

What can Policy Performance tell us about Political Legitimacy?

Lessons from Jamaica

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Introduction

This paper examines legitimacy and public policy in the Jamaican context, and the peculiarities of governance and democracy in its body politic, with a view to contributing to the emerging debates on legitimacy based on process and legitimacy derived from performance, and the significance. Questions have been raised globally about policies that are made and implemented by governments who lack legitimacy or suffer from problems related to governance and the exercise of authority (Hanberger 2003, Pardo and Parto 2016). At the same time, there are also concerns about the erosion of state legitimacy in the light of growing social dissent and the rise of groups, local and international, that have challenged the authority of the state. This, of course, is also tied to the illegitimacy of political parties, which are ubiquitous democratic organizations— and decreasing confidence in political processes (Ignazi 2014, Mair and Katz 1995). Furthermore, it is now common to speak of a ‘legitimation crisis’ (Habermas 1976), which has accompanied the dominant neoliberal economic paradigm and the effect it has had on social and political processes. (Harvery 2003).

As it represents a hybrid case, Jamaica is an interesting point of departure for such debates— legitimacy is pursued through both substantive and procedural means, and there have been major failures associated with both. Like most Caribbean countries, the emphasis on democracy and free and fair elections is an important feature of Jamaica’s political order. However, this procedural basis of legitimacy which emphasizes winning elections fairly has not been a sufficient condition for securing obedience and achieving the best possible relationship between the governed and the government, not just in Jamaica but in other developing countries. Increasingly, this is becoming a significant problem for countries globally.

This is partly why public policy matters so much. The focus of this paper is, therefore, on policy performance and what happens once elections are won through established democratic procedures. Having established that public policies must be the focus once elections are settled, the main question for this paper turns on whether public policies and political processes have been focused on fair procedures and adherence to stipulated rules or instrumental approaches which prioritise desired outcomes. Using the case of Jamaica, I argue that policy performance is the main object of questions to do with legitimacy in Jamaica but policy processes matter as well in discourses about legitimacy.

Labour precarity, little or no significant advances in development; public demands for improved political outcomes, and the inextricable link forged between political identity and promises of prosperity have been major factors shaping this emphasis on policy performance and its relation to two simultaneously processes: the erosion of state legitimacy and the rise of other non-state legitimacy actors. The procedural agenda is hampered by Jamaica's cultural orientation; normalization of corruption, limited mechanisms of accountability and oversight of key agencies. Most significantly perhaps, the lack of performance has led to an ambivalent attitude toward procedures and the rule of law. Despite the failure to secure a strong sense of political legitimacy through performance, the political culture and a sense of foreclosed political identity in geopolitical spaces of insecurity or so-called garrisons and middle-class respectability has allowed the state to continue to wield power.

Relating Political Legitimacy to Discourses and Practices of Policy Performance

The lack of policy performance has had negative but also unintended and paradoxical effects on political legitimacy in Jamaica. The negative effects are apparent in the steady erosion of state legitimacy and the actions of violent non-state actors who have sought to fill the vacuum in policy performance left by the state (Sives 2010, Campbell 2017, Jaffe 2012). In communities where these actors operate, they secure obedience and support by providing some kind of social welfare and assistance to the neediest (Campbell 2014). By contrast, within these same spaces, the Jamaican state has not been able to secure obedience through voluntary compliance, but has instead relied on coercive power. The erosion of trust in political

institutions and public attitudes towards politics, evidenced by low voter turn-out, are indicators of the way in which the lack of policy performance, but also the lack of democratic policing (Campbell 2017, Harriott) has negatively affected political legitimacy.

