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Book Review

THE POLITICS OF AIRLINE DEREGULATION. By Anthony E. Brown. Knoxville: University of Tennessee Press, 1987. pp. 224.

REVIEWED BY JAMES J. McDONALD, JR.*

Professor Brown's work focuses upon the thesis that deregulation of the airline industry challenged much of the conventional wisdom regarding the politics of the regulatory process. This book presents a comprehensive treatment of both the history of airline regulation and the events which led to the enactment of the Airline Deregulation Act of 1978. However, its real value lies in its presentation of airline deregulation as a phenomenon which refuted prevailing academic theories of bureaucratic politics. Most of the theoretical approaches to the regulatory process in vogue well into the 1980s held that regulatory reform could only be realized on an *incremental* basis. In other words, the regulatory structure must have expanded, or at least have survived largely intact, at the completion of the reform process.¹ As Brown demonstrates, airline deregulation — which involved the abolishment of a major government agency and repeal of much

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¹ A. BROWN, THE POLITICS OF AIRLINE DEREGULATION 17 (1987) (hereinafter "Brown"), citing D. BRAYBROOKE & C. LINDBLOM, A STRATEGY OF DECISION: POLICY EVALUATION AS A SOCIAL PROCESS.

of the statutory scheme regulating airline economics — obviously represented a significant departure from prior regulatory experience and its accompanying academic theories.

I. HISTORY OF AIRLINE REGULATION

Brown begins his study with a history of the regulatory regime governing airlines — a regime that has existed since the industry's infancy. He identifies the Air Mail Act of 1925,² directing the Post Office to determine air mail routes and to award mail contracts to private air carriers, as the first legislative scheme tying the economic fortunes of the airlines to government policy.³ Ultimately, the Civil Aeronautics Act of 1938⁴ emerged from this scheme, and the government's regulatory involvement in the airline industry became pervasive. In 1940, the Civil Aeronautics Board (CAB) was born out of the first organizational restructuring to occur under the 1938 Act. The CAB had authority to restrict entry into the industry by new carriers, regulate existing airline entry into and exit from routes, establish uniform fares, approve airline mergers and acquisitions, monitor the financial operation of airline companies and exempt airlines from the operation of the antitrust laws. Initially, the CAB also had the authority to issue safety rules and investigate accidents. But its safety responsibilities were shifted to the Federal Aviation Agency⁵ in 1958 and its accident investigation role was transferred to the National Transportation Safety Board in 1966. As Brown goes on to demonstrate, however, the CAB continued to play a prominent role in airline regulation in spite of the loss of its safety-related functions.

Brown posits that the CAB's carrier licensing require-

² 43 Stat. 805 (1925).

³ Brown, *supra* note 1, at 6.

⁴ 52 Stat. 973 (1938).

⁵ The Federal Aviation Agency was renamed the Federal Aviation Administration and became part of the Department of Transportation upon that Department's creation in 1965. Brown, *supra* note 1, at 9-10.

ments served as the "cornerstone" of the regulatory framework.⁶ As a carrier could not provide air transportation service without certification from the CAB, that agency was able to control the participation of air carriers in the commercial air transport system, to affect the level and types of service on a given route, and ultimately to determine the structure of the industry itself. In carrying out this last function, the CAB developed a system of classifying the carriers by type — "trunk," local service, "supplemental" (non-scheduled), cargo and commuter. The agency focused its primary attention on the existing trunk carriers, having closed further entry into the trunk classification in 1941.⁷ The CAB's strict control of route entry and exit and fare levels generally left those carriers with latitude to compete with one another only on the basis of service, such as equipment, flight scheduling and passenger services, though Brown points out that the agency did permit isolated price competition among carriers (largely in the form of discount or excursion fares) during periods of industry profitability.

Brown then traces the history of the regulatory reform movement in the airline industry. He notes that the theoretical groundwork for deregulation was laid during the 1950s and 1960s, when academic economists began to criticize economic regulation in industry generally.⁸ These studies provided a highly credible source of support for deregulation proponents.

