “the masters over the governments of states” (Strange 1996: 4), with states increasingly “merely the handmaidens of firms” (Strange 1997: 184). This is because they are effectively bound by what Friedman (1999) calls a *golden straightjacket*, a more recent variation on which is Tiberghien’s (2007) *golden bargain*: states are either powerless or face irresistible incentives to implement neoliberal reforms. They face a “Faustian Pact or devil’s bargain” with “far reaching social and political consequences” (Tiberghien 2007: xii) through which abundant cheap capital is offered by global equity markets in return for deregulation. If this is the case, states are no longer able to effectively regulate firms, having sacrificed the right to do so on the altar of globally integrated markets. Ultimately, state sovereignty is so undermined that the only regulatory functions left for governments are those which support markets themselves. This is seen not as a matter of opinion, nor necessarily a matter of left versus right, but as a *structural* reality. Some who hold this view therefore see it as unavoidable that business, as the “most powerful institution on the planet” and therefore the “dominant institution in society” must take the place of the state and “take responsibility” for its actions in the face of receding state regulation (Korten quoted in Lawrence et al. 2005, 47). The alternative is “the diffusion of authority away from governments (that) has left a yawning hole of non-authority, ungovernance it might be called” (Strange 1996: 14),

Since the 1990s, many authors have taken issue with this viewpoint to the point where it is now virtually on the fringes of mainstream international relations. As such, this paper first contextualises the neoliberal market, or globalist, view as one of three major waves of theorising on globalisation. The others are the skeptics, who see globalisation as more a discourse/idea employed by powerful states to serve their interests (e.g. Weiss 1998), and the transformationalists who affirm the existence of globalisation, yet do not go so far as believing this means the end of the nation state (e.g. Held et. al. 1999; Hay and Marsh 2000). Instead, they see the necessity of shared sovereignty between states, as well as between states and other actors, for regulation to be effective. Taking the transformationalist view, the argument is made for the need to focus on the institutional basis for states sharing sovereignty both with each other, as well as with private actors such as firms. By considering two crucial cases, it is shown that when states do this they are able to effectively influence, and maybe even make, ‘rules for the world’.[1] This paper therefore shows how what is often declared to be neoliberal globalisation has implications for the extension of states’ regulatory jurisdiction beyond their national territorial boundaries.

The two cases considered are crucial in the sense that they are emblematic of the neoliberal globalisation thesis, and as such are clear test cases for the rejection of the hypothesis that globalisation undermines state power, while demonstrating the converse.[2] The first is the car industry, chosen because it is often taken as “a paradigm case of a globalised industry” (Paterson 2007: 98) given its dominance by

[1] I use this term in the sense of Barnett and Finnemore (2004), but in this case am suggesting that states and firms, acting together, are rule-makers as much as international organizations in a world of integrated markets and global capitalism.

multinational corporations (MNCs) that manufacture and distribute their products on an integrated global scale. Even so, to see the industry through a completely de-territorialised lens is problematic. Comparing European Union (EU), US and Japanese fuel economy regulations, it is shown that the institutional basis for making regulations in their home states has implications beyond these states' borders. Specifically, when states make regulations that incorporate substantial voluntaristic components on the part of industry, thus sharing their sovereignty, such regulations are likely to be effective both domestically and internationally. The second case is the emerging online gambling industry, chosen because it employs the borderless medium of the internet to deliver its services. Even so, it is shown that the UK has produced a domestic regulatory regime that is being regionally 'exported' with the backing of the industry, as a result of the UK's membership of the EU which supports the liberalisation of European markets.

The first case demonstrates that the national institutional basis for regulation, specifically the degree to which states are willing to share sovereignty with MNCs which have their home base located within their borders, has implications beyond their national territories because of the globalisation of world markets. The second case further demonstrates that states which share sovereignty with other states, such as via the market liberalising institutional features of the EU, can extend the territorial jurisdiction of their national regulations. In both cases, which may be characterised as exemplars of the neoliberal globalisation view, globalisation has not just enhanced the power of MNCs, or firms' whose markets are global. It has also enhanced the power of states that grasp the opportunity to effectively share their sovereignty. The 'forces' of globalisation have provided states with the opportunity to extend their effective territorial jurisdictions beyond their borders. Firms, if you like, are the 'handmaidens' of these states.

Neoliberal Globalisation?

The globalisation debate is characterised by three 'waves' of theorists, summarised in Table 1.[3] The first are the globalists. They see the changes being wrought by globalisation as transformative, creating epochal economic, political and social change. Crucially, authors in this wave see the reality and unavoidability of neoliberal market deregulation as undermining the sovereignty of states (e.g. Ohmae 1995; Strange 1996 and 1997). In short, we are witnessing the demise of the nation state, necessitating its replacement by some form of global authority due to the pervasive loss of national sovereignty. Whether or not this is a good thing (economic liberals) or a bad thing (Marxists), it is regarded as unavoidable (Wolf 2004). States on their own are held in thrall to the power of markets which have opened up globally, become integrated, and controlled by large MNCs. If the state has any political agency, this is constrained to the promotion of business interests – i.e. neoliberal reforms (e.g. Crouch 2004).

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[2] The term 'crucial case' is used in the sense of a case that has the ability to prove of disprove a theoretical perspective and its implications. See Eckstein (1975: 113-123) and King et. al. (1994: 208-212).

[3] This table is itself extracted from a more comprehensive one in Martell (2007), whose essay on the three waves provides an excellent summary.

The second are the skeptics. They see globalisation as more a discourse, or idea, to be accepted or rejected, but not having transformative power on its own. Authors such as Clark (1999) point out that it is erroneous to see all change as emanating from some global realm and impacting on states. Instead, globalisation as an idea is primarily what states make of it. As such, states remain key actors, with international politics still best understood as a function of political agency in relations between states. Authors in this vein such as Weiss and Hobson (1995) and Weiss (1999) dismiss the 'myth of the powerless state', while Wade (1996) points out that the imminent decline of the nation state has been forecast for at least the last 200 years, yet seems a long time coming and will not be a reality any time soon. Therefore, nation states remain central to the study of international politics, if anything there is probably more regionalisation than globalisation going on, and it is a fallacy to suggest that all states are equally weakened by the 'forces' of globalisation. States are "agents of the transnational process of globalisation" (Martell 2007: 174), and it is not obvious that they are all equally weakened by the outcomes of this process. Indeed, it serves the interests of powerful industrialised states to promote globalisation in order that their flagship corporations be able to access cheap factors of production and sell their products in new markets, a point well made by Chang (2002 and 2003).

