Politics and the regulatory state: the difficult case of Britain's railways[1]

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Abstract

The regulatory state clearly differs from its forerunner, the 'providing' or 'welfare' state in that the roles of the state, civil society, business and industry are more clearly defined and delineated. This leads to a crucial interface in the regulatory state between the democratic world of politics and government and the technocratic world of regulation and industry. This paper analyses the functioning of this divide drawing on the example of UK railways. The UK utilities can be seen as a paradigm case of the regulatory state but the rail sector stands out as a case where the reforms have been seriously problematic. Some see this as a failure of the regulatory state, in particular a failure to control political intervention in the key divide between the democratic and technocratic worlds. This paper considers the reforms that have been proposed to overcome these problems which focus on a clearer and more limited definition of the interface. It is argued, however, that these proposals are too simple and abstract and underplay the complexity of deeply embedded policy norms and processes. The challenge for politics and the regulatory state and its analysts is how to incorporate new ideas on regulation and economic organisation into established political and policy processes. A 'one size fits all' approach seems, like the reform of the UK rail sector, to be doomed to failure.

[1] This is a first draft. I think it contains some important issues and questions on the nature of the regulatory state, particularly the relations between the government and politics (the world of democracy) and regulation and industry (the world of technocracy). Fleshing out and clarification is required. Comments, of course, are welcome.

1. Introduction

The regulatory state is often defined in terms of the roles of state and non-state and organisations. These contrast with the forerunner of the regulatory state: the ‘providing’ or ‘welfare’ state. A commonly used metaphor to depict the different roles is one of ‘steering’ - a process of directing and guiding - and ‘rowing’ a process of service provision or, more broadly, of carrying out an activity (Jordana and Levi-Faur, 2004, p12; Levi-Faur, 2005). While the providing state undertook both the tasks of steering and rowing, the regulatory state only steers; the rowing function is undertaken by civil society, business or industry. These depictions are of course crude ideal types: change has not been abrupt and sudden and there have been many overlaps and similarities. Nevertheless, the ideal types represent important changes that have taken place in the political economies of many nations in the last decades of the 20th century and can contribute to a better understanding of their form and operation.

From a political economy perspective an important reason for the clear division of labour between the state, business and industry is to create a more predictable and stable environment for the latter. This is more likely to promote investment, innovation and allow for a more effective functioning of the market. Politically defined public interest objectives mean there is, of course, a necessary and important connection between the state and business and industry - between the steerer and the rower. In order to engender the predictability and stability of this connection, state intervention in business/industry (steering), should be technocratic based and rational for reasons of ‘credible commitment’ (Thatcher and Stone Sweet, 2002). This is achieved by the delegation of regulatory tasks to regulatory authorities which are independent of political control. Independent regulators thus act to convert the uncertain, unpredictable and often non-rational world of politics and policy-making, to the more predictable, stable and rational environment necessary for business and industry to prosper.

The regulatory state differs from its forerunner in that the roles of the state, civil society, business and industry are more clearly defined and delineated. Although there is a clear separation of tasks, steering and rowing must be effectively connected and combined. Interfaces thus become crucially important; one of the key features of the regulatory state is the formalisation of inter-institutional relations (Levi-Faur, 2005).

Perhaps the most crucial divide and interface in the regulatory state is that between the democratic world of politics and government and the technocratic world of regulation and industry. What sets the democratic world apart in the regulatory state is that political and state intervention is to be formalised, defined and limited; there are constraints on policy-makers and policy change (Jordana and Levi Faur, 2004, p12). It is regulatory authorities which often straddle this key divide within the regulatory state. They inhabit the steering world associated with the state and the technocratic world associated with business and industry.

Britain, as one of the pioneers of the regulatory state, is a paradigm case of the regulatory state. The transformation since the 1980s of the utility industries, (telecommunications, gas, electricity, water, transport - rail and air), perhaps more than any other area of modern life, defines and depicts the shift from the providing state to the regulatory state. From nationalised state monopolies, exemplars of the providing state, the utilities have moved to regulated privatised industries, paradigm cases of the regulatory state. Although the transition has not been without problems and turbulence, the new settlement has become embedded and many see the transformation as a success. Of all these sectors, however, the transition has been the most painful and turbulent in the rail sector. Despite many different views on the organisation of the industry, there is a general consensus that the privatisation and liberalisation of the rail industry was the least successful among all the utility industries.

