Withering in the Heat? In Search of the Regulatory State in the Commonwealth Caribbean

Martin Lodge and Lindsay Stirton

I Introduction

As the other articles in this issue illustrate, network industries have been at the forefront of the reform agenda in Europe over the last two decades or so. These reforms have been encapsulated in the claim that there has been a shift from the ‘positive’ to the ‘regulatory’ state in Europe (Majone 1997, 1994). At the same time, these reforms have been imitated in developing countries, often with the support (some would say ‘insistence’) of multilateral donor agencies, such as the World Bank, though these have generally been accorded less scholarly attention. This contribution seeks to redress this relative neglect, by applying the analytical framework common to the other contributions to this issue to search for evidence of a corresponding rise of the regulatory state in the developing countries of the Commonwealth Caribbean. Accordingly, cross-sectoral, cross-national and temporal patterns analysis of regulatory reform is undertaken, in order to test whether the ‘regulatory state hypothesis’ (as defined more fully, below) can explain patterns of regulation in the telecommunications and electricity sectors of Jamaica and Trinidad and Tobago.

The selection of these four cases follows the logic of a ‘most similar cases’ research design, in terms of both countries and sectors. Both countries are part of the English-speaking Commonwealth Caribbean, sharing a similar colonial inheritance, including the derivative Westminster-Whitehall system of politics and administration (Ryan) and common law system. This common inheritance has been reinforced by membership of the group of CARICOM countries, sharing the common goal of Caribbean regional integration. Similarly, the administration of both countries has been shaped by the support of multilateral donor organisations, notably the World Bank and the Inter-American Development Bank, and of bilateral aid agencies, including the UK Department for International Development (DfID) and the Canadian International Development Agency (CIDA). International operators were present in each sector in both countries: in telecommunications, Cable & Wireless (C&W) has
been the main private investor; in electricity, Southern Electricity International (later the Mirant Corporation) has invested in both countries, taking a controlling interest in the incumbent vertically integrated company in Jamaica, as well as partnering in an independent power producer (IPP) in Trinidad & Tobago. The two sectors are both capital-intensive network industries, exhibiting features of high sunk-costs and asset specificity characteristic of these industries with substantial elements of natural monopoly. Despite the ‘similar case’ design, differences inevitably exist. These include availability of energy resources (Trinidad & Tobago possesses oil and natural gas) and ethnicity (Trinidad & Tobago is divided on more or less equal lines between African- and Indian-Caribbean populations), which have impacted upon the politics of production and consumption. And while both sectors have undergone a degree of technological change, challenging traditional ‘natural monopoly’ assumptions, this has been far more pronounced in the telecommunications sector. Despite similar starting positions (especially across countries, but to some extent also across sectors) by the beginning of the 1990s, cross-sectoral and cross-national analysis reveals that the development of the regulatory state in the Caribbean has been both partial and patchy, conditioned by both national and sectoral dynamics—suggesting a ‘withering’ of the regulatory state in the Commonwealth Caribbean.

This paper proceeds in three steps. Firstly, it examines in some detail what is meant by claims of a shift towards the regulatory state and identifies both core and secondary criteria associated with the regulatory state. We argue that the rise of the regulatory state can be seen as a functional adjustment to two closely related phenomena—the increasing interdependence of actors in a given policy sphere, and the imperative of prioritising efficiency concerns over distributive considerations in shaping policy. Secondly, we describe the reform experiences in the electricity and telecommunications sectors, in Jamaica and Trinidad and Tobago respectively, focussing on the features of the regulatory state identified in advance as being theoretically relevant. Thirdly, individual cases are compared cross-sectorally, cross-nationally and over time, in order to assess the performance of the regulatory state hypothesis in explaining patterns of regulatory development across the four cases. Finally, the discussion turns to the diagnosed ‘withering’ of the regulatory state. Actor-centred institutionalism is utilised to resolve the tension between what a purely functional analysis would predict and the observed patterns of regulatory
development (Mayntz and Scharpf; Scharpf). The consequent implications point to the differential impact of ‘capitalism’ on different national systems, both in the developed and lesser developed world, as well as the way in which national rules are able to filter international market processes that are said to be particularly prevalent in network industries, leading to diverse regulated forms of capitalism (Levi-Faur).

II The Regulatory State Hypothesis

At its most general, the rise of the regulatory state describes a shift in policy emphasis from macro-economic stabilisation and redistributive welfare policies towards a greater concern with competitiveness and economic efficiency, and favouring legal-authority and rule-making over alternative policy instruments such as public ownership, planning or centralised administration (Majone 1994, 77-80). Three basic changes have been identified with this shift (Loughlin and Scott, 205-7):

1. The separation of ‘provision’ from ‘production’, that is, the separation of policy-setting and operational activities, for example, through the transfer of state-owned enterprises to the private sector (‘privatisation’) but also through state-owned enterprise reforms, such as ‘corporatisation’;

2. The creation of free-standing (semi-) independent agencies to perform such activities as regulating prices, monitoring compliance with license provisions and handling consumer complaints; and

3. The formalisation of relationships within the policy domain, including a shift from implicit understanding of norms of adequate service towards greater reliance on explicit formal rules and performance measures.

Re-conceived as ‘variables’, these three ‘core dimensions’ of the regulatory states provide a useful basis for comparing both states and sectors. A number of further subsidiary issues of regulatory design help to locate regulatory regimes along each of these three dimensions, and allow for more detailed comparison. The three
dimensions, and policy choices associated with each of these are summarised in Table 1. Table 1 also illustrates the inherent complexity and potential contestation associated with policy choices across the three dimensions of the regulatory state.

Comparing national and sectoral regimes at both the broad and narrow levels is useful, since it avoids the problems inherent in some studies, of identifying the regulatory state with vague and overly broad phenomena, while failing to account for many of the subtleties in the design of regulatory regimes. For example, Nicola Phillips appears to interpret the idea of the regulatory state as a form of historicism, extrapolating the trend towards increasingly rules-based and technocratic policy-making to reveal a “process by which economic management becomes ’depoliticised’ or else ‘proceduralised’”. Not surprisingly, given this initial understanding, she finds that the benefit of applying the regulatory state label in the Latin American context does not go much beyond assistance in “identifying a particular mode of economic governance.” (Phillips, 228-9). By contrast, the present account seeks to demonstrate the analytical pay-offs from proceeding more systematically from the functional imperatives that are said to underlie the shift from the positive to the regulatory state, as well as constellations of institutions, interests and ideas that may facilitate or inhibit such functional adaptation. This builds directly on Majone’s work who explains the rise of the regulatory state as an effect of both demands for increased efficiency and of increased complexity in public policy:

‘Administrative Regulation – economic and social regulation by means of agencies operating outside the line of hierarchical control or oversight by the central administration – is rapidly becoming the new frontier of public policy and public administration throughout the industrialised world. The absence of an efficient regulatory framework is increasingly seen as a major obstacle to modernisation.’ (Majone, 1994, 83)
‘The growth of administrative regulation in Europe owes much to these newly articulated perceptions of a mismatch between existing institutional capacities and the growing complexity of policy problems’ (ibid., 85).

‘In fact, independent agencies and other non-majoritarian institutions are important actors in the politics of efficiency.’ (Majone, 1996, 619)

Thus, it is suggested that a positive causal relationship exists between (on the one hand) efficiency concerns, and the complexity of the attendant policy challenges, and (on the other) the prevalence of regulatory-type governance on the other. Traditional policy instruments are seen to lack the ‘commitment’, or the credibility, necessary to achieve policy goals where there is a substantial degree of interdependence in the production of particular services, requiring co-ordination of reciprocal expectations of independent actors. The pursuit of redistributive policies by traditional means of direct government intervention is seen as inherently more difficult in circumstances where co-ordination by states of different producer and consumer groups with different interests is a precondition of effective policy production and delivery: ‘In this new context, credibility becomes an essential condition of policy effectiveness’ (Majone 1996, 616). Such interdependence in turn is linked to policies aimed at promoting efficiency (i.e. improving overall outcomes) rather than redistribution (improving outcomes for some by making others worse off), as well as the need to signal credible commitment to agreed policy goals and instruments.