The third, and most recent, wave are the transformationalists. These include authors such as Held et. al. (1999) and Hay and Marsh (2000) who recognise the changes being wrought by globalisation, but do not see nation states as irrelevant so much as their political agency is being reconstructed. They share the concerns of the skeptics, in the sense that they reject the "globaloney" of the first wave theorists (Hay and Marsh 2000: 6),[4] but in recognising that states remain central actors in international politics they do not dismiss the idea of globalisation altogether. Rather than an approach that may be thought of as 'business as usual' for states, they see a complex picture. One key aspect of this picture is the recognition that states' political agency relies on them sharing their sovereignty with each other in order to retain it, as well as with private actors such as global social movements and MNCs. Sometimes, states may push neoliberal regulatory reforms if this is in their interests, but this is one of a range of policy paths that states may pursue. As such, the transformationalists can be seen as occupying ground between the globalists and the skeptics.[5]

Table 1: Three Waves of Theorising on Globalisation

Globalists	**Skeptics**	**Transformationalists**
Global governance/neoliberalism Decline of the nation state Loss of national sovereignty	Nation states remain in central Regional blocs are possible International power and inequality are key aspects Political agency is possible	Politics is globally transformed Nation states remain important but are reconstructed Sovereignty is shared

Source: Martell (2007), p.177.

In addition to the above three waves, comparative institutionalists highlight enduring national variations in capitalist relations of production despite pressures for convergence (e.g. Berger and Dore 1996; Hollingsworth and Boyer 1997; Kitschelt et.

[4] Though they in turn point out that it is a term that has entered common usage to the point where the identity of the person who first coined it is unclear.
[5] See discussion in Martell, pp.181-187.

al. 1999; Dore 1999; Dore et. al. 2000; Hall and Soskice 2001). Their view sits well with the skeptics and the transformationalists, in the sense that there remains the possibility for agency on the part of the nation state, but how this occurs, or at least the context in which this occurs, is institutionally framed. However, *whatever the theoretical perspective adopted*, institutionalists see state-firm relations as more a product of the national contexts in which regulations are crafted, than global markets. Globalisation is a political process mediated by national economic institutions. This leads Dicken to observe that MNCs are "produced through an intricate process of embedding in which the cognitive, cultural, social, political and economic characteristics of the national home base play a dominant part" (Dicken 1998: 196). Rather than 'placeless' entities, they are likely to be institutionally embedded in their home states. Hence, national institutions remain important for understanding the divergent paths to corporate governance reform (e.g. Tiberghien 2007; Thatcher 2007), and global-domestic linkages are important for understanding the interplay of domestic and international factors (Gourevitch and Shinn 2005).

The insights of the institutionalists are related to the work of authors who examine the nature of private authority in international affairs. They say that "in an era when the authority of the state appears to be challenged in so many ways, the existence of alternative sources of authority takes on great significance, especially when that authority is wielded internationally by profit-seeking entities" (Cutler et. al. 1999: 4). However, Haufler makes a particularly profound point when noting that only with Adam Smith's *Wealth of Nations* "does a separation between public and private economic affairs start to be widely discussed" (Haufler 2006: 89). The reality is that industry associations, business groups, corporations etc. all have power in international affairs, and that they interact with states to share power in achieving their profit-motivated goals. On the other side of the regulatory fence, states benefit from sharing their sovereignty with such private entities in achieving their goals, including beyond their borders. This means that regulatory governance is best seen neither in terms of the loss of state sovereignty to markets, nor in terms of its retention by states. It is neither private nor public. Instead, it should be analysed for how public and private power are shared to produce particular regulatory outcomes. The transformationalists' perspective that globalisation is transforming the relationship may be true, but the fact of the relationship has always been the case (see also Hall and Biersteker 2002; Cutler 2006).

Taking the view of the transformationalists, and considering the concept of shared sovereignty from an institutional perspective, suggests that the state is not dead nor dying. Instead, the reality of integrated global markets means that its role is transformed in the context of the ongoing relationship between states and private actors in markets. This transformation is predicated on the institutional basis of rule-making within, and between, individual states. To see what this means in practice, we now turn to the two case studies.

Regulating the Car Industry

The car industry dominates global manufacturing. Any statistics as to the industry's size and international importance are impressive. Vehicle production is the world's largest manufacturing sector, with five of the top ten businesses in the world by sales being accounted for by car manufacturers, and another three in the top 45 (The Economist 2002: 62).[6] On the basis of the value of the car industry's output, the Organisation Internationale des Constructeurs d'Automobiles declares that if vehicle manufacturing was a country it would be the sixth largest in the world (OICA 2006).[7] The industry contributes four to eight per cent of total GDP for Organisation for Economic Cooperation and Development (OECD) countries (UNEP and ACEA 2002: 12; OICA 2006). Given the global significance of the industry, it is also the case that most of its largest firms have over 40 per cent of their production outside their 'home' states (Paterson 2007: 98). In addition to the finished product being produced and traded internationally, global supply chains mean that various parts and components are produced in different countries, so that the final product itself is global in character (Braithwaite and Drahos 2000: 440-441; Dicken 2003: 355-369). Furthermore, collaborative agreements between firms of different nationalities, and often cross-ownership, mean that a 'global connectedness' exists in research and development, the dissemination of new production techniques and other advances (Dicken 2003: 375-376; Deutsche Bank 2004: 13).[8]

Yet, while being globally significant and integrated, the industry is also nationally concentrated. By location of economic activity, the triad of the EU, US and Japan remain its dominant hubs, accounting for 77 per cent of the industry's turnover, 74 per cent of its investment, and 61 per cent of its production (OICA 2006).[9] This is despite growth in markets such as China, Thailand and Eastern Europe. Therefore, it is clear that in addition to the industry's global economic significance, it is of particular significance to the world's largest industrialised states where up to three quarters of its economic activity is located.