Normally, the lack of policy performance would be expected to have only negative effects, such as the ones described above, on political legitimacy. However, in the Jamaican context, the lack of policy performance has also produced what can be deemed ‘unintended positive outcomes’ for political elites. Consequently, little or no policy performance by an incumbent administration can create the conditions on which political elites seek to justify their authority. In the first instance, there is always a ‘legitimacy promise’, which is based on the promise made by an incoming political party to fix the policy failures of the previous administration. When in office, governments continue to seek loyalty and support for their authority by emphasizing the policy failures of previous administrations as obstacles to their ability to fulfil election promises. In this context, the rhetoric, or what I am tentatively calling the legitimacy discourses of policy reform have become increasingly important.

Political legitimacy has also been impacted, negatively and positively, by the pervasive fear of violent non-state actors and ‘dangerous others’ and the state’s ability to use force against individuals and communities that threaten the safety and well-being of good, middle-class citizens. This might be deemed a positive outcome for the state because of the way in which it guarantees middle-class support for the political elite and legitimizes state practices such as zero-tolerance policing and violations of human rights. Public institutions such as the police force, the military and their intelligence agencies are relied upon to fix these problems, and citizens have become willing to support an increase in the state’s power. Extra-legal policy outcomes such as increased extrajudicial killings have also been backed by populist demands for a reduction in crime in the society. Arguably, it is the state’s lack of performance in providing this critical public good that has produced widespread fear, in the first instance, and this inability has also had negative effects on state legitimacy especially in communities where there is a high rate of subnational violence.

The state is also seen as the cornerstone for moving the society forward: civil society groups and the private sector have a role but the state retains some key functions and is largely regarded as indispensable. Moreover, while the state is expected to provide public goods and facilitate the expansion of private capital, the neoliberal state has also shifted most of its responsibilities to the individual, and this has reduced pressure on the state to deliver (Harvey 2003). Consequently, states that suffer from problems related to policy performance, such as Jamaica, can more easily maintain sufficient legitimacy to govern by insisting that they operate in a neoliberal system that has consistently called for a rolling back of the state through structural adjustment policies (Escobar 2001).

Notwithstanding, the Jamaican case demonstrates that in the absence of good performance from the public sector, many citizens live precariously and are left at the mercy of rogue subnational leaders who exploit everyday citizen. This erodes faith in the political system and its processes and threatens the legitimacy of the criminal justice system, broadly defined. Strong political identity and violence are defining features of Jamaica's political culture, and these have had negative and stifling effects on democracy in Jamaica. Sives contends that 'in many ways political inclusion through clientelist ties can alleviate some of the negative consequences of economic and social exclusion by providing a sense of belonging, identity and hope. This can be a critical support for elite hegemony' (2002: 70). Strong loyalty to politicians and political parties reduce the likelihood of a sense of committed urgency to engage in political and policy change. That is to say, the political culture in Jamaica encourages political complacency.

Legitimacy

Legitimacy is a contested and nebulous concept (Lipset 1984), and there have been numerous debates about how legitimacy should be defined. Barker is of the view that political legitimacy should be separated out from other forms of legitimacy, such as religious legitimacy. He defines political legitimacy as 'a feature

of the relationship between government and governed, or of the processes or structures of government' (1990: 2). He argues, as well, that in line with his definition, legitimacy has a political function, related to the legitimization of political relationships, rather than of other kinds— and a specifically political character.

Legitimacy is also about a state's ability to secure consent and voluntary compliance. Whilst the state can legally exercise the use of force against its members, a legitimate government is normally able to secure consent without resorting to the use of force. Legitimacy can be defined in either normative or empirical terms (Hinsch 2008). Normatively, legitimacy means that a government has the right to govern (Sternberger 1968) while empirical legitimacy suggests that people believe that a government has the right to government (Beetham 20013). Political scientists emphasize that what makes a government legitimate is its ability to exercise normative legitimacy, measured against objective principles such as elections. Social scientists are more interested in empirical or subjective legitimacy, asserting the importance of not just the right to govern but whether people believe this right is legitimate and rightful.

In arguing that legitimacy affects public policy makers in various ways, Hanberger argues that there is a need for 'an adjustment of the assumption that legitimacy first and foremost is achieved through democratic institution and processes and that public policy starts off with pre-existing legitimacy capital. Legitimacy cannot be taken for granted; any solution to prevailing problems has implications for legitimacy that must be considered (2003: 257).