Similarly, Colin Mayer suggests that in sectors with concentrations either in the demand or the supply side, and where complete contracting is infeasible or costly, public ownership is appropriate where there are reasons to prefer flexibility over credibility, while private ownership (and presumably therefore also other forms of ‘separation’ from political influence – to the extent that the separation is credible) is associated with greater commitment (Mayer). Delegation of policy-making powers to administrative bodies is said to be a commitment strategy, restricting the freedom for politicians to act opportunistically, because the degree of independence associated with such bodies (as well as their ‘expert’ composition) to some extent forecloses opportunities for ad hoc policy changes. Similarly, because the exercise of discretionary powers may be seen as inviting a greater degree of ‘time-inconsistency’,
a system of formal rules is said to bolster credibility. Hence, the purported rise of the regulatory state can be explained in terms of the regulatory state hypothesis:

The more that policies are intended to promote efficiency rather than distributional objectives and the more that successful policy outcomes depend upon the co-ordination of actors with independent objectives, the more that the chosen institutional arrangements will display the following features: (1) separation of policy-making from service provision; (2) delegation of policy-making authority to independent agencies; and (3) the more formalised will be the relationships between actors.

A number of observable implications follow from the above formulation:

1. Cross-nationally, a shift towards regulatory-state type arrangements should be expected in countries in which national policy preferences place greater emphasis on efficiency considerations over countries where distributive considerations have greater importance. It is assumed here that these policy preferences are mostly exogenously determined by a state’s resource dependence on external policy requirements that restrict the national government’s ability to engage in redistributive policies, and by patterns of interest group activity.

2. Cross-sectorally, we should expect that sectors in which there are multiple industry players (whether public or private) with independent objectives are likely to show a greater predominance of regulatory state type arrangements compared to sectors where services are provided by (public or private) vertically integrated monopolies; in such cases, a comparatively greater degree of informality will tend to prevail.

3. Temporal patterns analysis should reveal, based on 1) and 2) that given changing levels of complexity and changing emphasis between efficiency and distributional goals, there will be, over time, moves towards and away from features identified with the so-called regulatory state. To the extent that we can speak of a temporal ‘shift’ towards the regulatory state, this reflects historically contingent increase over time in policy complexity, and/or greater emphasis on efficiency.
These predictions follow more or less directly from Majone’s argument. But what of contrary cases? It is not that such ‘exceptions to the rule’ cannot happen; rather they are to be seen as cases of ‘mismatch’ between national or sectoral policy objectives and the selection of policy instruments. While particular circumstances relating to political institutions, patterns of interest group politics and dominant ideas may contrive to frustrate the predicted functional responses, sectors or countries witnessing any such mismatch should be expected to ‘pay the price’ for such responses in terms of poor performance; the costs of ‘incompetent’ state action are said to have increased in the age of internationalised markets (Evans).

This leads to a further observable implication of the regulatory state hypothesis:

4. In cases in which the relationships posited in 1) and 2) (and exhibited over time as stated in 3)) do not hold, national and sectoral governance will be less effective in promoting their objectives than in cases where such relationships do hold up. Consequently, investment is likely to be insufficient and/or costly, and efficiency and distributional objectives (as the case may be) are less likely to be met.

The reliability of causal inferences drawn from the present research is limited, given the familiar ‘many variables/few cases’ problem inherent in comparative case-study research (see Scharpf, 22-27). Nonetheless, the cross-sector, cross-country and ‘over-time’ research design is intended to increase the potential for falsification of the theory and therefore gives some level of confidence in the results of the test (Levi-Faur). Similarly, careful attention to the choice of hypothesis, including the deductive extension from premises established by others (in particular, Majone) ought to offer some comfort despite the limited empirical basis of this research.

III Comparing countries and policy domains

Before assessing the regulatory state hypothesis, this section first turns to the cross-national and cross-sectoral description of regulatory change. The different cases exhibit patterns that are, to some extent, in line with expectations generated by the hypothesis, but at the same time a number of puzzles emerge, that are difficult to reconcile with 1), 2) and 3), above, requiring us to investigate further the reasons for
this mismatch, and adduce evidence of poor performance, as predicted by 4). This section describes the two Jamaican followed by the Trinidad-Tobago cases. Table 2 offers a summary of the basic features of the various reform experiences. Table 3 provides a brief chronology of the four sectoral experiences.

TABLE 2 AND 3 HERE

The Jamaican Electricity Sector
The main development in the Jamaican electricity domain since the 1920s has been the emergence and subsequent nationalisation of the Jamaica Public Service Company (JPSCo) as monopoly provider, although subsequent developments represent something of a reversal of this trend. Prior to the 1920s, the sector was dominated by two providers, with a number of smaller systems serving the major provincial towns outside of the Kingston and St Andrews area. In 1923, these two providers amalgamated to become JPSCo. By the 1960s, JPSCo had succeeded in purchasing the smaller providers and to become a monopoly supplier of electricity for public use.

base through creative accounting practices (see Sampson), effectively circumventing control over monopoly profits through the so-called Averch-Johnson In terms of rate-setting, the pre-independence regime (i.e. until 1962) was based on a system of ad-hoc boards appointed by the Governor. Following independence, a US-style regulatory commission, the Jamaica Public Utilities Commission (in the Public Utility Commission Act 1966). Commissioners were appointed by the government of the day, and served for a three-year period. Sectoral oversight responsibilities were conferred upon an Electricity Authority (EA) under sectoral legislation (the Electricity Development Act 1958 was amended by Act of Parliament in 1971). Politicised appointment, combined with electoral competition between the parties to deliver ever-cheaper public services to the middle classes, contributed to populist regulatory policies, and to antagonistic relations between regulators and the provider. JPSCo, for its part, made expansion of the electricity network conditional upon it being given an exclusive, island-wide, long-term franchise—a condition to which the Government in the post-independence period refused to accede. The company, whose prices were controlled by ‘rate-of-return’ style regulation, was also alleged to have inflated its rate affect.
The economic ideology of ‘democratic socialism’ of the Peoples National Party (PNP) administration of Michael Manley (which governed Jamaica from 1972), promoted public ownership of the major industrialised sectors in Jamaica, as well as co-operative ownership in agriculture. Over a period of about five years, the government made successive acquisitions of JPSCo stock, eventually leading to government ownership of 99 per cent of equity in the company, the remaining shares being owned by private investors. Furthermore, the government initiated a rural electrification programme, which involved the establishment of Rural Electrification Programme Ltd, the function of which was to develop parts of the distribution system (which were then transferred to JPSCo).

Following government acquisition of all but a token share of JPSCo (which paralleled developments in telecommunications) regulatory activities were completely subsumed within the responsible Ministry, and the JPUC atrophied. Under the terms of the 39 year All-Island Electric License 1978, JPSCo was appointed the exclusive public provider of electricity, while the Minister was authorised to set rates, and to enforce compliance with the License terms and standards.

Despite a series of World Bank loans between the 1960s and 1980s, by the 1990s the sector required further investment and expansion. This was a result of rising electricity demand and dated infrastructure (and more pressingly, the loss of capacity following the destruction of one of the country’s largest turbines after a fire at the JPSCo Power Station at Old Harbour in 1994). World Bank policy had also shifted by this time, and conditions associated with Jamaica’s Bank-funded structural associated programme constrained public sector investment in the electricity sector. In 1991, the government had taken the decision to liberalise the market for power generation, and agreed an Energy Sector Deregulation and Privatisation Project with the World Bank. The consultancy firm Coopers & Lybrand (as it then was) recommended the vertical separation of the generation from the transmission and distribution (T&D) operations, accompanied by the privatisation of the former, but the Jamaican Cabinet rejected this recommendation. Instead, the government chose to sell the JPSCo as a vertically integrated company, but to augment the company’s generating capacity through the tendering for new generation to meet additional capacity requirements in the short
term. This arrangement was to be bolstered by the establishment of more powerful and independent regulatory oversight.

The first prong of this privatisation strategy, the tendering of private generation capacity was subsequently implemented. The first tender, a build-own-operate contract for a 60MW low-speed diesel-engine plant was secured with a consortium of American and British investors, trading as the Jamaica Private Power Company (JPPC), and a license was issued in 1994 (the plant started operating in 1996). Two further Power Purchase Agreements (PPAs) were reached following subsequent tendering processes. Thus by 1999, three IPPs produced roughly 25 per cent of Jamaica’s electricity requirement.