Examining how regulations are constructed in each of the industry's hubs highlights clear differences in the relationship between the state and business, the effect this has on the national success of regulations, and the resulting impact of these beyond the borders of the states where they apply. Focusing on fuel economy standards from 1990 to 2004 illustrates the point. The reason for choosing this time period is that the impact of these standards may be considered in the context of relatively constant material factors. First, the oil price was reasonably stable. For most of the 1990s the

[6] The largest businesses refer to industrial and service corporations and the data is for the year ended 31 December 2000, except for Japanese companies where they refer to the year ended 31 March 2001. The companies, with their nationality and sales in brackets, are: General Motors (US, US$184.7 billion); Ford (US, US$180.6 billion); DaimlerChrysler (Germany, US$150.1 billion); Mitsubishi (Japan, US$126.6 billion); Toyota (Japan, US$121.4 billion); Volkswagen (Germany, US$78.9 billion); Honda (Japan, US$58.5 billion); and Nissan (Japan, US$55.1 billion).

[7] Of this, car production accounts for 69 per cent of all vehicles produced.

[8] Dicken points out that all three major US producers have collaborative or cross-ownership links with Japanese and Korean firms, and the major European firms have joint research programs. A comprehensive list of firms and their cross ownership is provided by Deutsche Bank which shows that, for example, in 2004 General Motors owned 12 percent of Isuzu, 20 percent of Suzuki, 42 percent of Daewoo, 20 percent of Fuji Heavy Industries, 100 percent of Saab and 100 percent of Opel/Vauxhall.

[9] These figures may actually understate the significance of the triad because OICA does not include turnover and investment data for Denmark and Ireland.

spot price for crude oil was US$15-20 per barrel. From 2000 to 2003 it increased slightly to US$20-25 per barrel. However, thereafter there was a price shock that saw the price nearly double to US$50 per barrel by 2005. In 2008 it passed US$100 per barrel (US Energy Information Administration 2008). Secondly, the price of fuel faced by consumers at the pump may be discounted as a factor in the case of the US and Japan where prices were 3 per cent higher and 13 per cent lower respectively in 2000 by comparison to 1990 (i.e. there was minimal change or the price fell). The EU's petrol and diesel prices rose 11 and 21 per cent respectively over the same period, so the effect of these price rises suggests the potential for price signals to have had an effect (particularly the divergence between petrol and diesel prices) (OECD 2002a: 23). Yet even in this case the effect of price rises is likely to have been negligible due to a range of factors, such as high price inelasticity of demand (IEA 1997; Graham and Glaister 2002 and 2004), and OECD data demonstrates a lack of correlation between either distance travelled or consumption of road fuels and price changes (OECD 2002a).[10]

Turning to the standards themselves, in addition to differing stringency, there are distinct national differences in the way they are constructed. The US introduced fuel economy standards in the 1970s via its Corporate Average Fuel Economy (CAFE) program. CAFE was launched through the 1975 Energy Policy Conservation Act with standards coming into force in 1978. It sets a sales weighted average fuel economy target for a manufacturer's passenger car fleet in any given model year, and applies to all cars manufactured for sale in the US, whether produced domestically or imported. The clearest case of an attempt to *impose* regulations on the industry, CAFE standards have always been state-mandated with stiff penalties in the form of fines for firms failing to meet the fuel economy target for new car fleets (NHTSA no date; IEA 1991).[11]

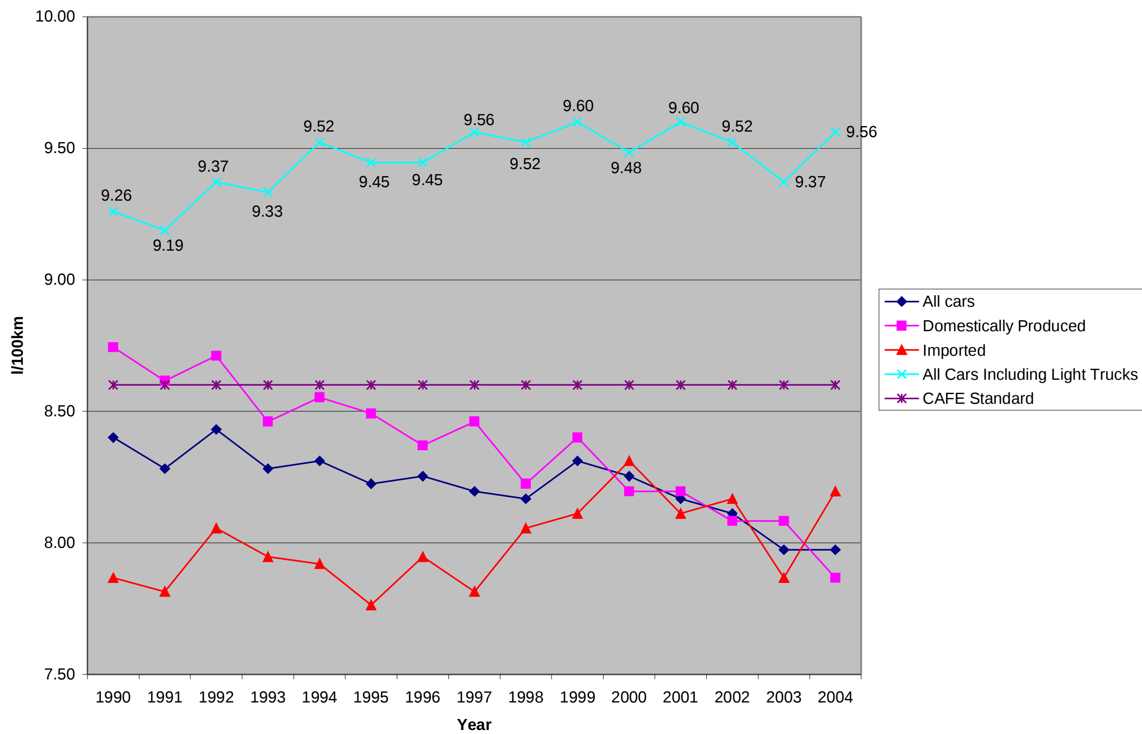
Despite the consistent strengthening of US standards up to the mid-1980s, there was no change in the CAFE standard for passenger cars after 1990, nor for light trucks after 1996. The latter is important, because it applies to pickup trucks and Sports Utility Vehicles (SUVs) which now account for half the new passenger car market in the US (NHTSA (2003: 21; DOT 2003).[12] Despite the long standing nature of the standards, and their relatively constant level over the period, there is only limited evidence for them improving fuel efficiency. Figure 1 shows that despite the 2004 CAFE standard for cars being unchanged at 8.55 l/100km, US manufacturers did not manage to meet it until 1993. While they did meet it after this, the overall downward trend in fuel consumption was not unbroken, with worsening fuel economy in 1992, 1994, 1997, 1999 and 2001 for domestically produced cars. Furthermore, until 2000 imported vehicles were consistently more fuel efficient.