Brown goes on to identify four major historical aspects of the airline regulatory reform process. First, the Ford Administration campaigned against inflation and linked inflation with overregulation. Second, Senator Edward Kennedy's Senate Subcommittee on Administrative Practices and Procedure clarified the need for some type of regulatory reform in the airline industry during investigative hearings conducted in 1974. Brown postulates that

⁶ *Id.* at 47.

⁷ Delta Air Corporation Case, 2 C.A.B. 447, 480 (1941).

⁸ Brown, *supra* note 1, at 102.

the credibility of the Kennedy subcommittee's pro-reform conclusions was enhanced by the fact that the subcommittee did not ordinarily supervise the CAB, affording the subcommittee a maximum degree of independence. Third, the Carter White House carefully assembled a diverse coalition of powerful interests to advocate reform. This coalition included groups such as Ralph Nader's Aviation Consumer Action Project, the American Conservative Union, the National Association of Manufacturers, and the American Farm Bureau Federation. Last, a shift occurred immediately preceding legislative deregulation, toward a more pro-competitive stance. Alfred Kahn effected this shift in large part when he became chairman of the CAB in 1977 and filled key staff jobs at the agency with proponents of deregulation.

Brown illustrates that the principal opponents of deregulation during this period were the chief objects of the regulatory regime — the larger scheduled carriers and their employees. Having grown comfortable with the protective cloak of CAB fare regulation, the major carriers feared that deregulation would lead to cutthroat competition among them (not an altogether unfounded fear, as it turns out). United Airlines broke ranks with its fellow majors on this issue in 1977, and was joined by Western and Braniff and ultimately the Air Transport Association in 1978. The largest airline unions also initially opposed deregulation. According to Brown, these unions believed that deregulation promised greater price competition between the old, heavily-unionized carriers and new entrants. Under deregulation's free-entry scheme, new entrants would enjoy significantly lower labor costs.⁹ La-

⁹ For a discussion of the impact of the emergence of new entrants upon established carriers as a result of deregulation, see Northrup, *The New Employee-Relations Climate in Airlines*, 36 INDUS. & LAB. REL. REV. 167 (1983). While some unions were forced to agree to concessions in wages, benefits and work rules as a result of deregulation, airline industry employment increased by 8.8 percent, and average annual compensation for airline employees increased by 62 percent, after deregulation. See McDonald, *Airline Management Prerogative in the Deregulation Era*, 52 J. AIR L. & COM. 869, 927 (1987).

bor's opposition to deregulation diminished, however, when the unions were assured that the final version of any deregulation legislation would include labor protective provisions.

Ultimately, the legislation introduced in its initial form as the Aviation Reform Act of 1975 was signed into law by President Carter in October 1978 as the Airline Deregulation Act of 1978. Dramatically, the final form of this legislation did not merely accomplish a "reform" of airline regulation. Rather, it entirely eliminated much of the statutory scheme regulating airlines and provided for the abolishment of the CAB on January 1, 1985.

II. AIRLINE INDUSTRY DEREGULATION

Brown recounts in some detail the process by which the initial push for reform led to a belief that the chief evil in airline regulation was regulation itself.¹⁰ Yet, there are two themes of particular significance to be gleaned from Brown's work. First, the virtual abolishment of the regulatory scheme ran counter to all popular theories of regulatory politics. The airline deregulation example is a case of the political process prevailing over the bureaucratic, a notion all but dismissed by political theorists in the 1960s and 1970s. Second, Brown elaborates the political strategies that succeeded in overcoming the entrenched regulatory culture in the airline industry.

In order to appreciate Brown's first theme, it is important to understand the transformations in political thought concerning the nature of government regulation that have occurred over the last century. The classical model of government bureaucracy, perhaps best characterized by Max Weber's example,¹¹ holds that the government agency is simply an *instrument* of the policy process; a mere tool for carrying out a political agenda established outside of the agency.¹² This classical view gave way to

¹⁰ Brown, *supra* note 1, at 95-127.

