TELEVISION

The Limits of Deregulation

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Preface

IT GOES WITHOUT SAYING THAT AMERICANS GET THE VAST BULK OF their news, entertainment, and sense of society from television. Television transmits to us, and mediates, our shared experiences. But despite television's role in our lives, few of us know much about the larger debates surrounding television as a policy issue.

In writing this book, I wanted to investigate how policymakers shape and control the powerful social force that is television. I also wanted to shed light on debates within the fields of public policy and regulation studies. The seeds for this volume were first planted when I read Martha Derthick and Paul Quirk's book *The Politics of Deregulation.* Derthick and Quirk investigated airline, trucking, and telephony deregulation, seeking to explain why, after decades of regulatory protectionism, regulators and policymakers suddenly reversed direction and engaged in deregulation. Derthick and Quirk capped their analysis with the generally optimistic conclusion that those examples of deregulation demonstrated that the U.S. political system had tremendous capacity for policy change that represented a diffuse public interest rather than a narrower, particularistic industry interest. The book challenged the prevailing view that the U.S. political system was incapable of reaching policy closure, was susceptible to gridlock, and was prone to pandering to business interests.

When I approached Derthick and Quirk's book, I had a cursory prior knowledge of television policy. My sense was that television deregulation was neither as smooth, as swift, nor as consensual as airline, trucking, and telephony deregulation. I wanted to see if this impression was correct and, if so, why television deregulation was so different. A larger question that nagged at me was whether, to the extent that airline, trucking, and telephony deregulation demonstrated that the U.S. political system "worked," the divisive, slow, and ambiguous nature of television deregulation meant that the system, or at least the television policy system, was "broken."

While investigating these questions, I benefited from the support and guidance of many others along the way. Because this book is, at least in part, about the power of ideas and a diversity of viewpoints, it is only fitting to first thank my colleagues in the School of Public Policy and Public Administration at The George Washington University, who constantly seek to create an intellectual community based in a wide range of ideas, approaches, and perspectives. I genuinely appreciate their encouragement and collegiality. I have also benefited from the research assistance provided by Sarah Epps, Melissa Merrell, and Christina Sgroi.

R. Shep Melnick and Sidney M. Milkis contributed to my early thinking on these issues, as did Christopher J. Bosso, who continued to read drafts and provide feedback, support, and a sounding board for my ideas. The Dirksen Congressional Center and the Caterpillar Foundation, as well as the Goldsmith Awards program of the Joan Shorenstein Center on the Press, Politics, and Public Policy at the John F. Kennedy School of Government, Harvard University, provided financial support for some of the research that has culminated in this book.

Several anonymous reviewers furthered my thinking on this topic and kept the work interesting, and I thank them for their careful attention. Leanne Anderson of Lynne Rienner Publishers combined patience, enthusiasm, and a sense of humor. Jason Cook copyedited the manuscript and Karen Williams professionally ushered it through production.

For their help in guarding against "writer's isolation," I thank my sisters, Diane Judd and Susan Lawson. The memory of my mother, Dorothy Brainard, and of the hope, encouragement, and caring she showered on me over the years, was a constant source of inspiration as I wrote this book.

Finally, I thank my husband, Bob Liebowitz. He has shared this journey with me, even as it meant forgoing vacations, doing all the cooking while I wrote, and then listening to me talk incessantly about television policy during our dinners. This is for him.

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Regulation and Deregulation in Theory and Practice

THIS BOOK INVESTIGATES THREE EFFORTS TO DEREGULATE THE TELEVISION industry since the mid-1970s. Despite considerable effort, the result was incremental and incomplete deregulation and episodes of *re*regulation as the political left and right, a wide array of interest groups, the major political parties, and key policymakers waged a pitched battle for several decades across all of the institutions responsible for television policy. This book explains why.

Considering television policy is worthwhile not just because it is an industry that captures so much of our attention and is perceived to influence everything from elections to toothpaste purchases, but because it tells us so much about U.S. politics and policy generally. It also provides striking examples of how regulatory policy and the categories we use to understand it (categories such as "economic regulation" and "social regulation") are influenced by perceptions, political reasoning, and rhetoric, not just a narrow conception of economic "rationality." Indeed, in the television case we find that a combustible mixture of economic issues and social issues led to failure to produce any coherent policy consensus.