Figure 1: US New Passenger Car Actual Average Fuel Economy as Measured Under CAFE Regulations

[10] This is based on comparing fuel consumption and distance travelled versus price changes. A more extended analysis is provided in Mikler (2005), based on data from OECD (2002a).

[11] Since 1983, car firms have paid more than US$590 million in penalties.

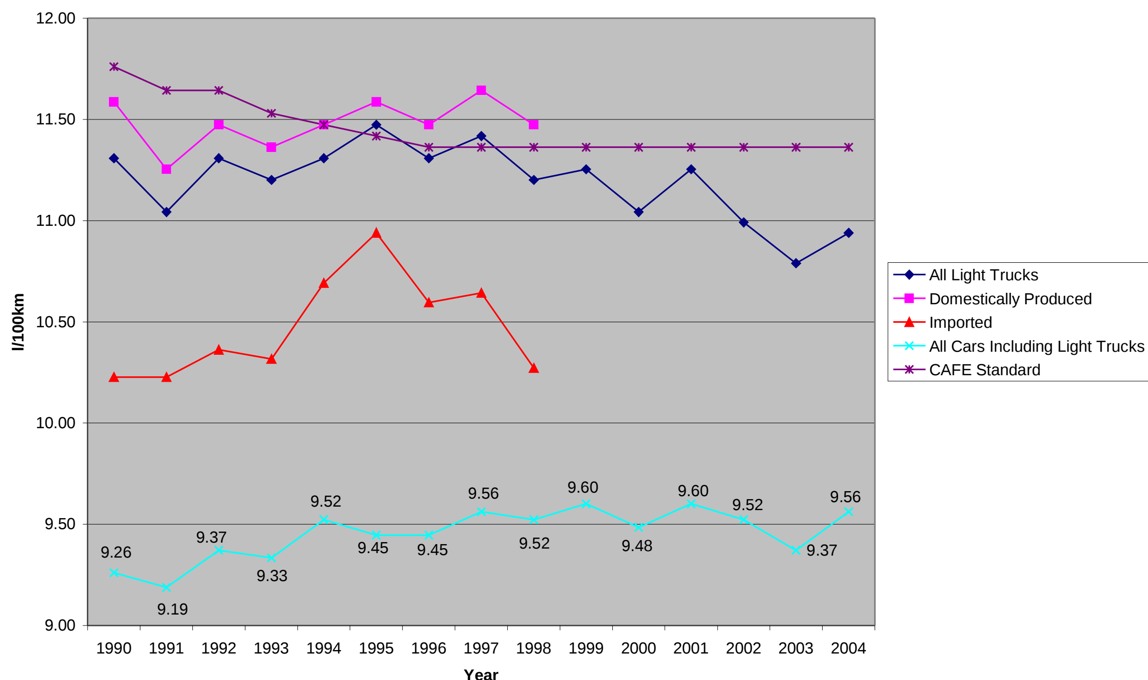
[12] Light trucks as passenger vehicles have been growing in dominance since the late 1970s when they only accounted for around 10 per cent of total sales. They accounted for 48.9 per cent of new car sales by 2002.



Source: NHTSA (2005: 20).

For light trucks the situation is worse. Although long-standing weaker standards for light trucks may have encouraged US manufacturers to build SUVs as passenger vehicles, Figure 2 shows they have increasingly had trouble meeting the standard. In fact, they did not meet it after 1994. Imported light trucks have consistently out-performed them, with improvements in fuel economy after 1995. Despite their popularity and market share in the US, it would appear that a culture of making more fuel efficient vehicles in this class exists to a far greater degree elsewhere. Indeed, one might surmise that the reason why the actual average fuel economy for all light trucks remained around 11 l/100km after 1998 is because of improvements in the fuel economy of imported vehicles. This is hard to prove though, because the US National Highway Traffic and Safety Administration (NHTSA), which is responsible for administering the CAFE standards, decided to cease classifying light trucks as domestically produced versus imported after 1998 (NHTSA 2005).

Figure 2: US New Light Truck Actual Average Fuel Economy as Measured Under CAFE Regulations



Source: NHTSA (2005: 20).

Rather than attempting to impose standards on the industry, the EU and Japan have taken a more market-friendly approach by incorporating voluntary commitments in regulations (in the case of the EU), and letting the industry itself set the benchmarks for targets (in the case of Japan). Although the EU has had an environment policy since 1973, greater harmonisation of environmental regulations in the 1990s occurred subsequent to the Act of Political Union, and in vehicle emission standards specifically (Leveque 1996: 9-19; ADB no date).[13] Fuel economy standards in the EU are set in terms of CO_2 emissions in grams per kilometre (g/km). These are equivalent to fuel economy standards because CO_2 emissions are the result of fuel being combusted, with a fixed (scientific) relationship between the two (Bradsher 2002: 246 and 421).[14] With respect to car CO_2 emissions, the EU car industry's peak industry body, the Association des Constructeurs Europeens d'Automobiles (ACEA), was invited to make voluntary commitments to reduce new car CO_2 emissions for cars produced in the EU in 1995 through a Joint Declaration with the European Conference of Ministers of Transport (ECMT). These commitments were submitted to the European Commission in July 1998, and subsequently made a Directive (ACEA 2002; ECMT 2001 and 2003).