Although 1995 saw the initial launch of the tendering process for the privatisation of JPSCo, which was to represent the second prong of the private sector development strategy, the process was subsequently abandoned. The government regarded the offers of the two companies, Houston Industries Energy and Southern Electricity International, as unacceptable, each of the companies demanding substantial tariff increases and tendered bids that were regarded as insufficient. In addition neither of the two bidders were willing to assume responsibility for cross-guarantees that the government had entered into with the IPPs (Sampson). After the leading bidder withdrew from the tendering process, the Prime Minister informed Parliament (on October 22 1996) that the privatisation of JPSCo had been put on hold. As this decision breached the conditions under a loan agreed with the World Bank for privatisation of the electricity sector, World Bank support for the Jamaican energy sector was withdrawn.

In anticipation of the intended privatisation of JPSCo, the government had put forward legislation that established a cross-sectoral utilities and infrastructure regulator. The Office of Utilities Regulation Act 1995 followed the ‘British’ model establishing a regulatory agency headed by a Director-General with responsibilities for handling consumer complaints and enforcing the conditions of operator licenses (with the authority to award licenses remaining with the Minister). The Office of Utilities Regulation (OUR) began work in 1997, but the objectives of establishing credible and independent regulation were only partially fulfilled because the
legislation did not specifically grant jurisdiction to the OUR over any of the Jamaican utilities. Formal regulatory authority consequently remained with the Minister, with the OUR acting essentially in an advisory capacity. For a number of reasons (among them ministerial reticence) this anomaly was not addressed, with respect to the electricity sector, until the 2000 Office of Utilities Regulation (Amendment) Act.

Following the failed privatisation of JPSCo, the government in 1997 entered a five-year performance contract with the management of JPSCo. This contract included targets for improved performance, covering improvements in efficiency and performance, as well as in investment in new capacity. The contract also imposed upon the company obligations to provide information to the OUR supplemental to those under the Office of Utilities Regulation Act (which were, as noted, minimal due to the provisions of the legislation). JPSCo performance subsequently improved, though by less than the terms agreed under the contract anticipated, and such improvement was insufficient to alleviate the difficulties facing JPSCo including the inability of the government to offer further loan guarantees necessary to maintain and expand the increasingly dated infrastructure. Furthermore, in 1999 JPSCo was accused of illegally overcharging its customers.

For these reasons, but also because the government anticipated a large budgetary deficit, the government took the decision in 2000 to re-commence privatisation of JPSCo, inviting bids from the companies short-listed in 1996. Only one, Southern Electricity (now trading as Mirant Corporation), was interested in acquiring an unbundled JPSCo as a going concern and the government continued to reject vertical unbundling and following negotiations. A memorandum of understanding was reached between the government and Mirant, and a sale of 80 per cent of the shares in JPSCO for US$201 Million was concluded in February 2001. Some suggested that the OUR (which favoured vertical unbundling of the industry) had been marginalised in this process. Jamaica’s privatisation agency, the National Investment Bank of Jamaica (NIBJ) issued detailed drafting instructions to the OUR for the preparation of a new twenty year All-Island Electricity License, the key terms of which had already been decided. JPSCo was to have the exclusive right to transmit, distribute and supply electricity in Jamaica for a period of twenty years, as well as a three year exclusive right to develop new generation capacity (after which new capacity was to be
established on the basis of competitive tender). More fundamentally, Mirant negotiated an exemption from the Fair Competition Act 1992, although as a surrogate, competition provisions (which were to take effect only after three years) were written into the license. Quality of service standards were written into the initial license with no power on the part of the OUR to pursue unilateral license modifications. The initial X-factor (in the RPI-X pricing formula) was set by the government at 0 per cent, with allowances for the pass through of fuel and exchange rate costs, although the OUR was to be given a more substantial role in subsequent price reviews after 2004. Nonetheless, the privatisation arrangements were successful in attracting external investment. For example, in late 2003, an International Finance Corporation (i.e. World Bank) loan of US$ 127.5 million had been approved for the construction of a further 120 MW combined cycle generation plant at the Bogue power station (in St James, North-West Jamaica), while at the time of writing the OUR was seeking consultancy advice on options for further liberalisation of the sector following the expiry of the three-year Fair Competition Act exemption period, as well as for the preparation of a replacement of the century-old Electric Lighting Act.

The Telecommunications Sector in Jamaica
The early history of telecommunications in Jamaica shares much of the history of the development of electricity. Initially, a number of companies provided telephone and telegraph services in Jamaica on a non-exclusive basis. In 1925, the Jamaica Telephone Company (JTC) acquired the exclusive right to provide services within the Kingston and St Andrew area (the Jamaica Post Office provided services to the provinces), and in 1945 acquired the Jamaica All-Island Telephone License. By the time of independence in 1962, Telephone and General Trust, a British company, controlled JTC. As with the electricity sector, price regulation was conducted by ad hoc rate boards. Legislative authority for licensing and for rate regulation was established under The Telephone Act 1893, which continued to provide the legislative basis for (domestic) telecommunications sector policy until 2000. International services, which commenced with the opening of the first international telegraph connection in 1870 by what became the Cable and Wireless Company (C&W), fell outside this legislation because they were organised along colonial—and hence government-to-government—lines (Spiller and Sampson, Barty-King).
The initial period following independence saw some sectoral and regulatory reorganisation. In 1961, a license was issued to C&W, and was extended in 1968, but with a number of restrictions. In 1971, international operations were transferred to Jamintel, a joint venture between Cable & Wireless (then a British nationalised industry) and the Government of Jamaica. Responsibility for domestic telecommunications regulation was transferred to the JPUC in 1966, while Telephone and General Trust, which was dissatisfied with the failure to grant a rate increase as well as with amendments made to its licence in 1966, transferred its holding in JTC to a North American company, Continental Telephone, in 1967. From 1968, the government began to accumulate equity in JTC through a ‘stamp duty’ scheme whereby, in lieu of a rate increase, the government imposed a levy on telephone bills, revenues from which were remitted to JTC in return for the issuing of shares in JTC to the Government. During this period, the government became frustrated at the (unsurprising, in the absence of a rate increase) failure of JTC, under the ownership of Continental, to enhance the capacity of the network. In 1975, Continental sold its stake in JTC to the Government.

Under the Jamaica Labour Party (JLP) administration of Edward Seaga in the 1980s, interest shifted towards promoting private sector development. After negotiations with C&W (privatised by the UK government in 1982), the Government announced in May 1987 the creation of Telecommunications of Jamaica (ToJ) as a holding company to combine the existing domestic and international telephone service providers (the Jamaica Telephone Company and Jamintel respectively both of which required substantial investment for network expansion and modernisation). The transfer of government shares to C&W proceeded gradually under the JLP government, which intended to retain a controlling 40 per cent stake in the company with 21 per cent being sold to the general public (Wint).

The initial regulatory arrangements, which attracted praise from World Bank sponsored research (Levy and Spiller 1995, 1996, World Bank), were set out in five licenses issued by the Jamaican government to ToJ in 1988. They were issued for a 25-year period, with the option for the licensee to renew the licences for a further 25 years and were based on a simplified rate-of-return mechanism that guaranteed the company an after-tax return of 17.5 to 20 per cent on equity. The Minister of Public
Utilities and Transport was required to adjust tariff levels annually to maintain revenues within the rate-of-return level. This (unprecedented) generous rate of return was mainly financed from the termination of international telephone services, profits from which cross-subsidised expansion the domestic telephone network.

The regime faced almost immediate challenges. Most significantly, the extent of exclusivity of the 1988 licences was contested by a variety of parties. C&W claimed that the set of licences, as a whole, created the expectation of an exclusive right to provide telecommunications services. The legal basis of this was tenuous given that the Telephone Act of 1893 (on which the telephone operator licences were based) at best authorised the government to establish a monopoly over the local wired telephone network. It was more problematic to extend the provisions of the Telephone Act to apply services not envisaged in 1893, such as data transmission, storage and retrieval, value added services or fibre-optic transmission. The legal uncertainty surrounding the extent of exclusivity led to attempts by C&W to obtain clarification from the government. C&W’s position vis-à-vis the Jamaican PNP government was strengthened by the Government’s need to divest its shares (given the country’s worsening financial crisis), the absence of expert advice on which the government could draw, and a policy orientation that regarded monopoly as the only basis for providing telephone service in Jamaica. This allowed C&W to obtain operational control of TOJ in 1989. In order to protect share-sale revenues, Prime Minister Manley agreed to amend the Telephone Act and the licence to respond to C&W’s demands. Subsequently, a Bill was introduced in 1993, which sought to grant C&W the most comprehensive monopoly, but widespread opposition led to the bill’s withdrawal. Further initiatives were pursued only after the 1997 election under a new (and more pro-liberalisation) minister, Phillip Paulwell.