The first effort to deregulate television occurred in the mid-1970s, when Representative Lionel Van Deerlin (D–Calif.) attempted but failed to pass legislation deregulating the industry. The second effort occurred during the 1980s, when the Reagan administration, with limited success, sought to deregulate television administratively by appointing proderegulation commissioners to the Federal Communications Commission (FCC), the regulatory body responsible for television. The third effort culminated in passage of the 1996

Telecommunications Act, which, contrary to the rhetoric surrounding the legislation at the time, produced further incremental television policy change.

The incremental nature of television deregulation sits in stark contrast to efforts to deregulate other industries. Between 1975 and 1980 the United States experienced a spate of deregulation efforts. Many of these efforts, especially in the important infrastructure sectors of transportation and telecommunications, were successful in the sense that policymakers achieved relatively quick and decisive results.[1] More telling, deregulation not only induced firms in the affected sectors to change the way they conducted business, but it also forced scholars in political science and public policy to alter their assumptions about change in the U.S. political system. Scholars who spent a great deal of time explaining why radical policy change did not and could not occur, now had to explain why whole sectors of the U.S. economy, in particular the airline, trucking, and telephone industries, had gone through such fundamental change in such a short period of time.

Not surprisingly, while these scholars generally agree on the facts of deregulation, they disagree on the larger causes. Indeed, scholars find evidence for all kinds of theories in the deregulation successes of the airline, trucking, and telephony cases. Some argue that deregulation ultimately was caused by economic contradictions inherent in regulation. Others argue that deregulation occurred because firms that would benefit from it sought it. Still others argue that deregulation was the result of an issue and institutional context that favored the creation of a broad consensus around the idea of deregulation and that enabled policymakers to override the policy preferences of the previously protected industries.

What is to be gained from studying a case—the television example—in which deregulation was more ambiguous? To the extent that the television example constitutes a case that is remarkably different from the relatively clear examples of airline, trucking, and telecommunications deregulation, investigating it can sharpen our understanding of the central debates about regulation and deregulation. Previous scholars of deregulation sought to account for regulatory change in light of the then-prevailing wisdom about policy stability in the United States. This book, by contrast, wonders about the comparative stability of television policy amid broader policy flux and in light of the subsequent prevailing wisdom about policy change.

To that end, this book examines three different theories of regulation and regulatory change. *Market forces* theories typically suggest that regulation and regulatory change reflect changes in the underlying economic or technological conditions (or both) of an industry. Theories of *industry determinism* suggest that regulation and regulatory policy change are direct responses to industry demands and that these policies clearly reflect the interests of the affected industry. A more broadly based *contingency* framework suggests that regulation and regulatory change result from, and are contingent on, a less deterministic array of factors, such as new ideas or institutional changes and, more important, the interaction between ideas and institutions. These theories direct our attention to important factors—economics and technology, industry influence, ideas, issues, and institutions—to consider in understanding the television story. Simultaneously, understanding television deregulation in reference to these factors also will shed light on which theory of regulatory change holds more explanatory power.

Regulation and Deregulation: Concepts and Theories

When we open a newspaper or turn on television news, we often find politicians, policymakers, and pundits bandying about such terms and phrases as "deregulation," "regulatory reform," or "regulatory relief." Politicians may benefit from such imprecise language, but any study seeking to sharpen our understanding of the saga of television regulatory policy must clarify these terms.

Marc Eisner, Jeff Worsham, and Evan Ringquist define regulation as "an array of public policies explicitly designed to govern economic activity and its consequences at the level of the industry, the firm, or individual unit of activity."[2] This definition is useful for several reasons. First, it directs our attention to decisions and actions made *by government* that impinge on economic activity—rather than, for example, those decisions made voluntarily by firms to control their own activities. Second, it directs our attention not only to specific regulations (such as pronouncements mandating that television broadcasters air a set number of hours of children's programming every week), but also to *patterns* of government regulations. The definition also encompasses the idea of intentional action by government, even though there might be (and often are) unintended consequences of regulatory policies. Finally, by noting that regulations are directed at the industry, firm, or individual, this definition concerns policies that operate at the microeconomic, rather than macroeconomic, level; these are actions that induce individual firms to change their behavior.