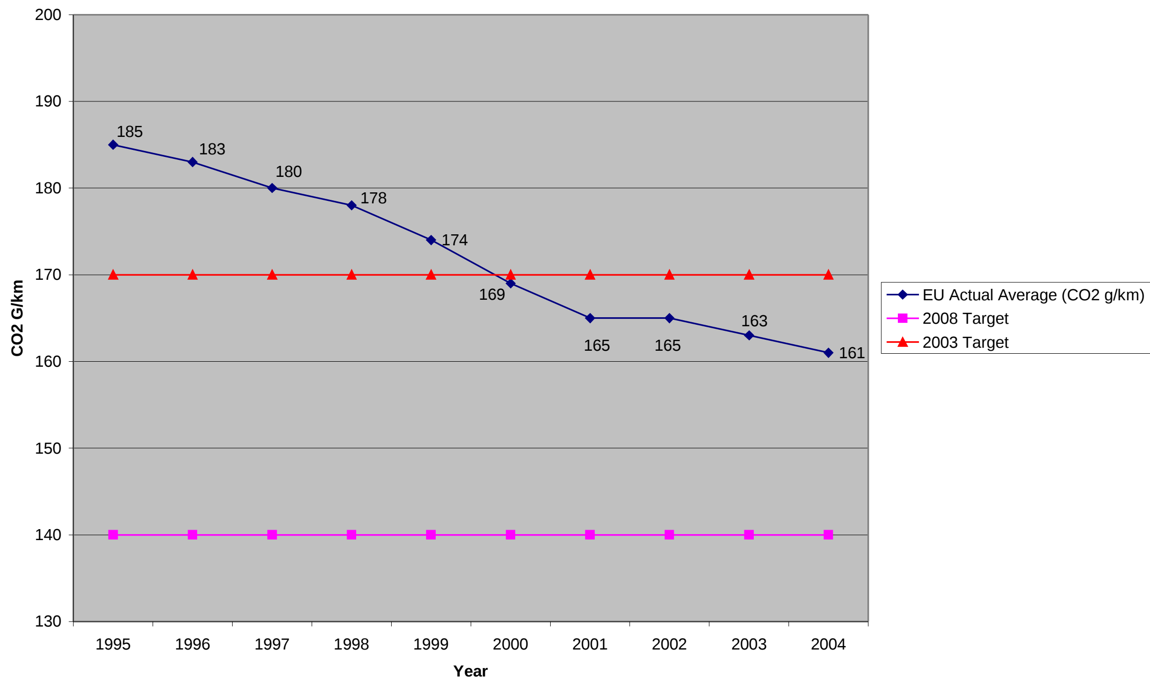
[13] For example, since June 1991 all emissions standards have been harmonised through the Consolidated Emissions Directive which is binding on all EU member states.

[14] That is to say, the more fuel used the more CO_2 emissions. Car CO_2 emissions are produced by the combustion of fossil fuels in internal combustion engines, with a fixed amount of CO_2 emitted as fuel is combusted in a petrol or diesel engine. For example, a typical petrol engine that uses a litre of petrol will combine 635g of carbon from the petrol with 1,702g of oxygen from the air to produce 2,337g of CO_2. Thus, CO_2 emissions expressed in grams per kilometre (g/km) have commensurate fuel economy measures in litres per hundred kilometres (l/100km): the lower the l/100km measure of fuel economy, the lower the g/km of CO_2 emitted.

In the case of Japan, fuel economy targets were introduced in the 1970s under the Energy Conservation Act. These were first set in 1979 for 1985 targets under the Law Concerning the Rational Use of Energy, and revised in 1998 by the Ministry of International Trade and Industry and the Ministry of Transport to accommodate Japan's Kyoto Protocol commitments. Car manufacturers which do not meet the standards under these targets are to be penalised, but penalties are less likely to be imposed than in the US because since 1998 targets have been set on the basis of the 'top runner method'. Rather than setting ambitious targets for firms to achieve, this method sets standards based on the most efficient model in a given weight class, with all other manufacturers then given time to match it (OECD 2002b: 79-80; JAMA 2003: 24; ECMT 2001: 37 and 81; Arima 2000). In other words, the standard 'imposed' by the state asks firms to do no more than what is already achievable.

The process for setting standards in the EU and Japan sounds very much like a case of power to the market – i.e. letting the industry itself dictate the terms. Some might say that the power of the state to set the regulatory agenda has been ceded to the forces of global capitalism, and the results are likely to be less than adequate without the heavier hand of the state and its regulatory institutions (e.g. Volpi and Singer 2000). Yet, the results have been impressive. Figure 3 presents average actual CO_2 emissions of ACEA new cars from 1995 to 2004. What is shown is an unbroken downward trend in CO_2 emissions with the 2003 target of 165-170g/km reached in 2000, three years ahead of schedule. In fact, already in 2001 2.8 million cars with CO_2 emissions of 140g/km or less were sold, representing 23 per cent of all sales and an increase of 970 per cent on 1995 figures (ECMT 2003: 7-8). Whether the 2008 target of 140g/km is achievable is more problematic. The latest European Commission reports cast doubt on this. Yet what they do highlight is that "the impact of labelling and fiscal measures has been negligible, while the voluntary commitments delivered the bulk of the reductions" (Commission of the European Communities 2007: 2). Therefore, it is the voluntary aspects of the regulations which have delivered the emission reductions, rather than tough state imposed regulatory measures or market intervention.

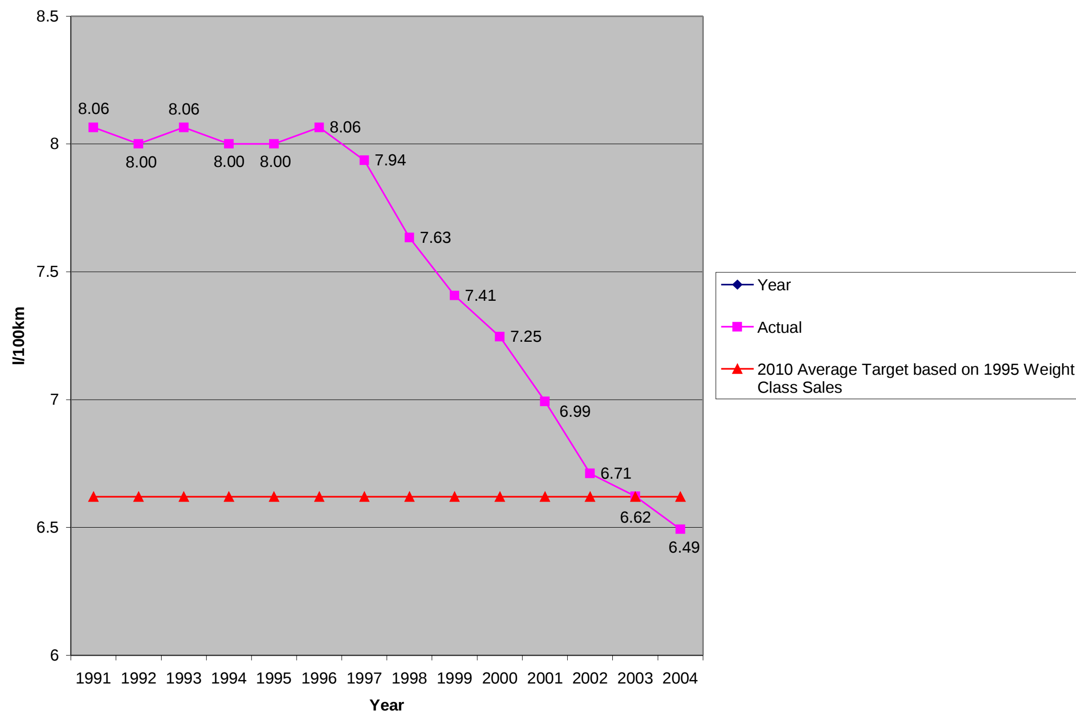
Figure 3: Average Actual Emissions of ACEA New Cars Weighted by Registrations



Source: Commission of the European Communities (2006: 9).