While many diagnoses of the problems of the rail industry focus on industry structures, some focus on the problems of politics and political intervention (Glaister, 2005; Winsor, 2004). The argument runs that since the privatisation and liberalisation of the industry in the mid-1990s political intervention has gone far beyond that which is acceptable and appropriate for the effective functioning of the industry as a private regulated industry. This raises the question whether the problems of the UK rail industry can be understood and explained in terms of the functioning of the regulatory state. A further question is whether there are any broader lessons on the transition to and development of the regulatory state that can be learned from the UK rail case. Does it show the limitations of the regulatory state, the difficulties in the transition, or the failure of politicians to understand the form and the imperatives of the regulatory state?

The paper firstly sketches out in more detail the key relations in the regulatory state, particularly in the world of democracy and technocracy. It follows with a discussion of the problems of the UK rail sector and arguments that these were primarily due to political intervention. The next section considers the ideas for better government – regulator relations, the central area of the democracy – technocracy interface. The aim of these ideas is to set up a clear and simple interface between government on the one side and regulation and industry on the other; in effect to define what is legitimate and illegitimate political intervention. The following section provides a critique of this, particularly the problem of defining legitimate political intervention when the problems of the sector have led to strong politics and deeply contested ideas on the organisation of the sector. A particular problem with the argument of the critics of political intervention in rail, and the regulatory state more generally, is that they are closely attached to a neo-liberal economic rationale. In berating the politics that draws from other economic rationales they, in effect, call for a suppression of political and economic contestation. Space, however, is needed for these contestations and more sophisticated and ad hoc models of political intervention are required rather than the 'one size fits all' model which emanates from advocates of the neo-liberal regulatory state.

2. Politics and the regulatory state

Figure 1 is a (highly simplified) sketch of the roles and relations of politics, government, regulation, industry in the regulatory state. 'Politics' is more a process than a particular organisation as it inevitably involves non-state, governmental, occasionally regulatory actors, as well as elected representatives. Nevertheless, this simplification is important for the analysis of the regulatory state because of the centrality of the delineation and limitation of roles and the formalisation of inter-institutional relations.

The key roles and relations of the various components can be outlined starting from the left. As noted, 'politics' is more a process than a formal organisation and can be seen as the process of inputing three key demands from non-state actors and organisations and from political representatives into government. These demands are (i) pressures from market and conduct failures, (ii) pressures from public opinion ('opinion responsive'), (iii) pressures from private interests ('interest driven').[2] These demands are input into government and democratic decision-making processes. The key objective of ministers and civil servants in government is to balance these various demands and convert them into policies. The policies, in the form of law (hard and soft) and regulations, are then input to industry and civil society, or in cases where a formalised regulatory regime is deemed to be necessary, policy objectives are input into regulatory authorities. On the basis of expertise and technocratic decision-making regulatory authorities convert the policy objectives to rules and regulations which govern a particular industry.

[2] Derived from Hood, Rothstein and Baldwin (2001) p.62 on the drivers of regulatory regimes.

