

Regulation, Organizations, and Politics

Motor Freight Policy at the
Interstate Commerce Commission

Lawrence S. Rothenberg

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Ann Arbor

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Regulation, Organizations, and Politics

*To my parents,
Judith and Nathaniel Rothenberg*

Acknowledgments

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Acronyms

ADA	Americans for Democratic Action
AFL	American Federation of Labor
ATA	American Trucking Association
AAR	Association of American Railroads
CAB	Civil Aeronautics Board
CEA	Council of Economic Advisors
DOA	Department of Agriculture
DOC	Department of Commerce
DOJ	Department of Justice
DOT	Department of Transportation
FPC	Federal Power Commission
FTC	Federal Trade Commission
GOP	Grand Old Party (Republican)
IBT	International Brotherhood of Teamsters
ICA	Interstate Commerce Act of 1887
ICC	Interstate Commerce Commission
LTL	Less than truckload carrier
MCA	Motor Carrier Act of 1935
NITL	National Industrial Traffic League
NLRB	National Labor Relations Board
ODT	Office of Defense Transportation
OMB	Office of Management and Budget
PAC	Political action committee
TL	Truckload carrier

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Part 1

Theory

Introduction: Explaining Regulation

The future research agenda certainly contains two obvious priorities. [One is theoretical and] the other is empirical: How can more meaty tests of interest-group theories be devised? In part, the solution is hard work.

—Roger G. Noll

For many years, the analysis of regulatory policy and the study of fundamental political questions have been inextricably intertwined. Not only have social scientists tried to suggest how agency behavior—both its modal tendencies and its variations—can be explained, but they have asserted that such an accounting provides key insights into the nature of political processes. The existence of this linkage has meant that, to a large extent, answering basic questions about regulation and about politics has been one and the same exercise. This endeavor has evoked waves of scholarly interest and controversy across several disciplines over a long period of time.

Theoretically, a number of provocative theses about the very nature of influence in the American political system have been generated (e.g., McConnell 1966; Lowi 1979 [1969]). Some have argued that regulation (and politics) is in the public interest; others have maintained that it reflects the dominance of organized concerns; and still others have suggested that it is a function of political actors pursuing their own interests.

Empirically, many different agencies have been examined in a variety of ways. But of these agencies, one has had a more sustained and profound effect on the way that scholars think about politics than the others: the Interstate Commerce Commission (ICC).

The reasons for this disproportionate influence are twofold. One is the agency's historical prominence. The ICC was created in 1887 as the first independent regulatory agency in order to regulate the railroads, and it eventually expanded its control until it encompassed virtually all surface transportation. It is no wonder that many have considered it the archetypal regulatory agency.

The other, related to the first, is more closely linked to the production of theoretical ideas. The ICC is the agency associated with the development of the concept of *regulatory capture*, which stipulates that producer groups dominate the agency that is assigned to regulate them (Huntington 1953). Although the more elemental variants of capture theory may now be discredited, the view that producer dominance is the modal description of regulatory politics remains perhaps the primary means of conceptualizing them for popular commentators and scholars alike.

Two additional points concerning the ICC in post–World War II America should also serve to pique interest in the commission. One is that despite the agency’s historical prominence, the scope of the ICC’s reach was severely reduced through a series of reforms that began in the 1970s. Why deregulation occurred when it did and how it corresponds to the agency’s implementation of regulatory statutes through the years remain a matter for debate and analysis.

The second is that while the ICC has had a profound impact on scholarly thought about regulation and government, students of politics have expended little time examining its latter-day activities. This has been particularly true of the agency’s supervision of motor carriers, which quickly became more economically important than its control over the railroads and which occupied the bulk of the commission’s time and energy because of the sheer volume of motor carrier cases requiring adjudication. Economists and “ICC practitioners” made great efforts to understand the economic implications, and the ins and outs, of commission rulings.¹ The politics behind the agency’s activities received considerably less attention for the understandable reason that much of the ICC’s day-to-day operations were mundane, even arcane. Political analysts directed their energies elsewhere, particularly with the development of social regulation (e.g., regulation of the environment), and their redirection of priorities left a gulf between the investigation of the agency’s political behavior and its importance in the development of ideas about political processes.

In short, there are a number of reasons to study the ICC’s evolution, particularly with respect to motor carriers: the agency’s importance in the history of regulation, its role in the development of theoretical ideas about political processes that are of interest to social scientists generally, the challenge of explaining deregulation given the commission’s reputation as the archetypal regulatory agency, and the agency’s absence from the modern-day literature on regulatory politics.

Investigating motor carrier regulation promises insights into the role

1. ICC practitioners are individuals certified to participate in agency proceedings as part of the commission’s bar.

played by organized interests, as would be expected given the fact that the idea of capture and the ICC became nearly synonymous, and into their interaction with political institutions.² The concerns of the regulated, broadly conceived to include regulated truckers, the railroads, and organized labor, were typically clear.³ In many instances, especially with respect to motor carrier entry, they were also congruent, thereby permitting an in-depth investigation into the case of producer dominance. Using James Q. Wilson's terminology (1980, 1989), trucking regulation was characterized by concentrated costs and extremely diffuse benefits; that is, the regulated motor carriers, who were allegedly to pay the costs of government policy, were small in number relative to the entire citizenry, who were presumably going to receive the accruing benefits. Consequently, and consistent with expectations about collective action given such a distribution of benefits and costs, the so-called beneficiaries of ICC trucking regulation were not only unorganized but unaware. *The ICC should have been captured.*⁴

Focus of the Analysis

To investigate such matters, the following analysis focuses on the development of the ICC's regulation of truckers from 1935 onward. Empirically, three interrelated questions are addressed, with the second garnering the most attention:

- Why were truckers regulated in the first place?
- Once the motor carrier regulatory system was established, what determined the agency's behavior?