At the domestic level, most aspects of telecommunications regulation were transferred to the Office of Utilities Regulation (OUR) in 1997. As already noted, the OUR lacked formal authority, including absent powers to monitor and challenge C&W. However, the Fair Trading Commission (FTC, established under the Fair Competition Act of 1993 and initially directed by Phillip Paulwell prior to his ministerial appointment) challenged C&W’s exclusivity, but only at the margins, not least because of self-restraint on the part of the FTC, which concluded that the terms of the
C&W licences were a matter for the government and should not therefore be challenged directly. Nevertheless, the FTC’s involvement led to the partial liberalisation in the market for consumer premises equipment (in 1994), C&W’s 1995 decision to allow Internet Service Providers (ISPs) to interconnect with the public telephone network (following action by the FTC and ‘Infochannel’ (an ISP) starting in 1994), and to the settlement between FTC and C&W over the latter’s advertisement of ‘free’ voicemail. Government policy regarding telecommunications policy also changed, endorsing information technology as a crucial aspect of a National Industrial Policy (Government of Jamaica).

Technologically, C&W’s exclusivity was challenged by the threat that consumers would bypass C&W by using Internet-based facilities for their international telephone calls. The Ministry for Commerce, Technology and Industry encouraged this competition by issuing five licenses to VSAT operators (under the Radio and Telegraph Control Act 1973). C&W was unsuccessful in its challenge regarding access to the local network. C&W also sought to challenge the legality of the issuing of VSAT licenses. While action before the Supreme Court was eventually abandoned, the Attorney General argued persuasively before the Court that the Jamaican government had acted unconstitutionally in granting the 1988 licences, and that they were therefore null and void.

At the international level, the Jamaican government sought to signal its changed policy preferences with regard to telecommunications regulation. A joint strategy agreed among CARICOM telecommunications ministers in 1997 altered negotiation tactics of Caribbean governments vis-à-vis C&W and its local subsidiaries. Jamaica also utilised the WTO Agreement to signal its intent to liberalise and to modify its legislative framework (while committing itself to honouring its exclusivity agreement until 2013). This broad commitment was followed by a more detailed framework for the implementation of the WTO obligations, although no timetable was given (Ministry of Commerce and Technology). The US Federal Communication Commission (FCC) also played a significant role in motivating actors in the Jamaican telecommunications domain to seek a renegotiated agreement. The FCC’s 1997 Benchmarks Order diminished international termination rates paid by US operators to
C&W, which had provided the revenues from which domestic network expansion was funded.

The impact of these cross-Caribbean challenges on Jamaica set the context for a renegotiation of the licences between C&W and the Jamaican government in 1999. The resulting agreement contained detailed drafting instructions for new legislation (enacted as the Telecommunications Act 2000) and established a provisional, phased three-year liberalisation policy. The OUR obtained legal powers, interconnection arrangements were specifically provided for, and universal service provisions adjusted to reflect a liberalised market environment. Furthermore, C&W committed itself to enhance and expand the telecommunications infrastructure. At the same time, the Act also protected C&W during the phased liberalisation period, for example, preventing VSAT operators from engaging in bypass services without a license. The agreement marked the end to the legal disputes between C&W and the Jamaican government, although the transition period was marked by considerable (legal and regulatory) conflict between C&W and new competitors, the latter also seeking to challenge government policy in the courts.12

The Electricity Sector in Trinidad and Tobago
The Trinidad and Tobago Electricity Commission (T&TEC) was established (by the Trinidad and Tobago Electricity Ordnance 1945) to generate and supply electricity in the Port of Spain and San Fernando areas. By the 1970s, T&TEC had developed, to become a vertically integrated monopoly, through a combination of expansion and acquisitions (of mainly local vertically-integrated operators). Following independence, Trinidad and Tobago, like Jamaica, moved to establish a US-style rate-setting body, the Public Utilities Commission (TTPUC), established by the Public Utilities Commission Act 1966. One key difference with its Jamaican counterpart was that the jurisdiction of the TTPUC included water and sewerage services in addition to telecommunications and electricity.

The prevalence of locally produced oil and gas in Trinidad and Tobago influenced the subsequent development of the electricity sector significantly. In particular, it attracted industrialisation (particularly from the 1970s), fuelling the expansion of the electricity sector, while generating steadily increasing demands. Until the 1990s, there
were relatively few capacity shortages (although the destruction of a substation transformer in 1982 adversely affected reliability in the North West part of Trinidad, including Port of Spain and the surrounding suburban areas for eight months). Until the fall in oil prices of the early 1990s, the electricity sector was not dependent on development loans, and hence not exposed to demands and policy priorities of multi- or bilateral funding agencies.

From the early 1990s, however, a series of capacity shortfalls and system outages provided the motivation to establish additional generating capacity and improved transmission capacity. However, in the light of lower oil prices and other demands on public finances, the government diagnosed a lack of financial resources to modernise the domestic electricity industry. In order to explore potential policy options, a Commission was established that included top civil servants, politicians and external advisors, which recommended a 49 per cent transfer of ownership of the whole electricity company to the private sector. Cabinet rejected this proposal, choosing instead the vertical separation of the electricity generation and T&D businesses. On the generation side, the Power Generating Company of Trinidad & Tobago (PowerGen) was established with the Government of Trinidad & Tobago retaining a 51 per cent controlling stake, while 49 per cent was transferred to the private sector. Southern Electricity took a 39 per cent stake, with the remaining 10 per cent taken by Amoco, an international oil company (it later became BP Amoco) in consortium with the National Gas Company (NGC). It was anticipated that PowerGen would build new generating capacity. However, efficiency gains in the operation and management of the plant made the immediate construction of further generating plant unnecessary. T&TEC remained 100 per cent government owned, and continued to undertake T&D operations in Trinidad and Tobago.

The unbundling of the distribution and generation businesses was mostly attributable to domestic political factors and less to ideas about the promotion of competition or the intention to overcome asymmetric information between regulators and industry. Transferring the manpower-intensive T&D business to the private sector would have been less acceptable to the powerful trade union movement. Unbundling, therefore, allowed for private sector participation and investment to enhance generating capacity, while reducing the political costs of conflict with the trade unions. At the
same time, the private sector partners had little interest in taking a stake in the distribution business that was felt to be more problematic, involving greater business and political risk. By contrast, interests within the management of T&TEC were antipathetic towards vertical separation and were therefore was, like the government-appointed Commission itself, unhappy with the Cabinet’s decision to reject the Commission’s proposals.

Further capacity increases were realised following a government decision taken in 1999 to establish an industrial park, and for the provision of a 225 MW co-generation plant to supply the park’s power requirements. Plans for the generation facility went ahead, though the industrial park itself never materialised. However Incogen, which operated the co-generation facility, provided the wholly state-owned T&D operator, T&TEC with generating capacity (and at a lower contractual price than that supplied by Powergen). At the time of writing, discussion in Trinidad and Tobago had moved towards the consideration of addition an additional (third) generator to the existing two providers to meet anticipated future demand, while the wider crisis of US-electricity firms led to some speculation of the (partial) nationalisation of the purely private ‘Inncogen’ (following the election of a PNM government), given also allegations about UNC government decision-making during the course of the construction of the plant (which, following the 2002 election, became the subject of a public inquiry).

As in the case of Jamaica, international donor support was enlisted to promote the modernisation of the electricity sector. In Trinidad & Tobago, the Inter-American Development Bank (IDB) provided a grant for the reform of the legislative framework for utilities regulation, which resulted in the Regulated Industries Commission Act 1999, as well as for the provision of the initial Executive Director of the new regulatory body, the Regulated Industries Commission (RIC). The RIC took over responsibility from the TTPUC for regulating water and wastewater services and electricity as well as (at least temporarily—the Government also planned to establish of a separate Telecommunications Authority) telecommunications regulation. Although this new cross-sectoral utilities regulator retained the multi-person board structure of the TTPUC, the activities of the board went beyond mere rate-setting and included such activities as monitoring compliance with license conditions and
handling consumer complaints. Consistent with this enhanced role, the RIC was supported by an enhanced secretariat, of which the Executive Director was head. While the potential scope of activities of the RIC was therefore substantially increased compared with its predecessor TTPUC, the RIC found it difficult to assert itself within the policy domain. For a start, the board of the RIC was not appointed until 2001. And while the RIC was directed to promote competition in the electricity sector, it was not represented on a specific Energy Committee that considered all investment policy matters, chaired by the Prime Minister. The RIC also did not play a part in the regulation of generation prices, as these were governed by long term Power Purchasing Agreements. With respect to T&D operations, although tariffs remained below cost, as well as unbalanced between residential and business customers, T&TÉC had not at the time of writing applied for a rate increase (which was attributed to informal pressure applied by successive ministers of energy, sensitive to the electoral implications of price increases). At the time of writing, the RIC was informally preparing for a rate review, while it had developed a ‘Quality of Service Standards’ performance regime for T&D operations, its first major policy initiative.