Japan presents a dramatic case of easily exceeding standards. Figure 4 demonstrates that Japanese firms have managed to meet the target set by standards early. Comparing the actual average fuel economy of cars sold with the 2010 average target of 6.7 l/100km based on 1995 weight class sales shows that the target was met in 2003, seven years ahead of schedule. Ever since the introduction of the top runner method in 1998, the industry has continuously improved the fuel economy of its cars. It has barely been regulated by standards, in the sense of having these imposed under threat of harsh penalties, because fuel economy has improved to such an extent that the target set by the standard has already been met. In fact, given that 6.7 l/100km is approximately equivalent to 164 g/km of CO_2 emissions ECMT (2003: 6), Figure 4 indicates the average fuel economy of Japanese cars matched that of those sold by EU firms in 2001 and exceeded them thereafter. This is despite Japanese targets being weaker and fuel prices lower than in the EU.

Figure 4: Average Actual Fuel Economy for Japanese Petrol Cars



Sources: JAMA (2003 and 2007)

Overall, US CAFE standards have clearly been less effective than those of the EU and Japan. They are also attacked by the US industry's peak body, the Alliance of Automobile Manufacturers (AAM), which sees market forces as a more natural determinant of which cars should be offered for sale. It asserts that US consumers demand less efficient cars, so the industry cannot be held responsible for worsening fuel economy:

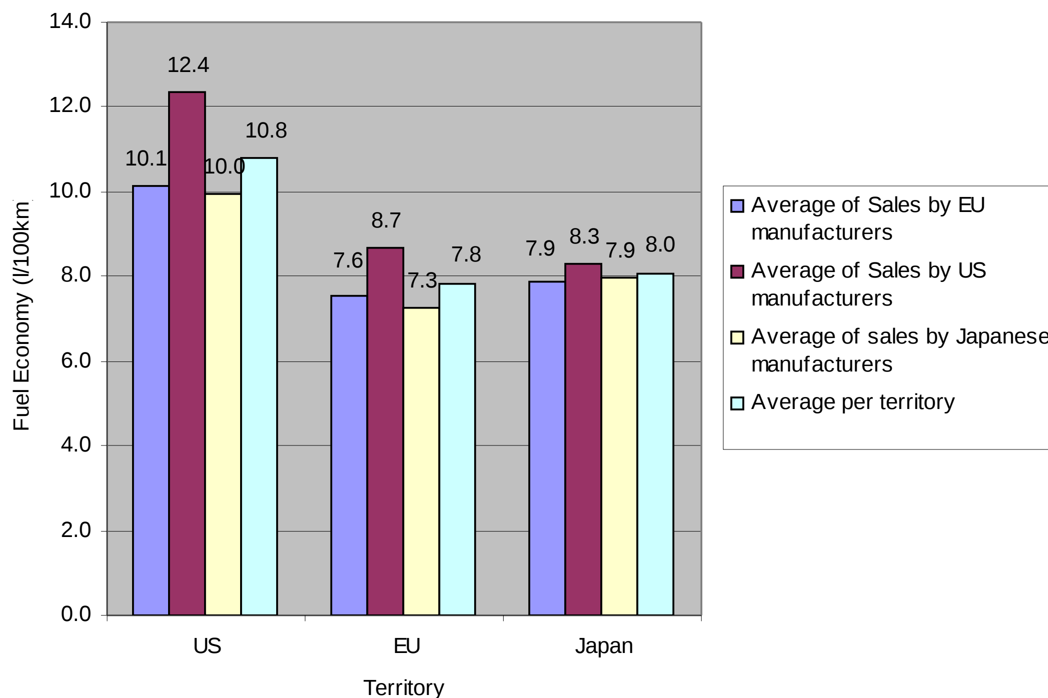
> The only way to control carbon dioxide emissions is to reduce fuel combustion, which requires making the vehicle smaller, lighted and less powerful….We make more than 30 different models that get 30 miles per gallon or better. Very few consumers buy them (Newton-Small 2003).

Rather than seeing fuel economy as its responsibility, the AAM's position statements make it clear that the industry believes the US government should provide subsidies to consumers for the purchase of "advanced technology vehicles" (AAM no date a; see also AAM no date b and c). What is left in the absence of cooperation is instead more of a 'battle' between regulators and the industry. This is an often observed feature of US state-business relations, in the sense that such relations are said to be characterised by business lobbying regulators rather than working in partnership with them (e.g. see Haufler 2006; Newell and Levy 2006). Contrast this with the relationship between business and regulators in the EU and Japan, where firms have worked cooperatively with regulators to agree on standards, and then have set out to achieve them.

Regardless of which market is characterised by more or less fuel efficient cars, it is the changes over time that tell the story of how effective regulations are. But more than this, Figure 5 demonstrates that EU and Japanese firms sell more fuel efficient cars *regardless of the territory in which they are sold*. Regardless of national market conditions, US firms always sell the least fuel efficient vehicles, while EU and

Japanese firms sell more fuel efficient vehicles. Putting it simply, even if Americans prefer bigger, thirstier cars while Europeans and the Japanese prefer smaller, thriftier ones, the fuel efficiency of the cars they purchase is determined by firms' production profiles rather than such market imperatives. This being the case, not only do more effective regulations impact on the markets in which they are constructed, firms appear to 'export' the regulatory settings in their home territories to other states in which their products are sold. This has at least two implications. First, EU and Japanese firms face lower adjustment costs in meeting any future regulations or adjusting to environmental imperatives such as climate change, than US firms. Secondly, US firms are at a disadvantage in a competitive sense if global consumer demand is increasingly informed by environmental performance, or if one accepts the view that there is a positive relationship between environmental protection and economic prosperity (e.g. Porter and van der Linde 1995).