2. After a long period of neglect, in recent years the politics of interest groups has received increasing attention from a variety of perspectives (e.g., Moe 1980; Hayes 1981; Salisbury et al. 1987; Hansen 1991; Walker et al. 1991; Petracca 1992; Rothenberg 1992).

3. Generally, the intermodal issues considered involve railroads. Although after 1940 barges were also subject to ICC regulation, questions involving rail-truck traffic were far more central to both of the latter modes and to the commission.

4. The shippers, who were in the middle between the producers (the truckers) and the consumers, were neither particularly well organized nor opposed to motor carrier regulation (Davis, Sherwood, and Rosenberg 1976, 1980; Constantin, Jerman, and Anderson 1977; Wagner and Dean 1981). Their principal concern was not the absolute level of rates but simply that all shippers be treated comparably. The primary shipper organization, the National Industrial Traffic League (NITL), was generally supportive. Furthermore, if they became too disgruntled, shippers could get around regulation's restrictions by buying their own trucks to transport their goods (Cowen 1979). The adoption of this strategy by many large shippers, such as giant department store chains, diffused much of whatever opposition might have been brewing.

However, to foreshadow a later discussion, the belief that motor carrier regulation should have been a classic case of capture needs to be tempered by acknowledging that the cost bearers

- Given the answers to the first two questions, how can deregulation be explained?

The answers should fit together neatly. Ascertaining why trucking was initially brought under governmental control will provide a baseline for the later analysis, in terms of both defining legislative intent and mapping out how such motivations translated into a regulatory mandate and were reflected in the agency's structure. This baseline will then set the stage for explaining commission behavior in the established regulatory system—whether, for example, it was consistent with congressional intent and the structure that was initially created. Understanding how motor carrier policy functioned through the years will help put the deregulation movement into perspective and shed light on how dramatic reform comes to pass.

The empirical findings should provide a means of assessing the key theoretical interests that fundamentally motivate this research. These concerns, which will be developed in more detail shortly, center on moving beyond tests of capture theory to an evaluation of whether treating organizations as an institutionalized part of the external environment furthers an understanding of regulatory politics.

Methodological Notes

Before proceeding, two brief methodological notes, one theoretical and the other empirical, are in order. Together, they should reveal much of whatever biases underlie the analysis to follow.

Theoretically, it should be immediately acknowledged that this research is conducted from what can be broadly termed a political economy perspective. As defined here, such a viewpoint brings economic ways of thinking about the world to bear upon explicitly political questions. Thus, for example, individuals are conceptualized as behaving in a rational, self-interested fashion in trying to translate their exogenously determined preferences into institutional outputs. Although other approaches—for example, those grounded in sociology (e.g., J. Q. Wilson 1989) or public administration (e.g., Rourke 1984a)—have certainly contributed to the understanding of regulatory politics, the utility of the rational choice perspective for studying institutional behavior has become increasingly evident in recent years. Particularly in cases such as the ICC, where the economic rewards at stake were so considerable for those being regulated, utilizing a political economy framework that em-

were split on some issues (most dramatically, rates, but also mergers). In such cases, more pluralistic or corporatist politics would be expected. Nevertheless, overall the ICC should have been dominated by the regulated.

phasizes how individual incentives and preferences are aggregated is the most sensible approach.

On the empirical side, a starting assumption is that no single analytical technique or source of information is sufficient to deal with the issues of interest. Consequently, a blend of quantitative and qualitative analysis using primary and secondary information of various sorts is employed. These analytic techniques and data sources should complement one another and yield additional insights into the evolution of motor carrier regulation.

In addition to using existing primary data that can be employed in exploring agency politics (such as congressional hearings, annual reports, and papers found in presidential archives), two other sources of information were generated for this project.⁵ First, a series of interviews conducted with key persons involved in the regulation of motor carriers over the years provides some unique intuitions (also included are a number of oral histories from presidential archives). While the resulting data are heavily incorporated into the analysis, interviewees were *guaranteed anonymity* and, therefore, there will be little in the way of direct quotation. Second, the compilation of quantitative data, notably on individual ICC decisions and votes on motor carrier entry and merger cases, allows the utilization of multivariate techniques to answer specific questions of interest.⁶

This primary information is complemented by secondary data. The large literature on the operations of the ICC and the economic implications of its policies is employed to acquire an understanding of agency behavior and to test hypotheses about regulatory processes. Rarely have the findings from this literature been interpreted as manifestations of an essentially political process.

Naturally, each type of information and method of analysis has its own strengths and weaknesses. Archival documentation and secondary data provide a more detailed and valid longitudinal perspective on the nearly fifty years of ICC involvement in trucking regulation than can be garnered from retrospective evaluations by participants. Given the rather scant attention paid to the politics of motor freight by scholars, however, participant observations furnish important insights into the key features that defined trucking policy.

5. While the use of presidential archives (cited throughout the text as [pres. papers]) is uncommon for the study of regulatory politics, these sources furnished a good deal of valuable information. The Johnson, Nixon, Ford, and Carter archives, which had fairly extensive collections of materials on the ICC, were all visited; additional materials were obtained from earlier presidential collections, which contained fewer relevant documents.

6. These decisions were made by either three-person panels of ICC commissioners or by the entire group of eleven commissioners. (Each commissioner was appointed to a seven-year term, with no more than six commissioners being selected from a single political party.) With two exceptions that examine small subsets of these data (Corsi 1975; J. E. Cohen 1985), none of this information has previously been collected for analytical purposes.