A difference is also made between substantive and procedural legitimacy. Procedural legitimacy suggests fair and legal prescribed processes are adhered (Tyler and Wackslak 2004).Procedural legitimacy is about moral alignment and ensuring that state actors adhere to the prescribed rules and laws that govern the conduct of individuals and institutions that carry out important duties and functions in a given polity (Hough et al. 2013, Rosanvallon 2001). This kind of legitimacy has been central to discussions on crime and policing, especially (Tyler and Wackslak 2004). It has also been controversial among state actors who prefer a greater focus on substantive legitimacy — an instrumental approach that emphasises desirable outcomes realized as a result of governing rather than fair and legal processes and procedures (Clarke 2007, Barnard

2001). Weber (1958), who is widely regarded as the architect of legitimacy, also differentiates between three different types of authority: traditional, charismatic and legal-rational authority. Democracy, and the emphasis on electoral politics and legal-rational authority through the state, has been the main way in which political legitimacy is derived in most modern democracies, with notable exceptions and sites which contest this dominant paradigm.

Jamaican Democracy: Patronage as a substitute for Policy Performance?

Jamaican democracy has been variously discussed, but one of the most outstanding theorisations has been Carl Stone's (1980). He characterises Jamaica's democracy as a clientilistic type of democracy. Stone distinguishes clientelism in Jamaica from class-based politics of liberal democracy and authoritarian states, preferring to see it 'as a mechanism by which to institutionalize a power structure that competes with, and parallels, the old and continuing power structures rooted in the ownership of the means of production, by local and capital foreign capitalist interest' (1980: 93). In this system politicians, who are seen as patrons, distribute economic resources to garrison communities, in this case clients, in return for votes. In this way, dominant power structures are created and sustained through mutual dependency, the use of violence and intimidation. The relationship between violence and democracy remains an important phenomenon, and while the Jamaican case is by no means exceptional, but the relationship between violence and democracy seems to have assumed a peculiar shape. The insertion of violence into Jamaica's political culture placed democracy, from the very beginning, on shaky ground, challenging the very notion of a democratic state according to its modern definitions. Stone's model of democracy still has relevance, but has to be problematized. Stone is criticised by Sives (2010) for overstating the power of the state while downplaying the social power of the urban poor. The power dynamic between politicians and garrison communities has undergone changes, the details and impact of which will

become evident in Chapter 5. This is partly the result of the inability of the Jamaica state to afford a broad-based system of patronage.

Jamaica's democracy is not unique in its reliance on patronage to secure power (Stone 1980) or its predatory practices to co-opt and dominate vulnerable or subversive groups in the society (Obeka 2004). Despite this, elections are held every 5 years and parties are elected to power under the inherited Westminster Whitehall First-Past-the-Post-System. Based on the Western liberal democratic model of legitimacy, this should give the government the right to govern. Despite this, however, there have been major difficulties with governance and the political order in Jamaica, evidenced by the erosion of trust, a history of protests and civil disobedience, the politics of patronage, lack of public order, localized citizenship (Campbell 2015) and the presence of violent non-state actors who have called the legitimacy of the state into question (Campbell, Jaffe). Subsequently, free and fair elections have not been the basis on which governmental power is legitimized across all groups in the society; while elections and adherence to prescribed electoral rules as well as democratic rights have become a key principle of legitimacy in Jamaica, citizens have expressed a willingness to trade off some of their democratic rights to achieve higher levels of economic well-being.