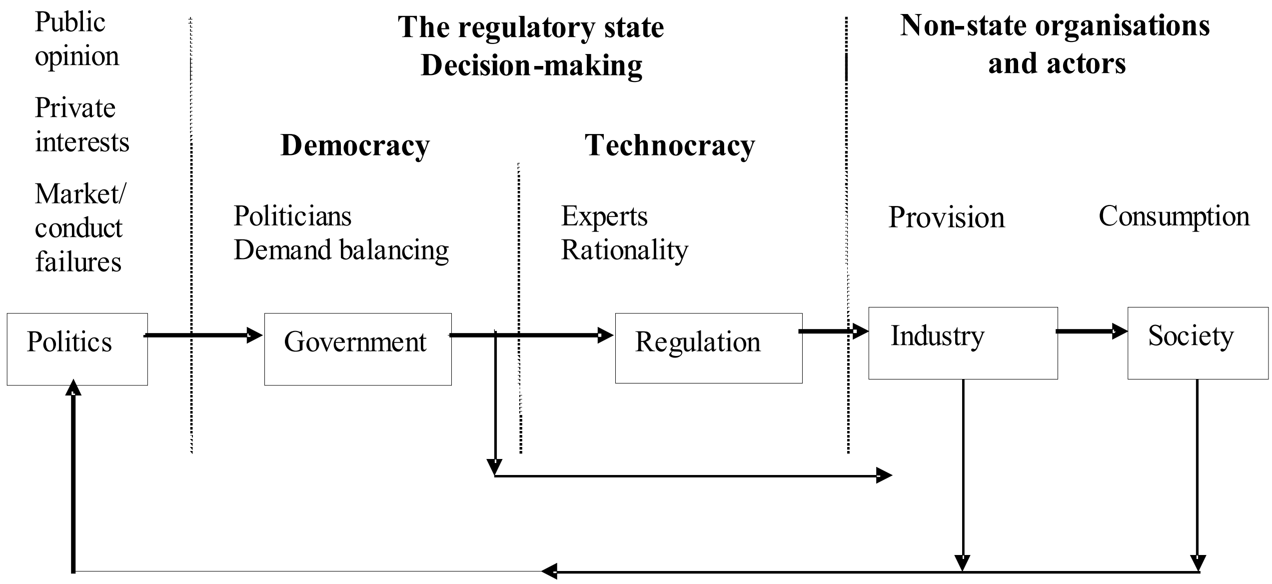

Figure 1: Politics-government-regulation-industry: roles and relations in the regulatory state

A key aspect of the regulatory state is the division between democratic and technocratic decision-making. In the operation of the regulatory state, this interface is crucial and it should be highly controlled and parsimonious. As noted above the spillover of democratic and political elements of decision-making into the technocratic domain (political intervention) can be problematic. This division is particularly important for large industries which have a high public interest element, such as the utilities. The nature of these industries creates two different and possibly conflicting imperatives. Firstly, the fact that they are large, technologically intensive industries means that a stable political, policy and regulatory environment is required to ensure investment, innovation and effective operation. Technocratic decision-making, such as that provided by independent regulatory authorities, is necessary to provide this environment. Secondly, the strong public interest element means that the democratic (political and governmental) realm of decision-making is very important, and resulting policies need to be transmitted to industry. In contrast to the technocratic realm, this is subject to the (legitimate) vagaries of the public opinion and private interest.

The interface between democracy and technocracy, or between government and regulators is crucial: it is the key area where the tensions between the two domains are mitigated and/or resolved. After balancing the conflicting demands of democracy, government is expected to produce clear policy outputs to be input as appropriate into the technocracy and industry. Whether governmental policy outputs are 'rational' is clearly open to debate, but for the regulatory state two other factors are crucial. Firstly, the policies must be high level, that is they should only specify elements required by public interest, notably service outputs and standards (e.g. safety, environmental, operational). The way that these are to be achieved and the industry inputs should be determined by the industry, monitored and regulated by the regulatory authorities. Secondly, governmental policy outputs should be stable for a sufficient period for effective industry operation. There is of course a trade off between the legitimate democratic pressures for government to respond to new circumstances and industry needs for long term stability. This indicates how crucial this interface is for the effective functioning of the regulatory state and possibly that the tensions between the two domains can perhaps only ever be mitigated rather than resolved. This can be illustrated in the case of the UK rail sector in which, it appears, these tensions have not been effectively mitigated.

3. The UK rail sector and the problem of political intervention

In the early 1990s the transition of the UK rail sector towards a structure fitting with the regulatory state commenced. From a monolithic nationalised monopoly appropriate for the 'providing' state, it was subject to privatisation, radical restructuring and a new regulatory regime to regulate natural monopoly and promote competition where appropriate (table 1 indicates the key events in the reform of the rail sector since the early 1990s).

Table 1: Key policy initiatives and events since the Railways Act 1993

November 1993	Railways Act 1993. Specified the restructuring (separation of infrastructure monopoly from competing train operating companies) of the industry for competition and privatisation.
1994	Rail network transferred from British Rail to Railtrack.
1994	Office of the Rail Regulator (ORR) and Office of Passenger Rail Franchising (OPRAF) set up.
1996	Privatisation of Railtrack, the infrastructure operator
1995-1997	Passenger franchises let to train operating companies.
October 2000	Hatfield crash. (followed by many months of severe speed restrictions, extensive rail renewals and poor performance - 'a collective nervous breakdown').
December 2000	Transport Act 2000. Included abolition of OPRAF and establishment of Strategic Rail Authority (SRA).
October 2001	Railtrack put into administration.
March 2002	Network Rail set up.
October 2002	Network Rail takes over infrastructure
2002-2003	Interim access charges review
January - July 2004	Government rail review
July 2004	Government White Paper - 'The Future of Rail'. Also regulatory board replaces regulator - ORR becomes Office of Rail Regulation.
April 2005	Railways Act 2005. Abolition of the SRA, transfer of rail safety regulation to the ORR.