The term "regulatory reform" means many different things to many different people—which is why politicians of many ideological stripes like it so much.[3] It literally denotes changes to regulation and, depending upon the person using it and the context in which it is used, may mean a rationalization, streamlining, or reordering of regulation, even a strengthening of regulation. Thus it is important to bear in mind that in practice the choice is not necessarily between regulation and deregulation. Rather, regulatory policy change often involves alteration of various policy tools—such as licensing and certification; price, rate, and quantity controls; product quality, technical, and performance standards; subsidies (direct and indirect); and assignation of property rights—used in particular regulatory arenas.[4] Alternatively, regulatory reform might mean a decrease or removal of regulation. This latter meaning is more strictly in line with the definition of deregulation given by Martha Derthick and Paul Quirk as "the removal, to whatever degree" of earlier regulations.[5]

The wave of deregulation that occurred in the 1970s and 1980s did not directly address the entire economy but rather the "infrastructure industries" that form its backbone.[6] The transportation and telecommunications industries, for example, facilitate commercial and social interaction by promoting and expediting the movement of goods, services, and people. Any changes in this sector naturally would have major ripple effects throughout the economy and society. Moreover, "deregulation" is somewhat a misnomer in that some regulations were kept in place. Deregulation was targeted at a specific type of regulation, known as economic regulation, as opposed to social regulation. This distinction is important for the ensuing analysis, so further discussion of it is warranted here.[7]

Stemming from the Progressive and New Deal eras, economic regulation focuses on the problems of monopoly—when no competition exists—on the one hand, and excessive competition, on the other, and their respective effects on prices and service. It also focuses on the problem of scarcity, which results from an undersupply of an important resource, such as the frequencies that television broadcasters use to send their programming to viewers. Thus, economic regulation controls prices, entry into and exit from an industry, and the allocation of business rights.

Because the microeconomics of each industry historically have differed, economic regulation typically is industry-specific. Having said this, one certainly can argue that "waves" of regulation and deregulation also mirror changes in prevailing scholarly and political thinking about dominant problems. One can say that the New Deal wave of regulation was a response to one temporal set of problems, while the deregulation wave was a response to an entirely different set of problems, to more sophisticated sets of arguments about the merits of less regulation, and sometimes to the eventual pathologies created by earlier regulation. So, regulation is sector-specific, but within broader ideological or analytical contexts.

Mirroring the sector-specificity of economic regulation, government agencies responsible for implementing economic regulation also usually have sector-specific jurisdictions. Economic regulatory agencies usually operate under broad and vague statutory mandates to regulate in the "public interest." Such agencies, therefore, typically have vast discretionary authority to interpret the public interest as they see fit. That discretion, coupled with their vague mandates, makes economic regulatory agencies prone to "capture," which Barry Mitnick describes as a form of "reverse regulation" whereby regulated firms and industries over time come to dominate the agencies that are supposed to control them.[8] Indeed, by the 1960s, such cozy mid-level relationships between the agencies and the regulated industries (as well as with key members of Congress) came to be called "iron triangles" because of their endurance over decades, though the image of iron triangles began to break down in the 1970s.[9] The quasi-corporatist nature of iron triangles had origins in the deference to bureaucratic expertise inculcated by the Progressive and New Deal eras.

Social regulation, on the other hand, addresses the social effects of economic and business activity, or as Mitnick notes, "activities with a direct impact on people," such as pollution, occupational safety, consumer protection, and equal employment opportunity.[10] Unlike economic regulation, social regulation cuts across industry lines, and therefore the agencies responsible for implementing it operate across the economy. Social regulation came to dominate the policy agenda in the early 1970s, when capture theory was at its peak and during significant abuses of discretion, such as the Watergate scandal. Thus the legislative statutes involved in social regulation, again reflecting changes in thinking about the desirability of deference, typically award less discretion to social regulatory agencies than to their economic kin. Given that these agencies exist essentially to force firms to absorb the costs of social responsibility, coupled with the rise of consumer advocacy and the public interest movement, far more overt political conflict surrounds social regulation.[11]

Not surprisingly, by the late 1970s, students of public policy began to argue that the iron triangle construct no longer held—or at least that it was relevant only to certain business sectors—and that regulation, especially social regulation, now occurs in the context of what Hugh Heclo calls "issue networks"—unstable and fluid policy communities consisting not just of private-sector actors, agency regulators, and congressional experts but also of public interest groups, citizen advocacy organizations, and even academics.[12] Whatever geometric conception one uses, the political and policy reality is messier and less predictable.