The findings of a study conducted by Powell and Lewis (2010) on political culture and democratic values, found that Jamaicans were strongly committed to democratic norms. Commitment to democratic norms does not, however, naturally translate to satisfaction with democracy. Satisfaction and the willingness to remain committed to democracy depend on policy performance. Consequently, forty-five percent of the respondents interviewed in the study were not 'very satisfied' with 'the way democracy works in Jamaica', and in response to the question, 'I would not mind a non-democratic government in power, if it could solve the economic problems', 38% of the respondents said they agree. It is also clear from the finding in Powell and Lewis's study

that, for democracy to be perceived as a legitimate form of government, people must expect that it will go beyond voting and actually provide a stable environment that serves their interests.

Political Culture, Trust and Policy Performance

The problem of legitimacy is no doubt impacted by overall low levels of trust in the society and in political institutions, in particular. Low levels of trust and the formation of a specific type of political culture, I would argue, are significantly influenced by the manner in which political institutions have sought to intervene in the day-to-day enactment of citizenship and the democratic process in Jamaica. Jamaica's political culture has been shaped, and is shaped, by the political structures in the society. Individuals are 'socialized into their culture but they also reproduce it' (Chilton 1988). Understanding the political culture of a particular society is important for the precise reason that 'revealing the patterns of orientation to political action helps us to connect individual tendencies to system characteristics' (Almond and Powell 1966: 51-52). There are various ways in which individuals in Jamaica have been socialized and oriented toward certain forms of political action and certain political norms and values. These have been produced and reproduced through actions and discourses that take place between political parties and communities, and the different classes in the society. Jamaica's political culture is also strongly associated with charismatic and populist leadership, as is the case in most of the Caribbean (Ryan 1999, Singham 1968).

Policy Performance Gaps, Promises and Failures: The Case of Security

In the case of Jamaica, security policies have largely focused on crime fighting and reducing crime through policing and repressive law enforcement strategies (Harriott 2000). Most of these policies have failed to achieve their desired outcomes. At a rank of number six, Jamaica has one of the highest murder rates in the

world (Report of the United Nations Office on Drugs and Crime 2013) ahead of countries like South Africa and Swaziland and after some of its hemispheric neighbours (Honduras, El Salvador, Guatemala, Venezuela and Belize). This has created high levels of fear in the society, and gated communities and private security have become pervasive as a result, a general trend across Latin America. Consequently, private security firms have largely displaced the state as the largest providers of security.

Drug trafficking is also a major law enforcement challenge for Jamaica: Jamaica is regarded as a major transshipment or 'way point' for drugs produced in South and Central America and consumed in North America. Jamaica produces marijuana but not cocaine, hence the designation as a major transshipment point. During the first 10 months of 2016, 944 kilograms of cocaine, 14.33 metric tonnes of cannabis were seized and there is no reason to believe the current reality will change in the short-term. Gangs, subnational violence and difficulties with public order constitute other formidable threats to national and citizen security. Gangs are well established non-state actors who command a significant amount of power in Jamaica. First, second and third generation gangs operate across the Latin American and Caribbean region and are involved in the struggle for control over space and power. Most gangs operate across various different criminal domains, including money laundering and narcotrafficking and are responsible for most of the violence in Jamaica. Drug traffickers and gangs are able to use money laundering as a means of concealing the gains from their criminal activities and this has compounded the problem with transnational crime in Jamaica.

Corruption is also increasingly being regarded as a national security problem for Jamaica. The use of public office for private gain has made it more difficult to investigate and prosecute criminal cases. The interconnectedness of legitimate and illegitimate actors means that corruption is becoming a cultural and a highly politicised phenomenon in Jamaica, with serious implications for organized crime and the rule of law and the ability and willingness of the state to enforce its anti-corruption laws. While the Transparency International Corruption Perception Index is not a wholly accurate measure of corruption, at a rank of 39 in the 'mostly corrupt category', Jamaica's corruption policies must be subject to analysis.

Policy Performance Measures and Failures

The policy measures employed to address problems with violence and transnational organized crime have not been effective. Policy measures have ranged from introducing new legislation to establishing new institutions and policies. Police reform has focussed on professionalizing and reforming the police force (Harriott 2010), and recently there has been a new thrust toward setting up new oversight bodies and experimenting with community policing. Community policing has, however, been resisted and its practices applied in a piecemeal and spatially inconsistent fashion.