However, a decade after the reforms were initiated, it became commonplace to hear of the railway industry in crisis. Railways became highly prominent in the media, the BBC, for example, has a web site 'railways in crisis' and many relatively minor initiatives gain high prominence in the press.[3] Railway reform has also been described as a 'policy catastrophe' (Moran, 2004) and a 'great rail crisis' (Murray, 2001); the industry has been 'wrecked' by privatisation (Wolmar, 2001) and almost none of the original policy objectives have been achieved (Haubrich, 2001).

The poor performance of the industry was particularly manifest in terms of service quality measured in terms of reliability and punctuality. Service quality gradually declined in the late 1990s, then it plummeted after the Hatfield crash in October 2000 as the industry experienced imposed severe

[3] BBC (2003), Railways in Crisis, http://news.bbc.co.uk/1/hi/in_depth/uk/2003/railways_in_crisis/default.stm [15 July 2003].

speed restrictions, leading to a widespread reductions in service, a ‘collective nervous breakdown’ (Bartle, 2004). In 2005, almost 5 years after the Hatfield fiasco, performance has not reached the levels it was before the accident. Costs in the industry have also risen significantly, notably of large projects such as the west coast main line. One of the key objectives of the reformers in the early 1990s was the reduction of public subsidy; this again was not achieved as the level of subsidy has risen not fallen (Bartle, 2004).

Among the regulated utilities and the other transport sectors the rail sector has stood out as problematic. It is true that in the early and mid 1990s there were wide ranging and highly prominent criticisms of utility regulation in general, including huge profits, extremely high directors’ pay, and dubious service quality (Bartle and Wilks, 2002). However, while there are still difficulties in other utility sectors, these criticisms have declined. Also while there are problems in all transport sectors, such as congested roads and airspace, and environmental pollution, it is the railways that have stood out above all as in crisis. After a decade or two the privatisation of the utility sectors, such as telecommunications, gas, electricity and water, are broadly accepted if not widely loved, but the performance of the private rail industry has given rise to widespread criticism and disenchantment with rail privatisation which appears to be beyond the abilities of the regulatory framework to address (Ahn et al, 2002).

The most common explanations for the problems of the industry have focused on the privatisation and the fragmented industry structure. A ‘public interest = public ownership’ argument appears particularly strong in the rail sector and a number of commentators on the rail industry and rail unions invoke these arguments. Murray (2001, p150), for example, argues that ‘society will benefit as a whole, both economically and environmentally, [from a public transport system with] an extensive and efficient railway network’. Wolmar (2001, p193) notes the ‘incompatibility of having a profit-maximising firm at the heart of an industry that has major social responsibilities’ while Crow notes that ‘the rail industry is a key public service’ and that privatisation has led to a ‘built in reflex to protect the share price above all other interests’ (Crow, 2003). Fragmentation into many parts of a complex industry requiring integrated operation has also been argued to be flawed. Fragmentation is often interlinked with privatisation (Murray, 2001; Jack, 2001; Crompton and Jupe, 2002), while others have stressed the problems of fragmentation much more than private ownership (Wolmar, 2001; Gourvish, 2002).

These explanations have focused mainly on industry structure and ownership rather than the regulatory state. Tacitly it may be assumed that there is some criticism of the basics of the regulatory state as the provision of services (rowing) is seen to be a role of non-state organisations in the regulatory state.

There are, however, other analyses of the problems of the industry which have the underlying assumption that the problems were due to ineffective processes and structures of the regulation in the rail sector, and not problems inherent in the regulatory state. Some have criticised regulatory processes and mechanisms. In a comparison with the water sector Smith (2003) argued that in the earlier years of rail regulation the assessment and knowledge of capital assets and the definition of capital investment programme and outputs were particularly inadequate and were major contributory factors to the poor performance of the industry. Others have criticised the regulatory institutions. They have pointed to the confused roles, responsibilities and accountabilities of the ORR (Office of the Rail Regulator) and SRA (Strategic Rail Authority) and how this can create uncertainty and have a detrimental effect operation and investment in the industry (Grayling, 2001; Helm, 2002; Vass, 2003).