The Telecommunications Sector in Trinidad & Tobago

The early history of telecommunications in Trinidad & Tobago shares some features in common with that of Jamaica, including separate domestic and international telephone service providers, and the initial patterns of domestic provision. While private companies provided services within the capital, Port of Spain, the government operated some services rurally. From the 1930s, a British company, the Trinidad Consolidated Telephones Company provided a national service. In 1960, following a prolonged strike, the telephone service was taken over, and a new entity, the Trinidad and Tobago Telephone Company (TELCO) was created. In 1968, a partial (and transient) re-privatisation occurred with the sale of fifty per cent of the shares in TELCO to Continental (who it will be recalled had at the same time also assumed ownership of JTC in Jamaica) although the company returned to full public ownership in 1973.13

As in the case of Jamaica, international services were provided by companies that eventually became Cable & Wireless. C&W continued to provide international communications in a variety of forms. Since 1969, a joint venture between the
governing of Trinidad and Tobago and the Trinidad and Tobago External Telecommunications Company (TEXTEL) provided international services until 1991.

This increase in state ownership since the 1970s reflected the wider government policy preferences of the Peoples National Movement (PNM). Under the theme of ‘localising’ the economy, state ownership was eventually to be transferred to the (domestic) private sector, once it had become sufficiently developed (Adams, Cavendish and Mistry; Mills). In 1986, the first ever electoral defeat of the PNM since independence brought the National Alliance for Reconstruction (NAR) into power. The change facilitated attempts to alter the status quo, partly motivated by the desire to attract investment for infrastructural expansion, partly to gain access to private management expertise. In 1989, after a tendering process, an agreement was reached with C&W West Indies to take a stake in TELCO. The shareholders agreement between the Government of Trinidad and Tobago and C&W West Indies provided for the merging of the international and domestic providers into a new Telephone Service of Trinidad and Tobago (TSTT). The government retained a 51 per cent shareholdership, while 49 per cent were owned by C&W West Indies. The newly formed operator was to provide both domestic and international services for a period of 20 years. TSTT was given the ‘right of first provision’ of new services, while C&W West Indies was granted the ‘right of first refusal’. The Agreement also guaranteed TSTT a minimum rate of return of 15 per cent.

The creation of TSTT coincided with attempts to alter the original telecommunications policy framework. An expert working group had been established in 1987 and advocated liberalisation and regulatory reform, claiming that the previously secret Shareholders Agreement did not establish any form of exclusivity that would prohibit any reform. A Telecommunications Authority Act was subsequently passed by Parliament in 1991, which provided for the creation of an independent Telecommunications Authority. However, TSTT—predominantly PNM-supporting, urban-centred, Afro-Trinidadian, highly unionised and at the time highly profitable—successfully resisted the commencement of the Act (which required Presidential proclamation) following the return of the PNM to power in 1991.
Although the Public Utilities Commission Act 1966 was amended (in 1990) to take account of the concessions granted to C&W/TSTT, few changes were implemented regarding the existing regulatory regime. The PNM, opposed to regulatory independence, established a Telecommunication Division within the Office of the Prime Minister. Its head, the Director of Telecommunication, was to advise on policy and to deal with licences and concessions and technical issues. Thus although the Public Utilities Commission (PUC) had jurisdiction over the setting of domestic tariffs (subject to the statutory minimum rate of return of 15 per cent), there was no regulatory jurisdiction over international tariffs (as in Jamaica, they had been set through inter-governmental agreement). Satellite and other wireless communications for which the Telecommunication Division was responsible were governed by a Wireless Telegraphy Ordinance 1936, which vested licensing authority for these services with the responsible Minister. Regulatory change was restricted to efforts to require TSTT to lease facilities to other parties interested in offering value-added services, including Internet connection as well as paging services.

Further reforms were sidelined until the election of the United National Congress under Prime Minister Panday in 1995. Trinidad & Tobago’s accession to the WTO Agreement on Basic Telephone Services committed the state to liberalisation after 2010. The Schedule of Specific Commitments (intended to codify existing commitments) restricted progress towards liberalisation, by formalising C&W/TSTT's (contested) exclusivity. Competition in basic services was not permitted until 2010, while value-added services were only permitted on TSTT's network facilities until that time.15

A new working group was set up to consider the telecommunications and broadcasting sectors together. It suggested that liberalisation of cellular services (to which the Government was committed under its obligations to the WTO) was possible under the existing Wireless Telegraphy Ordinance 1936. Subsequently, a second provider was sought, which was required to be owned by at least 51 per cent by nationals and to be registered company in Trinidad & Tobago. The (WTO-proofed) evaluation procedure required the establishment of an advisory Licences Committee to the Prime Minister. However, the whole process ended in gridlock following the decision to include within the final bidders Open Telecom, a company
partially owned by the family of Senator Lindsay Gillette, the Telecommunications Minister. The challenge was directed at the exclusion of one bidder, the Caribbean Communications Network (CCN – a consortium led by Ken Gordon’s Express Group of newspapers, which was regarded as hostile to UNC Prime Minister Panday) from the final shortlist, on the advice by the Director of Telecommunication. This contrasted with the advice of the Licences Committee (established separately from the Telecommunications Division). PriceWaterhouseCoopers reviewed the procedure, and judged that “the results of the Evaluation of the Proposals reflect fairly the application of the Criteria used to assess the Proposals”. CCN challenged the decision, and the Trinidad and Tobago High Court of Justice held the selection invalid on the grounds of breach of agreed procedure, citing strong and partial statements by the Prime Minister against The Express newspaper as evidence of potential and actual bias.16

The working group’s Draft Telecommunications Policy recommendation of an overhaul of the overall regulatory framework was largely implemented in the form of the Telecommunications Act 2001. The Act established a Telecommunications Authority, which was to take over the responsibilities of the Telecommunications Division and rate-setting responsibilities (expanded to include international tariffs). The authority to grant licences (‘concessions’) was to remain with the Minister. However, although provisions establishing the Telecommunications Authority took effect on the accession of the Act by Parliament, the remaining provisions in the Act required proclamation by the President. Following the December 2001 election result and subsequent political and parliamentary stalemate, the absence of any parliamentary consensus prevented any further legislative development until the PNM’s election victory in autumn 2002.

The establishment of the RIC (discussed in the previous section) failed to impact on the regulation of the telecommunications sector. The Regulated Industries Commission Act 1999 included jurisdiction over domestic and international telephone services, although these were to be relinquished once the Telecommunications Act 2001 took effect. The RIC did not, however, have jurisdiction over cellular, data or value-added services, which remained with the Telecommunications Division. Further, as the Board was not appointed until 2001, and during the interim period in
which the RIC had jurisdiction over aspects of telecommunications, no application was made by TSTT for a rate review.

Telecommunications reform has therefore been characterised by persistent gridlock. Domestic political adversarialism, union opposition and disputes over institutional arrangements concerning the appointment of Telecommunications Authority Board members and procedural controls over the exercise of Ministerial discretion delayed reform of regulatory institutions. Conflictual relations between government and incumbent also contributed to reform delays. Following the 1997 FCC Benchmarks Order, TSTT supported new legislation incorporating a phased transition towards liberalisation (similar to the approach taken in Jamaica and Barbados and, after some dispute, in the Eastern Caribbean states). The (then) UNC government instead insisted on a ‘Big Bang’ approach, while also placing the state-owned shares into a holding company, National Enterprise Ltd. Liberalisation within the existing statutory framework was stalemated by the procedural irregularities in the selection of a second cellular operator as well as delaying tactics by the partially state-owned incumbent.\footnote{17}

**IV Comparing Countries and Sectors**

This section turns to the assessment of the regulatory state hypothesis in the light of the three ways of comparison, cross-national, cross-sectoral and comparison across time. We first assess the degree of conformity between observed patterns in the development of regulation across countries, sectors and time, which we argue shows evidence of the ‘withering’ of the regulatory state in the Caribbean in the sense that although the functional predictions 1) to 3) in Section II are not met, there is at best mixed evidence of dysfunctionality as predicted by 4). We conclude by accounting for the observed ‘withering’ patterns.