A whole range of legislation has been introduced in the last decade or so, and Jamaica is signatory to a number of international agreements aimed at addressing transnational organized crime. For example, Jamaica is a signatory to the United Nations Convention against Transnational Organized crime and the International Drug Control Conventions. The Proceeds of Crime Act (2007), the Anti-Gang Act (2014), the Money Laundering Act (1999) and a Zone of Special Operations Bill is now being debated in the parliament. Very few persons have been prosecuted under these laws, raising questions about the effectiveness of domestic and international law as a crime fighting tool in Jamaica. Despite developing new policies such as the National Security Policy 2007 with a subsequent review done in 2012, the desired policy outputs have not been achieved.

The lack of policy performance can also be observed in the failure of police reform and policing practices to deliver on their intended outcomes. Zero-tolerance policing, special police operations, states of emergency, policing profiling and the creation of new agencies in the police force such as the National Investigative Bureau (NIB) have also not produced a reduction in neither crime, violence nor insecurity in Jamaica. Jamaica continues to institute new institutions while maintaining the colonial post-colonial culture of discipline and control. Consequently, there is a misalignment between institutional reforms and the institutional culture. The failure to secure police accountability using mechanisms internal to the police force has led to the establishment of an independent oversight body, INDECOM. Established under the INDECOM act (2010), the organization is ‘to undertake investigations concerning actions by members of the

security forces and other agents of the State that result in death or injury to persons or the abuse of the rights of persons; and for connected matters.’ One of the main justifications for the establishment of INDECOM was the high levels of extrajudicial killings in Jamaica.

Failures of the criminal justice system have also resulted in low levels of performance in the security sector. The justice system is justifiably criticised for the slow pace at which cases are tried and decided upon, and this has resulted in incredible delays in the justice system and an overall sense in the society that the criminal justice system is ineffective and not geared towards deterring criminal behaviour and supporting the existing mechanisms of crime control in the society (Justice Sector Reform Task Force, 2007).

The statist approach to national security has also contributed to the failures described above. Security policies in Jamaica are mainly developed and articulated in relation to the security of the state.

Illustratively, the 2012 Reviewed National Security Policy begins its introduction with a conceptualization of national security:

the concept of national security includes the measures taken by a State to ensure its survival and the safety and welfare of its people. There are many potential challenges to the integrity of the State. These include the use of conventional or unconventional forces to destabilize a government, annex resources or impose regime or policy change. They also include a range of threats to economic, institutional and social structures.

While national security is important for any state, the major threats to Jamaica emerge from internal sources, such as gangs, corruption and the relationship between politics and organized crime. National security on the other hand is mainly about military and external threats to security, underpinned by realist assumptions of anarchy and state survival in a hostile international environment. States have always been concerned with guarding their territorial integrity and various assets at their disposal from threats arising externally – this is the meaning conveyed by national security (Sherry 1977). This is the realist thinking that dominated world politics up until the end of the Cold War, and was a major preoccupation for the US and the Western world.

While the Cold War demonstrated that larger countries could in fact threaten small states and impose upon them, at will, their military might (Bryan, Greene and Shaw 1990), the everyday experiences that structure and create the core of the security problem in Jamaica is quite different to from that articulated by a concept of national security. Internal violence presents a major source of insecurity, and it is within the archetypal garrison communities that the violence pandemic is most evident. However, while making these communities central to policy discourses, the security agenda presents them as primary threats to the security of the state, without a simultaneous acknowledgement of, and emphasis on, threats to the security of the ‘uncivilised non-citizens’, arising from agents, and agencies, of the state.