Two critics who have focused primarily on regulation rather than industry structures have highlighted the problems of political intervention. Glaister (2004) has argued at length that competition was ‘destroyed by politics’. He describes the political interventions of the Labour party from 1997 to 2004, for example the setting up the SRA, ‘rail summits’ called by the deputy prime minister, threats to legislate away the independence of the regulator, the formation of the not-for-dividend company, Network Rail, to replace the failed infrastructure operator Railtrack, and a major governmental review of the industry initiated in January 2004. Although he recognises that a rushed privatisation process by the reformers in the early 1990s led to an inadequate regulatory framework, this was caused by the threat of political intervention by the Labour party who were seen as likely to win power in 1997 and possibly reverse the reforms. Competitive mechanisms, Glaister argues, 'can be made to work successfully in national railway systems if, but only if, they are correctly set up and then left unmolested by the political process' (Glaister, 2004, p1).

The former rail regulator (from 1999 to 2004), Tom Winsor, has also stressed the problems of political intervention, in particular the undermining of independent economic regulation. Regulation independent of politics is central to the regulatory state and the requirement to segregate the realms of democracy from technocracy. In January 2004 when the 2004 rail review was initiated Winsor berated the political interventions which threatened his independence as regulator:

> I have been in office as the Rail Regulator now for four and a half years. In that time, the jurisdiction of the ORR has always been under question. It was under question in the run-up to what became the Transport Act 2000. It was under question – very serious question – in what we now affectionately call the 'Byers Bill' of 8 October 2001 (that was the one which was not published but which was intended to be introduced into Parliament a week latter to take the ORR under direct political control in relation to all of its functions, and which was not proceeded with following strong pressure from the industry and financial markets). Then the government embarked up a review of rail regulation from 15 October 2001 to 12 June 2002, culminating in Alistair Darling's [the Secretary of State for Transport] statement that they had had a good look at it and they did not think there were any changes required apart from the creation of a regulatory board instead of a the single-person regulator model. … Then ORR was under scrutiny again in the run-up to the Railways and Transport Safety Act 2003. Now we have to do it again in a five month review announced by the Secretary of State two days ago. (Winsor, 2004, p3).

It can also be added that in the days that followed the announcement of the review in January 2004 it appeared that independent economic regulation might again be under threat and, to allay concerns, rapid reassuring statements were made by the secretary of state and the permanent secretary in the transport department. There was also some tense politics between the Winsor and government ministers at the end of the 2003 periodic review of access charges (charges paid to the infrastructure operator by the train operating companies – along with the public subsidy and fares, this is the principal funding process within the industry). Because of the impact of the review on the level of public subsidy to the industry there was particular unease within the Treasury about the process and outcome of the review (Glaister 2004). An indication of the political controversy over the review is the House of Commons select committee report which noted that the regulator had failed to have regard to the budget of the SRA – the government's agent (House of Commons, 2004).

In essence, these arguments amount to a demonstration that the regulatory state has not worked in the rail sector. The argument runs that this is primarily the fault of government which has let the tense and difficult politics of the sector overspill into the realm of technocratic decision-making. This leads to the question of whether it is possible to envisage a model of democratic-technocratic interface for the rail sector which might overcome the problems and, more specifically, whether the reforms to that interface enacted in the 2005 Railways Act will effectively address the problems.

4. Government – regulator relations (democracy – technocracy interface): a better working model?

Despite these strong critiques, some form of political intervention is clearly legitimate, particularly in a sector with a high degree of public interest and the necessity of large public subsidy. The important question is what form the intervention should take. A crucial dimension of this is the connections between government and the regulator. Within the paradigm of the regulatory state these connections should be controlled and limited, not arbitrary and unlimited.

One way this can be achieved is for the government to restrict itself to the specification of industry outputs (services) and standards. All other requirements – industry inputs, industry funding – would follow from these high level specifications. Outputs and standards may not be achievable in practice particularly due to insufficient funds, e.g. from the fare-paying passenger or from the level of public subsidy the government sees as acceptable. The process would thus not simply be unilateral: an 'iterative' process between government, regulator and industry can take place to determine and acceptable and fundable level of industry outputs and standards. Once established, this would form the high level government specification for a fixed period (e.g. the 5 year control period in British utility regulation). Government would then stand back and leave the detailed intervention to the regulator. The process is summarised in box 1. This is, of course, an ideal type and reality will always be more complex, nevertheless the aspiration to controlled and limited political intervention is clear.