**Cross-national comparison**

As predicted by implication 1), a national patterns analysis of the regulatory state would be expected to observe more of a regulatory state approach to economic governance in states under greater constraints to place greater emphasis on efficiency over redistributive policies in their utilities sectors. In fact, cross-national analysis supports this prediction, though some puzzles remain.
As a very broad indicator of an external constraint on national governments, we take the exposure of the two national governments to the funds of multilateral organisations. As Figure 1 suggests, Jamaica has seen far more involvement in quantitative terms as well as in numbers of projects when compared to Trinidad and Tobago. Thus, of the total of 46 World Bank projects, 12 involved the expansion of infrastructure (not including here special facilities made available for administrative modernisation). By contrast, in Trinidad and Tobago a total of 20 projects involved World Bank funding, three of which involved infrastructure projects. The Inter-American Development Bank points to a similar (although less asymmetric) pattern. Among Jamaica’s 14 lending projects approved until 30 September 2002, 21.2 per cent of all approved loans (slightly more than US$ 345.4 million) where devoted to energy or transportation and communications projects. In Trinidad, among a total of 7 approved loans, 44.4 per cent of IDB loans (amounting to slightly less than US$393.1 million) were devoted to energy or transportation and communications. Although these are extremely rough indicators, they at least offer some form of measure of an external constraint on domestic governments that may force them to concentrate on ‘efficiency’ rather than on ‘redistribution’.

FIGURE 1 HERE

Based on these observations, we should expect a larger degree of regulatory state – type governance in Jamaica than in Trinidad & Tobago. National patterns analysis seems to confirm this particular prediction. In terms of ownership structure, Jamaica seems at first sight to have moved further in the direction of private provision of services (or aspects of services), having completely transferred ownership to C&W in telecommunications whereas Trinidad & Tobago (through NEL) maintained a majority of state ownership, and continued to appoint the majority of members to the Board of TSTT. Similarly, by 2002, the Mirant Corporation had assumed majority ownership of the Jamaican vertically integrated JPSCo, though the Government of Jamaica’s remaining 20 per cent came with the right to appoint a minority of members to the Board of the company. By contrast, in Trinidad and Tobago T&TEC, and the majority of the PowerGen company remained in state ownership. In terms of market structure, Jamaica had undertaken substantial reform of the telecommunications sector through its phased liberalisation programme. This
contrasts starkly with the attempted ‘big bang’ market opening in the telecommunications sector of Trinidad and Tobago, which had nonetheless not led to any new entrants in core telecommunications services. In the electricity sector, although the reverse achieves to be true, this is somewhat illusory: although there was a formal separation between power generation and T&D operations in Trinidad and Tobago, there was in effect no continuous rivalry in generation since electricity was sold under long term PPAs.

In terms of the allocation of regulatory authority, both countries followed broadly similar patterns of cross-sectoral regulation, though Trinidad and Tobago had enacted legislation provided for the hiving off of telecommunications regulation to a separate Telecommunications Authority. Furthermore, both countries adopted approaches which reserved substantial powers to sectoral ministries, though (in line with our predictions) there was (at least after 2000) a greater degree of delegation and greater formal regulatory independence in Jamaica. For example, in terms of in Trinidad and Tobago, the ministerial Telecommunication Division retained responsibility for regulating international services, in addition to licensing, which remained a ministerial function in both states, with the RIC responsible only for domestic tariff setting. In electricity in Trinidad and Tobago, it was claimed that there was de facto an unofficial ministerial veto over any decision by T&TEC to seek a rate review, as a consequence of the continued state ownership. In Jamaica, rate-setting was to be undertaken by the OUR in accordance with pricing formulae set out in the license, though it is significant that the initial price cap of RPI-0 for JPSCO was agreed between the government and Mirant

In terms of decision-making style, there was considerable formality in both states, though (again, in line with the hypothesis) this was more prominent in Jamaica. In the Jamaican electricity sector operational standards for both the IPPs, and latterly for JPSCO were set out in license terms, though some were critical of the effective relegation of the OUR to a standards monitoring and enforcement role vis-à-vis JPSCO. Wholesale electricity prices in Trinidad and Tobago were completely hardwired by the relevant PPAs, though the prices charged to consumers fell within the jurisdiction of the RIC which had, if anything, more discretion than its Jamaican counterpart. In terms of quality of service standards, these had traditionally been
largely implicit—and enforcement measures limited to informal persuasuon—in Trinidad and Tobago (see Lodge & Stirton 2001), though at the time of writing a set of more formal quality of service standards had been developed.

It is therefore suggested that the shift towards the regulatory state in Jamaica has been on the whole more pronounced, allowing us to speak of distinct ‘national styles’ of regulation. In Jamaica, this can be characterised in the following terms: wholly or predominantly privately-owned provision of services with plural operators (although the extent of actual rivalry differs between sectors); independent monitoring and enforcement of license conditions as well as price-setting by the cross-sectoral OUR, with the allocation of licenses reserved to ministers; and a decision-making style characterised by a high degree of formality, based on license conditions. In Trinidad and Tobago the national style of regulation can be characterised as following a predominantly ‘mixed enterprise’ model with minimal rivalry (through there was evidence of some competition ‘for the market’); contested regulatory authority between ministries and the RIC; and a continued ministerial involvement in decision-making.

Cross-Sectoral Comparison
The existence of distinct national styles identified above should not be taken to imply a complete consistency of approaches across sectors. The question therefore arises as to whether such sectoral differences or similarities enhance or qualify support for the ‘regulatory state hypothesis’. In fact, as noted at the outset, telecommunications and electricity are somewhat similar industries in this respect: both are capital-intensive network industries, with high sunk costs and asset specificity, with substantial elements of natural monopoly. For this reason, we would expect to observe a high degree of similarity between the electricity and the telecommunications domain: in other words, differences between these two particular sectors should matter less than should differences between countries.

In terms of ownership and market structure, there was overall, a greater degree of public ownership in electricity than in telecommunications: in Jamaica, following the majority-privatisation of JPSCo, the government retained a twenty per cent stake (which it was prevented by the terms of the sale agreement from selling for a further
three years), while in Trinidad and Tobago, T&TEC remained wholly in state ownership, as did the majority holding (51%) in PowerGen. Only Innogen, the smaller IPP was a wholly private provider. By contrast telecommunications had been completely privatised in Jamaica since 1991, while TSTT in Trinidad and Tobago had been 49% owned by C&W since its creation in 1989. Market structure exhibits mirror-image developments, with greater fragmentation in Jamaican telecommunications compared with electricity, compared with the Trinidad and Tobago position of vertical separation in electricity with no (at the time of writing) new entrants into core telecommunications services.

The allocation of regulatory authority shows a substantial consistency across sectors, reinforced by the fact that both states adopted cross-sectoral regulatory approaches (pending the establishment of the Telecommunications Authority in Trinidad and Tobago). Such differences as can be detected exhibit a greater degree of regulatory authority exhibited by independent agencies over telecommunications than electricity—though only if we ignore the problems in establishing the Telecommunications Authority in Trinidad and Tobago, a questionable assumption if we look at the history of reform initiatives in that country. Thus substantial aspects of electricity sector price-setting was undertaken at the ministerial level—negotiating Power Purchase Agreements in both countries, setting the initial price cap for JPSCO in Jamaica. Further, as discussed above, although in Trinidad and Tobago the RIC assumed responsibility for setting T&TEC’s prices, some had suggested that state ownership of T&TEC led to an unofficial ‘ministerial veto’, preventing the company from applying for a rate increase. By contrast, there was substantial delegation of regulatory responsibility in the electricity sectors of both states, to the RIC and the OUR respectively though (again, at least until the Telecommunications Authority) assumed its duties, ministerial regulation of international telecommunications services persisted and the RIC had not been called upon to exercise its responsibilities with respect to domestic tariffs.

In terms of the third dimension of the regulatory state, the shift from discretion to formal rules, both sectors exhibited comparable degrees of policy-making in formal rules. In Jamaica, the All-island Electricity License 2002 represents an extreme example of hardwiring, while in telecommunications, the arrangements under which
services were provided were ‘regularised’ following the Telecommunications Act 2000. In Trinidad and Tobago there was comparatively less formality overall, with no distinct pattern emerging between sectors, despite the establishment of formal Quality of Service Standards in telecommunications in 2002.