Policies have also failed because of the state’s inability to address issues of marginalization and respect for fundamental rights and freedoms (Levy 1996). There is a discourse circulating within the society and at the policy levels, which defines the integrity of the state and respecting the rights of marginalised individuals in the society as being in opposition to each other. The consequence has been that garrisons, the main spaces in which violence is used, are regarded as states within a state and as such a paramilitary approach instead of social justice approach has been used to address problems with crime and violence in these spaces. Jamaica’s security policies address themselves to ‘confronting’ these individuals, and this has served to eclipse importance of long-term policies to address socio-economic marginalisation and the lack of full citizenship in so-called garrisons. Moreover, the idea that people in the garrisons ‘get what they deserve’ is a very pervasive narrative in Jamaican society, and has been echoed by political elites

... This idea that the don provides protection in the communities is a warped dysfunctional way of thinking. He [a student at the University of the West Indies, who lives in a garrison community, and who insisted that the don provided more protection than the police] gets what he deserves when the police enters his community — he is still thinking like a dunce. And we should not use social exclusion as an excuse; there is nothing intrinsically marginalising in terms of how the society operates, and there is not anything that is an insurmountable obstacle. But they have been sold that story for years [that the police do not provide protection for the garrisons], even by politicians, some of who were exposed on Wikileaks for preaching that same falsehood. It facilitates a culture of secrecy and makes it difficult for police to get information; that is what it does (Sean Brown: Parliamentarian).

The dismissal of sociological explanations for ones which essentialize volatile communities as deserving of punishment and punitive acts by the police is evident from Sean’s comments. To

proffer that there is ‘nothing intrinsically marginalising in terms of how the society operates’ is a political myth that underscores how power, and those who lead the political order, influence the construction of a discourse that is far removed from reality, and which mutates to satisfy the needs of established power in the interest of the prevailing social and political order.

Consequences and Implications for Legitimacy

Insecurity remains widespread in communities that are afflicted by crime. These communities have turned to extra-legal security and have relied on dons to provide protection. The proliferation of private security in middle class spaces also evidences the state’s failure to deliver on election promises to ‘tame the crime monster.’ Owing to the state’s inability to solve the security problem and provide protection for its citizens, criminals have been able to legitimize a localized form of leadership, which challenge state authority in so-called garrison communities.

Moreover, the lack of policy performance has created a citizenship deficit in spaces that must rely on the state or some state-like entity to fill the gaps in policy performance left by the state. This citizenship deficit is one of the most formidable challenges to state legitimacy in Jamaica. Marginalized populations who lack *de facto* legitimacy are rejecting many aspects of the rule of law and state governance and are willing to submit to forces outside of the state who can fill the vacuums in policy performance.

In the absence of policy and reform changes that are commensurate with local realities, challenges associated with legitimacy, violence, trust, and public security have persisted, indicating the extent of both government and market failures in Jamaica as mechanisms for change. Despite the fact that the punitive, legalistic approaches have, if anything, created more insecurity than security, they continue to be embraced by a wide array of class factions in Jamaica as common sense, appropriate responses.

Additionally, the continuing influence of the church on public policy and the rise of civil society groups, more generally is an indication of the extent to which the state must compromise with other groups in the society that are seeking to fill the policy and legitimacy gaps. The establishing of public-private partnerships

to deal with security and economic issues is also an illustration of the way in which the state has failed to find solutions to the problem of crime and security in Jamaica.

Conclusion

Legitimacy must be an important concern for policymakers and those in charge of implementing public policies. The lack of policy performance coupled with organized crime and the illegal use of force by dons in garrison spaces have proven to be veritable challenges to securing obedience and voluntary compliance with the rule of law. It is extremely difficult to implement policies in spaces that are not fully governed by the state. Policy goals around policing, reducing violence and ‘dismantling’ organized crime have essentially failed to achieve their intended outcomes. The lack of procedural fairness, extrajudicial killings and police impunity have also brought state authority into further disrepute. Moreover, middle-class Jamaicans have turned to private security and have retreated from public life, demonstrating their apathy and disillusionment with governmental authority and performance. This has impacted significantly on the policies of the government and its role in 21st century Jamaica.

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