Box 1. Government – regulator relations
Outline of 'iterative process' in setting outputs and funding

- Government specifies draft output requirements and standards. It indicates any funding parameters, i.e. price levels, public subsidy;
- Regulator and industry assess how the outputs and standards can be achieved. They say whether they are fundable within parameters set by government;
- If there is a mismatch between outputs/standards and funding, the government, regulator and industry discuss and propose alternatives;
- Agreed final high level outputs and standards fixed for a control period (e.g. 5 years).

In the rail industry the 2004 rail review, the white paper and the subsequent Railways Act 2005 represent attempts to move towards this framework. The importance of good government-regulator relations is clear from one of the main driving forces behind the review. It was particularly the later stages of the 2003 access charges review, the major mismatch between funding and outputs that emerged and the tensions between the government and regulator which provided the main impetus for the 2004 governmental review.

Among many other things, the review and the new Act specified an iterative process for the setting of industry outputs and funding (Bartle, 2005). The iterative process specifies the roles of the ORR and various governmental parties in the access charges review from initiation to the conclusions. The key stages of the process are summarised in box 2.

Box 2. Summary of iterative process for the setting of outputs and funding during an access charges review - specified in Railways Act 2005. (DfT, 2004, p47; ORR, 2005).

1. Initiation. An access charges review is initiated by the ORR or ministers.

2. Discussion of options. Before the formal stages of the review the government and the ORR discuss output options and the expected level of public funding is indicated.

3. Provision of information. Ministers are legally obliged to provide the ORR with information about required outputs during the review period and the public funding likely to be available during the period.

4. The review. The ORR proceeds with the review.

5. Revision of outputs. If at any time during the review it appears to the ORR that the available public funding is insufficient to achieve the outputs specified then the ORR is required to notify ministers who may decide to revise the specification of outputs and public funding.

6. Insufficient public funding. If public funding is still insufficient, then it is for the ORR to determine how much of what is wanted should be achieved using all the public funding that is likely to be available.

7. Conclusions. Following the review the agreed outputs become a 'statement of reasonable requirements' specified by the government to the regulator and the infrastructure operator.

In outline form the iterative process specified in the 2005 Railways Act is similar to the ideal form in box 1. One obvious area of difference is step 6 in box 2 in which the regulator determines industry outputs if insufficient funding is available after consultations with ministers. This approach does represent a clear attempt to define the roles of the key institutions in the regulatory regime of Britain's rail industry and thus to address the problems of political intervention. It is interesting, however, that a critic of political intervention discussed above does not think the reforms will be robust enough overcome the problems (Glaister, 2004). The extent to which the reforms can be successful is considered in the next section.

5. Critique

A critique of this model of the regulatory state can firstly focus on whether a clear and simple interface between government and regulator is workable in the rail industry. Secondly, there is a more general question about the separation of democracy and technocracy, in particular whether a clear and acceptable distinction can be made between the realms of legitimate and illegitimate political intervention.

Is a clearer and simpler government-regulator interface workable in the rail sector?

There is evidence to doubt that the simple interface of output and standard specification described above is workable in the railway sector. A particular problem, for example, that arose in the 2003 access charges review was overlaps between the roles of specification of service outputs (undertaken by the SRA) and specification (or assessment and approval of industry specification) of network outputs (by the regulator, the ORR). In theory a clear separation of high level outputs (train services) specified by the SRA (or government) and infrastructure outputs to meet the required service outputs (assessed and approved by the ORR) can be perceived. In practice, however, these different outputs are inextricably linked. The SRA's network output specification and the draft published in 2003 are indicative of this.[4] One of the key aims of the 2004 rail review was to simplify public structures (and with it the hope of simplifying the all important interfaces between government, regulators and industry). However, although the abolition of the SRA in the review simplified the public structures, the problem of overlaps between two public specifiers remains. In effect, the Department for Transport's new rail group will take on the output specification of the SRA (services and network outputs) and the ORR will continue with its role in the specification of network outputs.