These concepts and terms are important vocabulary because, in the debates surrounding television policy, the distinction between economic regulation and social regulation is not as clear as it is in textbooks. Nevertheless, as important as these terms are for *describing* regulation, they are of little help in *explaining* regulation and, more important, regulatory change. We therefore look to three models that offer competing explanations for where regulation comes from and under what conditions it goes away.

Market Forces Theory

The market forces theory of regulation often is referred to as "public interest" theory because it emphasizes that regulatory policies are intended to serve the broader public interest by compensating for instances of market failure.[13] Because it focuses on the economic origins of regulation or deregulation, it views economic and technological forces as independent variables to which policymakers respond. Moreover, there is an important normative element to this theory, to the extent that it holds a presumption in favor of the marketplace and to the extent that it presumes that government must step in and engage in regulation only when the market fails or to improve the marketplace. The economic theory is closely related to models of the policy process that emphasize the role of analysis, what Deborah Stone refers to as the "rationality project."[14] In this model, goals are identified, alternatives are considered systematically, and policy decisions are made on the basis of politically neutral expert analysis as to which alternative is most likely to achieve the stated goal.[15]

According to this theory, airline regulation was initiated in the 1930s to rescue an infant industry from the effects of corrosive competition. Trucking regulation was adopted at about the same time to prevent similarly destructive competition within the industry and, equally important, between the trucking industry and the railroad industry during an economic depression. Telephone regulation was necessary to protect consumers from the monopoly power and monopolistic prices of what essentially was a national utility. These policies were deemed to be in the public interest because they would preserve important industries and protect consumers from harmful economic effects.

The market forces theory suggests that deregulation occurred as a response to changes in the economic and technological conditions underlying these industries. For example, in the 1970s the combination of high inflation and high unemployment made economic regulation appear inefficient and expensive. Similarly, airline and trucking regulation came to be seen as unnecessary because these industries matured and stabilized and their economic conditions improved. Technological change made a natural monopoly in telephony decidedly *un*natural. Given such changes in the fundamental nature of these industries, in perceptions about the desirability of market intervention, and in the economy generally, regulations that impeded the "normal" functioning of markets finally could be lifted without harming the broader public good; in fact, lifting them could promote it.

Industry Determinism Theory

The industry determinism theory differs from the market forces theory of regulation in that the former is based on the "rational choice" approach to the study of politics, which views industry actors, political actors, and policy actors as engaged, first and foremost, in pursuing their own self-interests.[16] As a result, the industry determinism theory makes no assumptions about whether or not regulatory policy serves, or ought to serve, the public interest. Indeed, such a theory concludes that regulation often serves private interests, and any notion of protecting the public interest is purely secondary. Similarly, the industry determinism theory concludes that, far from using rational policy analysis to correct for market failures, regulation often is used, at the behest of the regulated firms, to bypass markets altogether.[17]

This theory, then, implies that the power of private-sector actors is the important independent variable in policy.[18] As the argument goes, firms and industries sought regulation to protect their financial interests. Policymakers, who are seen as rational actors seeking reelection, and agency personnel, who are seen as seeking to maximize their budgets and jurisdictions, responded favorably to industry requests for regulation.[19] Regulation subsequently became a form of protectionist corporate welfare.[20] So, for example, this theory viewed airline, trucking, and telephone regulation as an attempt to protect active airlines, trucking firms, and the AT&T telephone monopoly from natural (and beneficial) competition.

By extension, this theory also suggests that deregulation was a response to industry interests. That is, it suggests that the regulated industries and firms (or new firms seeking entry) wanted deregulation, demanded it, and got it.[21] Where once regulation was deemed essential to their needs, changes in economic conditions and industry structure led them to demand regulatory changes that would continue to maximize their advantage. This, of course, is in line with the notion of capture discussed earlier.