Figure 5: Average Fuel Economy for the EU, US and Japan by Firm Nationality, based on 2002 Sales



Source: Austin et. al. (2003: 31).[15]

Even for what is held up as an archetypal example of a global industry, national regulations can remain effective. The degree to which they are effective depends on the extent to which regulations have been imposed on firms by the state, versus a co-regulatory relationship between the two. Regulations imposed by the state in the US cannot be said to be associated with changed industry behaviour to the same extent as in the EU and Japan, nor to have created an environment in which more efficient vehicles are regarded more favourably. In choosing to share sovereignty with the industry, EU and Japanese regulators have produced better results not just in their

[15] The careful reader will note that the fuel economy figures quoted here are slightly higher than those indicated in previous Figures. I am unable to account for this other than to say that the data comes from different sources, but comfort may be taken in the fact that the relative differences between territories appear consistent.

domestic markets, but have also influenced outcomes in markets beyond their national territorial borders. As climate change becomes a crisis, or oil prices continue to rise, or social environmental concerns come to affect consumers' purchasing decisions, Japanese and EU regulators, cooperating with their flagship corporations, will be the international agenda setters.

(De)regulating the Online Gambling Industry

The internet is said to be a fundamental aspect of the information technology revolution that has been an enabling/facilitating agent for globalisation (Dicken 2003: 85). The development of the online gambling industry mirrors the development of the internet itself. As public access to the internet increased in the early 1990s, so did business opportunities. In 1996, only 15 online gambling sites were in operation, but just ten years later in 2006 there were around 2,000-2,500 sites. Over the same period of time, global revenue is estimated to have grown from a modest US$300 million to US$15 billion, representing around 5 per cent of the total global gambling market. Projections are that it could reach at least US$24-30 billion within the next five years (Hammer 2001; Ranade et. al. 2006; Williams and Wood 2007).

The market for online gambling is global, and the medium it employs cannot be defined by territorial borders. It does not take neoliberal *ideology* to promote the need for neoliberal reforms such as market deregulation. This seems an unavoidable reality, given that national regulations cannot control an internet-based, borderless industry, the hardware for which can be established anywhere in the world, and whose consumers are just a mouse click away regardless of their location. This leads authors such as Schwartz (2005: 225) to declare that "technology has inverted the geopolitical reality – the mighty United States is apparently powerless to stop operators in Antigua from directing gaming operations at its citizens". Borders are 'porous' to such an extent that the *structural reality* of the medium the industry employs makes it emblematic of the neoliberal globalist view. When Strange said that globalisation involves "the diffusion of authority away from governments (that) has left a yawning hole of non-authority" (Strange, 1996: 14), she could easily have been talking about any industry employing the internet as its means of delivering services to consumers, such as online gambling.

Even so, the UK has sought to regulate the industry via its new Gambling Act 2005. The development of this new Act was foreshadowed as early as 1994 when the Gaming Board for Great Britain (1994: 2) noted that it was "sympathetic" to requests from the "gambling industries for the removal of regulations which they believe to be outdated, intrusive and unnecessary". With this in mind, a comprehensively review of gambling regulation was launched in 2000 with the establishment of a Gambling Review Body chaired by Sir Alan Budd, a former Treasury Adviser. Its terms of reference revolved around "the desirability of creating an environment in which the commercial opportunities for gambling, including its international competitiveness, maximise the UK's economic welfare" (Gaming Board for Great Britain 2000: 107; DCMS 2001: 6).[16]

Therefore, a deregulatory approach was implicit, with effective regulation viewed explicitly through a lens of strengthening the commercial gambling market in the

[16] The full terms of reference are available from Gaming Board for Great Britain (2000: 106)

interests of the British economy (Miers 2006: 473). Indeed, in respect of online gambling specifically the Gaming Board for Great Britain saw "a need to act quickly if a valuable commercial opportunity is not to be missed forever" because "such a missed opportunity would conflict with the Government's stated aim of making Britain a leader in e-commerce" (Gaming Board for Great Britain 2000: 111). Subject to this business-friendly approach, the aims of regulation were to address the potential social costs arising, such as ensuring that all gambling remains crime-free, with children and vulnerable (i.e. potentially problem) gamblers protected (DCMS 2001: 2). Altogether, the objective of the review was the promotion of an internationally competitive gambling industry while guaranteeing "the probity of the market" and guarding against "inappropriate consumption" (Miers 2006: 473).

The majority of the Budd Report's recommendations were adopted. Online gambling was therefore incorporated in the new (de)regulatory framework as one of a suite of gambling alternatives. Under the new Act, responsibility for gambling was transferred to the Department of Culture, Media and Sport (DCMS), and a new Gambling Commission established as a unified gambling regulator (DCMS 2005). While covering more aspects of the gambling industry such as online gambling, the new legislation is less prescriptive than that it replaces, and leaves the Gambling Commission with considerable discretion in applying license conditions and codes of practice over all forms of gambling (Gambling Commission 2006: 12).

For the most part, this all sounds like a clear case of market deregulation given the reality of globally integrated markets, and the online gambling industry certainly seems to approve of the result. For example, e-Commerce and Online Gambling Regulation and Assurance (eCOGRA no date), one of the largest online gambling industry associations based in the UK, states that it strongly supports the UK's regulatory stance and desires a close relationship with the DCMS. Its CEO has declared that "it is in the best interests of the industry, which provides employment and revenues worldwide, that it is recognised and regulated by national laws and we want to continue to offer our support for what the UK is doing in this area" (eCOGRA no date).[17] Market imperatives appear to be to the fore at least as much as social concerns. Yet, the new Act puts safeguards and requirements in place for online gambling that did not previously exist, including player protection, accreditation of sites as offering fair play to consumers, mediation of disputes, putting safeguards in place to protect the young and vulnerable and anti-money laundering measures (DCMS 2003; DCMS 2005). The benefit appears to be that the proportion of problem gamblers in the UK in 2007 remains steady at around 0.6 per cent, unchanged from 1999 levels, and lower than in the US (Wardle et. al. 2007: 10).