The government's role in specification (and hence political intervention) is also not clearly limited in the 2005 Railways Act. This is an indication of the difficulty of specifying a clear constraint on political intervention in the rail sector rather than political or policy failure. The Act gives the government the right to specify outputs such as network capacity and infrastructure enhancements which seems to overstep what the government should be able to specify, i.e. high level *service* outputs. The difficulty is, if it is accepted that the government has a legitimate role in rail strategy and broadly transport strategy, then this strategy almost inevitably will include the analysis, examination and specification of infrastructure upgrades and enhancements. As the major funder of the latter it is difficult to see the government being willing to take a back seat in a regime in which major infrastructure changes are agreed and specified by commercial agreements between Network Rail, the train operators and other key stakeholders. Indeed the strategic input (in relation to infrastructure) of the government's agent, the SRA, has been valued by some train operators, notably freight operators (Bartle, 2005). In general, this input has taken the form of specifying and developing infrastructure enhancements, such as those to enable larger containers to be carried by freight trains and loading facilities which integrate into other freight transport modes, notably shipping. In these circumstances it is difficult to conceive of an effective strategy being developed in which the public authorities have little role in the specification of infrastructure, the long term strategy for passenger services and their integration with other transport modes.

The separation of democracy and technocracy: legitimate and illegitimate political intervention

As discussed above, at the heart of the regulatory state is the separation of democracy and technocracy. In effect, within this model certain forms of political intervention are legitimate and some illegitimate. The regulatory state does not preclude 'irrational' politics, but the politics has to be mediated to produce political interventions which are highly controlled and parsimonious outputs suitable for industry and technocracy. If the political interventions are not limited in this way then they are not legitimate.

The crucial problem for the regulatory state, however, is the distinction between legitimate and illegitimate political intervention. This is particularly compounded in countries such as Britain in which parliamentary sovereignty is the deeply embedded and central organisational concept of politics and policy-making, and the separation of powers is not well developed. Within parliamentary sovereignty, political intervention is legitimate when parliament deems it to be which can be very different from political interventions deemed to be legitimate within the regulatory state.

The difficulty of aligning what are seen as legitimate political interventions in a parliamentary democracy and those in the regulatory state can be illustrated by the arguments of one of the critics of political intervention in the UK rail sector discussed above (Glaister, 2004). Although competition is described as being 'destroyed by politics' implying that all political intervention is illegitimate, certain forms of intervention are clearly seen to be legitimate. The highly controlled political intervention of output and standard setting described above can be considered to be legitimate. Also legitimate in this view is the political interventions of the early and mid-1990s

[4] SRA (2003a), The SRA's Specification of Network Outputs, Consultation on the SRA's Draft Strategy, July; SRA (2003b), The SRA's Strategy, Specification of Network Outputs, September.

which created competition and privatised the industry. The problem was not the interventions themselves, but the threat of political intervention to overturn the reforms by the opposition party once they gained power in 1997. Interventions which were clearly problematic were those of the Labour government after 1997 which challenged and defied the regulatory state, notably the threats to curtail the independence of the regulator.

In this view, the definition of legitimate and illegitimate political intervention appears to be based more than the principles of the regulatory state. Political interventions which result from pro-competition and privatisation politics are legitimate whereas those that result from anti-competition and privatisation politics are not legitimate: in effect a neo-liberal regulatory state. Moreover, the politics of anti neo-liberalism are not legitimate even when they arise from on opposition government with the possibility of taking power. This seems untenable for a number of reasons.

Firstly, in case of the recent history of the rail industry to put the primary blame for the rushed and botched privatisation on the opposition party rather than the governing party seems extraordinary. A common theme running throughout many analyses and critiques of rail privatisation is that for reasons of political expediency the whole process was undertaken with too much haste (Gourvish, 2002; Lodge, 2002; Murray, 2001; Wolmar, 2001). There was a political 'need to signal commitment by making reversal seemingly too costly for a future government and [reduce] the opportunities for the BR executive to delay the process' (Lodge, 2002, pp130-131). However, to say that the pursuit of a 'scorched earth policy' to ensure that privatisation was irreversible (Wolmar, 2001, p93) was legitimate political intervention, whereas threats of the opposition party to reverse the process and their attempts (whether misguided or not) to rectify the problems when in power were illegitimate seems unsustainable.

Secondly, and more broadly, to constrain politics and political intervention to one particular view of the way the economy and industry is organised also seems unsustainable. It seems to be an offence to democracy that alternative systems of economic and industry organisation should not be debated and experimented with. It also seems highly unlikely to succeed, particularly in industries such as rail when the model adopted has palpably failed. Politics should surely allow different views on the problems and organisation of an industry and if they are sufficiently strong and represented within government then political intervention to attempt to overcome them should be legitimate. Of course this politics and intervention has to be conducted within acceptable policy processes and the law (there appears to be a case that a Labour minister in 2001 (Byers) went beyond the bounds of legal political processes).