Summarising the foregoing, no clear sectoral patterns seem to have emerged in terms of regulatory-state type governance. Although there is greater private ownership overall in the telecommunications sectors of the two countries than the electricity sectors, as well as a potentially greater role for independent regulatory agencies, in terms of the latter, this has to be qualified by the lack of distinct sectoral patterns in terms of the formalisation of regulatory relations. To some extent, this is to be expected, given the similar choice of sectors—indeed, had there been noticeable sectoral differences this would count as evidence against the regulatory state hypothesis. We finally turn towards the analysis of regulatory developments across time.

Temporal Patterns Analysis
Looking across time, the analysis should reveal, according to the regulatory state hypothesis, variations in institutional arrangements reflecting variations in the complexity of the regulated domain. Assessing patterns over time seems to suggest, at first sight and both across countries and across sectors, that there has been a move towards privatisation, delegation of policymaking authority and formalisation of relationships across time; further, this seems to be correlated with a greater degree of reliance on external funding in both countries and sectors, which would imply a need to restrain the political impulse to ‘redistribute’ assets from investors to consumer-voters. Thus, at first sight, the regulatory state hypothesis receives some support from cross-temporal analysis.

However, such a claim should not be overemphasised: given the ambiguity in terms of explaining both broad cross-sectoral similarity and cross-national variations, there can only be limited support for the regulatory state hypothesis in cross-temporal analysis. After all, this comparison over time is at least as compatible as the sometimes-asserted ‘mimicry’, ‘herding’ or ‘bandwagoning’ explanations for the adoption of regulatory state type arrangements.
Assessing the withering of the regulatory state hypothesis

The regulatory state hypothesis seems to receive most, albeit not full, support in the case of Jamaican telecommunications, but far less in the other three domains under investigation. Countries appear as an assembly of sectors with distinct experiences. How can we account for this apparent withering of the regulatory state hypothesis in the regulation of telecommunications and electricity in two Caribbean states? Following the ‘ladder of abstraction’ method suggested for actor-centred institutional analysis, we first focus on institution-based explanations (defined here in the narrow rule-based definition of institutions) before moving towards more actor- and idea-centred explanations, where institution-based explanations are found to be lacking (Mayntz and Scharpf 1995).

Turning to institution-based explanations first, the different patterns in the four cases seem a surprise in that both Jamaica and Trinidad and Tobago are widely considered to be ‘derivative Westminster/Whitehall’ systems (Subramaniam 1977). While therefore the broad political-institutional rule system and its effect – namely a two-party system with civil service systems that had moved considerably from its ‘neutral competence’ days, it was differences in sectoral rule-systems that influenced the different patterns in the various cases. First, there was substantial difference in terms of penetration of international regimes on national rule systems between the telecommunications and the electricity regimes. In particular, the Jamaican government used the presence of international arenas (CARICOM and WTO), while also being far more exposed (as was C&W) to the financial consequences of the FCC’s decision to unilaterally reduce international termination rates. In the electricity domain, international organisations demanded the introduction of private capital and of independent regulatory institutions (to which both states responded), but at the same time both governments responded with substantial discretion. In the Jamaican case, this involved the detailed prescription of technological options while later abandoning the initial tendering process in the mid-1990s. In Trinidad, the organisational structure chosen for regulatory reform in electricity reflected as much trade union as well as international private capital preferences.
However, both the national political institutional rules as well as differences in international penetration of sectoral rules do not fully explain the ‘withering’ of the regulatory state hypothesis, as explored above. It offers some explanation for the developments across sectors, and it highlights the differential impact of international rules across states (and sectors), but it does not account for the observed variation of regulatory patterns, in particular when it comes to the choice of ownership structure and the allocation of regulatory authority as well as ‘style’ of regulatory reforms.

These differences, and thus the various observations of ‘withering’ can be better accounted for by the different actor constellations within the national political systems. In contrast to Jamaica that had witnessed regular change in party government until the early 1990s, one-party government by the PNM had dominated Trinidad & Tobago until 1986. This one party rule was also linked to the ethnic-basis of much of Trinidadian politics and administration that was not present in the Jamaican case. Not only were trade unions closely linked to particular Trinidadian parties, the public sector had also been traditionally regarded as a ‘second’ employment market for PNM constituencies (with its largely African-Caribbean supporter base) and the relevant public sector unions were therefore supportive of the PNM. Its adversary (in the 1990s), the UNC, could rely on substantial private business interests that were also linked to interests that were expecting to benefit from access to a rapidly liberalised telecommunications market (which became evident in the parties’ divergent preferences in a ‘big bang’ (UNC) or ‘phased’ (PNM) liberalisation). Thus, while both parties (when in government) were largely supportive of encouraging liberalisation, the inherently contested nature of Trinidadian politics in the 1990s as well as constituency considerations meant that any attempt at telecommunications regulatory change provoked hostility and opposition. Similarly, choices in electricity had been dominated by Trinidadian political actor constellations; the choice of vertical separation rather than emerging from the transplant of neo-liberal policy templates from international actors emerged in the purely domestic calculus of placating labour unions while attracting the necessary capital infusion for additional generation capacity.

Actor constellations in Jamaica differed considerably. The main cleavage on regulatory reform in network industries ran across both major parties (and there was
government stability in Jamaica throughout the 1990s); therefore key conflicts during regulatory reform processes took place within the government and between government and incumbent operator. Thus, in telecommunications there was a prime ministerial emphasis on insulating the telecommunications domain against more interventionist pressures, first by installing a reform-minded and pragmatic minister (Paulwell) following a general election in 1998; and second, by centrally promoting regulatory reform. This differed substantially in the electricity domain: here the interventionist groups within the Jamaican PNP government, placing the OUR in a mere ‘advisory capacity’ (and also sidelining the Jamaican Fair Trade Commission).Political actor constellations were also reflected in ownership distribution. Trinidadian network industries were overshadowed by a party-political preference of maintaining and creating domestic ownership (by 51 per cent government ownership, or 51 per cent domestically-held shares, as in the case of the second, voided, cellular license issue). This allowed negotiations between the incumbent and the government to be far more ‘internal’ to the political domain than the negotiations between C&W and the Jamaican government.

This analysis points to a much richer empirical pattern than generated by a mere reliance on the broad regulatory state hypothesis. Furthermore, an actor-institutional framework allows the analysis to move beyond claims established by the rather broad ‘national’ or ‘sectoral’ patterns explanations or variants of the regulatory state hypothesis.

V Conclusion
At the outset, we have claimed that the ‘rise’ of the regulatory state claim represents a hypothesis that allows to be assessed in the light of empirical evidence. This conclusion returns to this discussion.

The ‘regulatory state’ in the two states and the two sectors ‘withered’ to some extent in that different reform trajectories were evident and different types of institutional arrangements were employed, some providing for more formal and actual independent regulatory authority, formalised relationships and ownership patterns. The regulatory state also ‘withered’ to different degrees in the sense that the
paradigmatic features of the regulatory state (as set out in Table 1) were substantially modified (and arguably weakened) in their implementation.

As a very broad explanation for institutional change in the Caribbean, the regulatory state hypothesis has received some support: both Jamaica and Trinidad & Tobago have implemented reforms involving privatisation and market liberalisation, delegation of policy-making to independent agencies and formalisation of relationships. However, the hypothesis has proved less effective in explaining differences in the extent of reforms across countries and sectors. Furthermore, these differences in extent could not be explained in the light of ‘national contexts matter’ or ‘sectors matter’ assumptions. In part, this has been because the variables are difficult to measure (the extent to which policies aim to promote efficiency or distributional objectives, for example) or depend on unavailable data. At the same time, even where the hypothesis does suggest differences on which relevant data are available, observations run counter to the predictions. For example, other than as a policy and legislative drafting ‘mistake’, why was there not a genuine delegation to the Office of Utilities Regulation in the five years following the 1995 legislation? And if it was a mistake, why did Jamaica not pay the price of its ‘incompetence’ in the form of lower telecommunications sector development (which was comparable to Trinidad & Tobago at the beginning of the 1990s)?

The ‘withering’ of the regulatory state in the comparative analysis in the Caribbean therefore occurred at two levels, the empirical, in that institutional arrangements showed substantial variety that went beyond the usual properties associated with the regulatory state, and the analytical, in that this institutional variety only partially supported the regulatory state hypothesis. It may be that this formulation was particularly functional, but it was derived from the implicit and explicit assumptions of the foundational accounts of the supposed rise of the regulatory state in contexts previously defined by state owned network industries.