Industry support for the UK's regulatory principles may serve to enlarge the territorial reach of the UK's regulations. A further key reason why this is likely to happen is that the institutional framework of the EU lends itself to the regional regulation of the industry. The EU represents an exercise in regional integration that goes beyond what

[17] This is hardly surprising given that one of eCOGRA's directors is Bill Galston, OBE, former Chief Inspector of the Gaming Board for Great Britain in which position he had responsibility for investigations, regulatory compliance and enforcement. Similar supportive statements are made by individual site operators such as Parytgaming (2006).

is usually found in international organisations, and therefore beyond functionalist, or neofunctionalist, interpretations. The 1957 Treaty Establishing the European Community (hereafter the EC Treaty), laid "the foundations for an ever closer union among the peoples of Europe" (Official Journal of the European Communities 2002: 39; Church and Phinnemore 1994: 53). Article 2 of the EC Treaty states that "the Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities" (Official Journal of the European Communities 2002: 40; Church and Phinnemore 1994: 64). Articles 3 and 3a specify the activities to be included, and in this respect the following is noteworthy: "an internal market characterised by the abolition as between member states of obstacles to the free movement of goods, persons, services and capital" (Official Journal of the European Communities 2002: 40; Church and Phinnemore 1994: 65). If online gambling is a service, then such foundational provisions for regional integration apply.

Two Articles of the EC Treaty are especially pertinent to online gambling. The first is Article 49 which makes provision for the *freedom to provide services* across the borders of member states. It provides that "restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of member states who are established in a state of the Community other than that of the person for whom the services are intended" (Official Journal of the European Communities 2002: 54). Therefore, services provided to citizens of one member state cannot be restricted to those in another. This supports Article 43 in respect of *freedom of establishment*, defined as follows:

> Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period. Such progressive abolition shall also apply to restrictions on the setting up of agencies, branches, or subsidiaries by nationals of any Member State established in the territory of any Member State (Official Journal of the European Communities 2002: 52).

In essence, a business operating in one member state may not be restricted from establishing an arm of its operations elsewhere.

This means the UK's approach has extra-territorial implications. Because the UK approaches and regulates online gambling as a business with economic/market concerns to the fore, the EC Treaty provides the framework for the adoption of an EU-wide regulatory regime. In what is somewhat a case of federalism by stealth, there are regional implications for Europe as a whole because of its explicitly 'open borders' approach to regional markets. Although the internet could not even have been imagined in 1957, let alone online gambling, the EC Treaty's attack on member states' discretion over economic affairs within their borders means that the stage has been set for a regional approach to regulating online gambling, or at least some degree of harmonisation of national regulations (Verbiest and Keuleers 2003: 195).

Recent European Court of Justice (ECJ) judgments illustrate the point. There have been several cases that test the legality of restrictions in the provision of online gambling services, especially across EU member states' borders. The most important is the 2003 Gambelli judgment which set the precedent for regional regulation, rather than prohibition. The case concerned an Italian, Piergiorgio Gambelli and others who

provided Italians with access to Eurobet, a UK-based online bookmaker run by Stanley International Betting. The lower court of Santa Maria Capua Vetere (Italy) found that no Italian laws prohibiting online gambling had been infringed because the site was legal under UK law. The Court of Ascoli Piceno (Italy) subsequently requested a ruling by the ECJ which found that Gambelli and others were within their rights to offer such a service (see ECJ 2003; No author 2004; Verbiest and Keuleers 2003; Keuleers 2005).

The reason for the ECJ's ruling is that Gambelli built on findings in previous online gambling cases to specifically address the question of the regional provision of online gambling services from the perspective of freedom of establishment and freedom to provide services. As such, the ECJ found that restricting access to online gambling services went against Articles 43 and 49 of the EC Treaty. On freedom of establishment, the ECJ found that "where a company established in a member state such as Stanley pursues the activity of collecting bets through the intermediary of an organisation of agencies established in another member state (such as Gambelli), any restrictions on the activities of those agencies constitute obstacles to the freedom of establishment" (Straetmans 2004: 1413). On freedom to provide services, the ECJ had previously found that gambling constituted an economic activity, and as such the Gambelli judgment reinforced the freedom to provide online gambling services across member states' borders in respect of this (for an extended analysis see Straetmans 2004; Verbiest and Keuleers 2003).

With the online gambling industry's support for the UK's regulations, the UK's membership of the EU and the rulings of the ECJ, the stage is set for regional harmonisation with the UK's national regulations, and potentially the adoption of them. The market liberalising provisions underpinning the EU, to the extent that they break down national barriers between member states, provide the impetus not just to extending the power of the industry and market for its products, but also the UK's regulatory regime. This enhances and extends the UK's effective regulatory jurisdiction, thus enhancing its sovereignty, as much as the online gambling industry might be said to benefit from deregulation. The UK recognised the need to share sovereignty with the industry by deregulating its national market enough to ensure the consumer protection and regulatory requirements of the Gambling Act 2005 can be applied. If the industry wants to legitimately offer its services within the EU, it is likely to find that the UK's regulatory framework will be the vehicle for so doing.

Conclusion

Turning Strange (1997) on her head, this paper opened with the bold assertion that neoliberal globalisation means firms have become the 'handmaidens' of states. This seems, at first glance, counter intuitive. Yet what has been demonstrated is that in a mature market dominated by MNCs whose product is produced and distributed globally (the car industry) and in an emerging market that employs the borderless medium of the internet (online gambling), this is indeed the case. Although vastly different industries with very different products, they should both be archetypal examples of industries which, by their nature, undermine state sovereignty. Instead, the common thread identified has been that states which have grasped the opportunity to share sovereignty with the industry they seek to regulate reap the benefits of effective regulation domestically, as well as beyond their borders. The existence of

globally integrated markets and, in the case of online gambling, the use of a medium that is fundamentally transborder in nature, do not on their own support the neoliberal vision of globalisation as meaning the end of the nation state. Quite the contrary. The integration of global markets, and in the case of the online gambling industry the EU's institutional support of market liberalisation, provide opportunities for states to seize the regulatory initiative beyond their borders.

A world where borders are more permeable and markets less territorially defined is thus an opportunity for states as much as firms. In both the cases considered here, states that have effectively shared their sovereignty with industry in the making and implementation of regulations have managed to extend the territorial jurisdiction of these regulations. This has enhanced their sovereignty, not diminished it. An overly state-centric view clouds the fact that states and private industry actors are not actually as mutually exclusive as they are often conceived. In our fervour for analysing state sovereignty, its increase or diminishment, we tend to overlook the fact that the line between the state and business is as blurred as that between states themselves. States that understand this reap the reward of making rules not just for themselves, but for the world.

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