The argument of the former rail regulator Tom Winsor noted above is the same principle – on the limits of legitimate political intervention – but is more focused on the specific area of independent regulation. His assumption is that independent economic regulation is the key stone of effective industry operation and the various threats to that independence, particular during his term of office (1999-2004) increased uncertainty and instability and detracted from good performance. This argument runs in tandem with an argument that regulatory failure, particularly in the first years of privatisation, was one of the main reasons for the problems of the industry (Bartle, 2004).

However, it is equally plausible to say that the problems of regulation were an effect of the initial policy problem: an ineffective industry structure. The difficult politics and political intervention can be seen as the result of a initial policy mistakes, and ineffective industry structure and performance, rather than the cause of the latter. Independence of regulators, to work effectively and be legitimate, needs to be part of a larger regulatory and industry regime which is workable and seen to be working. The accepted boundaries between democracy and technocracy can then become embedded and regulatory independence, within a broader governmental-industry system can be more assured. If the model is not seen to be working then political intervention is more acceptable, and possibly inevitable in a parliamentary democracy.

In focusing above all on the problems of political intervention and the need for regulatory independence Winsor and Glaister appear to deny the acceptability of the politics of alternative arguments for the problems of the industry. The problem with this is that unless the empirical evidence of its effectiveness is overwhelming, to constrain the area legitimate political intervention in an industry to one particular model is unsustainable. There is a big problem in confining and constraining the bounds of acceptable political intervention.

6. Conclusion

The regulatory state, and its manifestations in particular sectors such as the railways, in its ideal form involves a formalisation of inter-institutional relations and clear definitions and limitations on roles of key organisations. Particularly important is a clear delineation between activities which are clearly to be within the realm of 'democracy' (governmental policy-making) and those within the realm of 'technocracy' (regulators and regulation). From this a clear distinction can be made between legitimate and illegitimate political intervention. Arguments have been put forward, notably in Britain's rail sector (but which could affect and apply to other sectors and countries), that the problems of the industry have been due in large part to the ineffective operation of these key aspects of the regulatory state.

Drawing on the experience in the UK rail sector it is argued that there are significant difficulties with this argument. What is particularly difficult is to distinguish between legitimate and illegitimate political intervention. Legitimacy itself is dependent on widespread acceptance of the norms in question, notably by those actors and institutions which are significantly involved in the policy process. Legitimacy cannot rest only on the theoretical arguments which some see as 'rational' without the widespread acceptance by key actors and public opinion. To define legitimate political intervention as that which is pro-competition, and illegitimate intervention that which is anti-competition (in effect a neo-liberal regulatory state), as Glaister implicitly appears to do, is fraught with problems. It is particularly the widespread contestation of competition in the rail industry which makes it difficult to predefine as unacceptable any political intervention which derives from a scepticism of competition.

These difficulties do not mean giving up on the ideal of a clear limited, controlled, workable and defined democracy-technocracy interface, or more broadly, government-industry interface. Whether in the regulatory state or the providing state this interface is always going to be difficult as politics and government necessarily has to handle the vagaries and uncertainties of democracy, while industry (whether nationalised or privatised, competition or monopoly) will always prefer a more stable, clear and (as far as possible) rational political and policy environment. The trouble with the regulatory state and the neo-liberal economic rationale that often accompanies it, is that it often assumes a fiction that privatisation and independent regulatory authorities have overcome the problems of this interface. The difficulties of this interface need to be more explicitly recognised, particularly that no single 'one size fits all' ideal 'rational' model will be suitable across different sectors and countries.

Contestations over the forms of economic and industrial organisation, when widespread and strong and spilling over into government and policy-making have to be accepted as legitimate. They need some space to be channelled and cannot simply be suppressed by ideal models of political economy. More broadly, established policy-making processes and styles across sectors and countries are often deeply embedded: they are dependent on a wide range of norms and practices, resources of institutions and actors that span the divide between government, regulation, industry and society. As has been noted in the policy transfer to developing countries, these issues and processes are not going to disappear with the imposition of the regulatory state and its associated ideas of regulation and neo-liberal economic organisation (Minogue, 2004). The challenge for politics and the regulatory state and its analysts is how to incorporate new ideas on regulation and economic organisation into established political and policy processes. A ‘one size fits all’ approach seems, like the reform of the UK rail sector, to be doomed to failure.

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