Contingency Framework

The contingency framework[22]—so labeled to denote that policy outputs are mere possibilities conditional on factors that are themselves fluid and uncertain—views regulation and regulatory policy change as less deterministic, and more conflictual, than do market forces and industry determinism theories. This approach thus regards motivations other than economic self-interest and values other than economic rationality as relevant. The contingency approach holds a wide array of factors, such as ideas, beliefs, perceptions, and institutional arrangements, to be present in policy and regulatory change. As these factors are very fluid and difficult to pin down, unlike the more easily abstracted (and even measurable) independent variables associated with the other two theories, analyzing them is a far messier and more complex enterprise. Nevertheless, as this book will demonstrate—especially with regard to television policy—we are sacrificing elegance for greater descriptive and explanatory power.

Unlike the market forces theory, the contingency framework assumes that microeconomic conditions and rational analysis are not necessarily the central factors in policy change. In other words, simply because the economics of the airline, trucking, or telephone industry changed does not mean that policy change automatically followed. Nor does it mean that policymakers or citizens take their leads from scripts produced by economic or technological change. This approach does not suggest that economics do not matter but that economic factors compete with others within a larger issue and institutional context.

Unlike the industry determinism theory, the contingency framework suggests that policy decisions are not necessarily reducible to rational, self-interested motivations. It also assumes that politicians and policymakers may actually be interested in passing good public policy even if and when it does not mirror the policy wishes of private-sector actors—or at the very least, that politicians and policymakers may have their own policy concerns that are not consonant with private-sector wishes. Moreover, while the industry determinism theory seems to assume that money equals power and therefore that private-sector actors are a powerful force in our political system, the contingency approach assumes that there are other forms of influence in our system (for example, votes, an ability to mobilize public opinion, and an ability to persuade) and that these forms of power are dispersed throughout our system, including among citizen advocacy and nonprofit organizations.

The contingency approach creates important conceptual space for the role of ideas, values, and competing images of the public good. Deborah Stone, for example, emphasizes the role of ideas, political reasoning, and rhetoric. She looks at how we argue about issues, or as she puts it, how we try "to get others to see a situation as one thing rather than another."[23] For example, she argues that a great deal of our political life involves defining the "public interest," which (like regulatory reform) means different things to different people. Stone notes: "There is virtually never full agreement on the public interest, yet we need to make it a defining characteristic of the polis because so much of politics is people fighting over what the public interest is and trying to realize their own definitions of it."[24]

This approach also stresses the role of governing institutions. For example, E. E. Schattschneider, noting that "organization is the mobilization of bias," argues that institutions structure political conflict.[25] Hence, he argues, institutions (through their governing rules, norms, or culture) necessarily rule out the participation of some actors, organizations, and interests while ruling in that of others. Taken to its extreme, one variant of a focus on institutions skates close to institutional determinism and focuses on how institutions structure the preferences of the people who operate within them. Institutional arrangements are important, as this variant holds, because different arrangements will lead to different policy decisions.[26] Still other scholars argue that, besides institutional structures, we must pay attention to the intellectual backgrounds, professional and personal ambitions, and ideological preferences of policymakers.[27] In any case, institutions matter, a point not made in either of the other two theoretical frameworks.

In recent years scholars have made great strides in integrating analyses of ideas and institutions. The work of Frank Baumgartner and Bryan Jones warrants special attention here.[28] Looking specifically at the phenomenon of policy change, Baumgartner and Jones argue that policy is not necessarily a "rational" response to either economic change or industry demands. They note, "In the long sweep of American politics, one is less tempted to claim that cozy arrangements between politicians, interest groups, and the media will prevent change and more likely to ask when and how new policy arrangements will emerge."[29] To answer this question, Baumgartner and Jones advance the notion of "punctuated equilibrium," by which they mean that a policy construct may remain relatively stable for long periods of time only to go through a remarkable spasm of change in a relatively short period of time. They argue that punctuated equilibrium, of which economic deregulation was an example,[30] reflects changes in dominant problem definitions, which in turn increase the salience of issues to more actors, mobilize resources, and force issues into new institutional venues that are more receptive to policy change.[31]

The boundaries between these three theories of regulation and regulatory policy change often are blurry. Thus, for example, economic and technological changes often produce new interests, which then affect the larger issue context. Or the market forces theories might be an extreme case of a particular set of ideas—economic rationales for