While therefore the regulatory state hypothesis provides for some mileage in predicting institutional arrangements given particular contexts and circumstances, it cannot account for institutional variety and ‘speeds’ of regulatory change. Even when considering two lesser developed states with broadly similar institutions, with
resource-dependency on international organisations and the presence of international expertise and transnational companies, there was a diversity of templates that were adopted as a result of the interaction between actors rather than single-factor or structurally-determined patterns.
Bibliography


### Table 1: Dimensions of the regulatory state

<table>
<thead>
<tr>
<th>Dimension</th>
<th>Particular issues</th>
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<tbody>
<tr>
<td>Ownership and market structure</td>
<td>Ownership distribution (debates about degree of transfer of entity from public to private sector, type of ownership transfer, and about degree of national-non-national shareholders)</td>
</tr>
<tr>
<td></td>
<td>Structure of policy domain (horizontal fragmentation) (debates about degree of domain fragmentation)</td>
</tr>
<tr>
<td></td>
<td>Vertical separation (debates regarding the fragmentation of the industry between different elements of the service production stages)</td>
</tr>
<tr>
<td>Allocation of regulatory authority</td>
<td>Authority and organisation of regulatory agency (debates regarding whether regulator should be focused on sector, on industry or should be cross-sectoral; what type of leadership should be provided for (collective or individual), types of appointment procedures and how funding for regulatory activity should be provided (taxpayer or industry)</td>
</tr>
<tr>
<td></td>
<td>Distribution of regulatory competencies across actors (how resources are allocated across regulatory domain, their formal authority)</td>
</tr>
<tr>
<td>Decision-making style</td>
<td>Formalised relationships between actors in terms of social obligations, price control and enforcement (procedures and style, e.g. adversarial vs. co-operative, diversity of regulatory instrument deployment, e.g. types of information gathering and behaviour modification tools)</td>
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</tbody>
</table>

Source: Adapted from Loughlin and Scott 1997, Lodge 2002.
Table 2: Comparing regulatory states in the Commonwealth Caribbean (as of 2003)

<table>
<thead>
<tr>
<th>Ownership and market structure</th>
<th>Jamaica</th>
<th>Trinidad</th>
<th>Electricity</th>
<th>Jamaica</th>
<th>Trinidad</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gradual privatisation - full C&amp;W ownership of incumbent. Competition via ISP (Infochannel) and on cellular markets (Digicel, Centennial and AT&amp;T)</td>
<td></td>
<td></td>
<td>Incumbent TSTT 51% government, 49% C&amp;W ownership. Competition restricted to paging services and certain value-added and data services.</td>
<td></td>
<td>Full state-owned T&amp;TEC. Partial privatisation of power generation company PowerGen (minority shareowners BP and Mirant). Third independent power generator Incogen</td>
</tr>
<tr>
<td>Allocation of regulatory authority</td>
<td>OUR, Ministry and FTC; funding by regulated industry; cross-sectoral regulator, DG</td>
<td>Telecommunications Authority, Ministry (and Telecommunications Division). chief executive plus cross-partisan, part-time policy making board</td>
<td>OUR, Ministry cross-sectoral regulator. DG, funded by regulated industry; FTC excluded by the terms of JPSCo license until 2004.</td>
<td>RIC (cross-sectoral regulator apart from telecommunications), currently no competition legislation in T&amp;T, chief executive and board structure of RIC.</td>
<td></td>
</tr>
<tr>
<td>Decision-making style</td>
<td>OUR as decision-making, but ministerial arbitration role</td>
<td>Ministry as dominant regulatory authority, no sectoral regulator in operation</td>
<td>Side-lining of OUR in politically sensitive issues</td>
<td>Informal ministerial veto on rate applications of by T&amp;TEC; long-term contracts for electricity supply sideline RIC</td>
<td></td>
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</tbody>
</table>
Table 3: Contrasting reform styles

<table>
<thead>
<tr>
<th></th>
<th><strong>Telecommunications</strong></th>
<th><strong>Electricity</strong></th>
</tr>
</thead>
</table>
| **Jamaica**          | Privatisation and substantial liberalisation  
following period of private monopoly provision since 1988. Liberalisation in cellular services provides for awards to a number of operators | Privatisation with negligible liberalisation  
Since 1980s, number of independent power suppliers have supplemented vertically integrated JPSCo. Partial vertically integrated sale of JPSCo |
| **Trinidad & Tobago**| Partial Privatisation and negligible liberalisation  
Mixed enterprise TSTT (51% government owned) monopoly provider since 1989. Repeated stalling of attempts to introduce liberalisation. | Partial privatisation with limited liberalisation  
Partially-privatised generation in mid 1990s. State-owned transmission and distribution by T&TEC. |
Figure 2

Source: International Telecommunications Union, World Telecommunications Indicators
Figure 1

Source: World Bank database on project documents
1. Department of Government and ESRC Centre for Analysis of Risk and Regulation, London School of Economics and Political Science, and Norwich Law School and Centre on Competition and Regulation, University of East Anglia respectively. We are indebted to the British Academy/Association of Commonwealth Universities, STICERD and the Norwich Law School Staff Research Fund for financial and institutional support. This study was presented to the staff research seminar at the Norwich Law School at an early stage, and we are grateful to the participants for helpful comments and suggestions. In addition we wish to thank the following individuals who helped with this article in different ways: Malfried Braut, Franklyn Brown, Jurgen De Wispelaere, Ansord Hewitt, St Clair King, Catherine Waddams, Patrick Watson. This study also owes a debt to numerous interviewees in Kingston, Jamaica, and Port of Spain, Trinidad, and who by convention remain anonymous.

2. Admittedly, Majone sees other, more historically contingent factors, such as attempts by the European Commission to expand the range of its influence over multiple policy domains without the capacity to increase its budget. Here we concentrate on general rather than historically specific explanations for the rise of the regulatory state.

3. Under the Power Purchase Agreement (PPA), most business and commercial risk was diverted from JPPC. However, the company assumed some operational risk, and as it transpired, has repeatedly paid penalty charges under the PPA because of capacity shortfall resulting from poor quality standards in the initial construction of the plant.


5. In 1991 the Government of Jamaica had approved an automatic adjustment clause (or ‘fuel band’) in JPSCo’s tariff structure, allowing it to pass through fuel and foreign exchange costs. As the oil price fell during the latter half of the 1990s, the PPAs agreed with the IPPs became increasingly uneconomic. Instead of decreasing in line with the drop in oil prices, the fuel band remained constant, with the revenues used to cross-subsidise payments the PPAs with the IPPs. Following public criticism by the OUR and others, the responsible minister claimed that this policy had been endorsed by Cabinet.

6. For further information on the sale, as well as on the privatisation strategy, see Ministry Paper: Privatisation of JPSCo (2001). The interested reader may also consult Sampson (2002).

7. Readers may also consult the detailed account provided by Spiller and Sampson (1996), though this only covers developments up until the early 1990s.

8. A new company, Jamaica Digiport Ltd was established as a joint venture between C&W and AT&T to utilise Jamaica’s potential to provide low-cost call centres to the North American market.


10. During the late 1980s and early 1990s Jamaica’s expansionist monetary policy led to hyperinflation, which peaked at 80% in 1992.


12. Infochannel successfully challenged the legality of the three-year transition period at first instance, although this decision was overturned on appeal. At the time of writing, Infochannel were contemplating an appeal to the judicial committee of the Privy Council.

13. The Telephone Communication Ordinance 1898 provided the legal basis for licensing domestic services in the period up until the entry into force of the Public Utilities Commission Act 1966. The Wireless Telegraphy Ordinance 1936 (still in force at the time of writing) provided the basis for long distance radio connection.

14. The domestic licence was established under authority of the Telecommunications Act. The international licence lacked a statutory basis, but was arguably protected by the Shareholders Agreement. Under its WTO GATS agreement, the T&T government committed itself to the exclusive provision of internal and external services by TSTT for the duration of the license.


17. Some accused TSTT of using this ‘breathing space’ to buy up vital cell sites, making it difficult for new entrants to establish effective service coverage.

18. Elsewhere we suggest that the ‘drafting errors’ were not part of an attempt to ‘hardwire’ the regime, as Levy and Spiller would suggest. In their analysis, Jamaican development was possible because of the non-
discretionary nature of the initial license. We suggest that even at the time of the initial deal between the Jamaican government and C&W, such a claim would require extreme short-sightedness among the actors involved.