¹¹ See M. WEBER, *ECONOMY & SOCIETY* (G. Roth & C. Wittich, eds., 1968).

¹² See V. THOMPSON, *BUREAUCRACY AND THE MODERN WORLD* 2-14 (1976).

what Brown terms the "revisionist" approach to government regulation. Under the revisionist view, the regulatory agency is not an instrument of policy but rather the *source* of most policy, with an agenda of its own. Members of the agency largely shape the agenda in conjunction with the industry or group regulated and the congressional subcommittees having oversight authority over the agency.¹³ The "iron triangle" thus formed represents a vested interest in the existing regulatory regime according to revisionist theorists. It also presents a nearly insurmountable barrier to regulatory reform, much less outright deregulation. As Brown describes it, "survival is the dominant bureaucratic imperative Not only are organizations designed to resist termination, they can adapt to changing circumstances by altering their clientele, objectives, and policies."¹⁴ Thus, as Brown observes, most efforts at regulatory "reform" are incremental in nature. The regulatory agent's resources and the scope of its mission generally turn out to be even greater after the reform process than before, as incremental reform "prescribes procedural and organizational solutions to remedy regulatory problems."¹⁵

Deregulation of the airline industry clearly failed to follow the revisionist model; however, Brown devotes considerable effort trying to explain this result. To be sure, sentiment for public sector retrenchment increased in the mid-to-late 1970s in the face of rampant inflation and the spiraling public deficit. This in itself cannot be a sufficient explanation for what occurred. After all, the whole emphasis of the revisionist theory is upon the demonstrated ability of programs and agencies to survive in the midst of a shrinking revenue base and negative public sentiment. What is interesting about the airline deregulation example, as Brown points out, is that a number of different

¹³ Brown, *supra* note 1, at 13.

¹⁴ *Id.* at 39.

¹⁵ *Id.* at 28.

political factors coalesced to allow the radical result of near complete deregulation to occur.

First, public disaffection grew with the CAB and its anti-competitive policies. As the "Golden Age" of air travel suffered a decline by the end of the 1960s, the CAB reassumed its traditional, more restrictive approach to airline competition in order to protect the profitability of the industry as a whole.¹⁶ This move turned out to be politically unpopular, however, as the CAB commonly was perceived as merely protecting the trunk carriers at the expense of smaller carriers and the traveling public. Moreover, the fact that the CAB's chairman at the time, Robert Timm, was the subject of several political scandals hardly enhanced the agency's credibility. The political atmosphere was ripe for a change.

The second factor concerns the manner in which the deregulation concept was politically packaged. In order to garner the support of the adverse group of interests referred to earlier, deregulation was promoted as a means to multiple ends. Proponents sold it to consumer groups as a promise of lower fares. They sold it to conservative business groups as a means of reducing inflation caused by excessive governmental intervention. Brown observes that "[t]he most significant reason for passage of the act was its bipartisan support. Pro-consumer Democrats joined with free enterprise Republicans."¹⁷

The third factor concerns what Brown describes as "equity compromises." Such compromises become necessary if the elimination of a regulatory scheme threatens the welfare of vocal interests. The airline deregulation bill contained such compromises in the labor protective provisions and the small community service program. As indicated earlier, organized labor initially opposed deregulation. Unions feared that the increased airline merger activity and the onslaught of low-cost new entrants would threaten employee job security and the un-

¹⁶ *Id.* at 99.

¹⁷ *Id.* at 140.

ions' traditionally strong position in the industry. In response to these concerns, proponents of deregulation legislation added provisions for government assistance payments and preferential hiring rights for airline employees displaced by deregulation.¹⁸ Similarly, small communities feared that deregulation would mean an end to scheduled airline service to their localities. The CAB had ensured such service through its carrier subsidy programs. Deregulation's backers met these concerns by including a provision that carriers maintain "essential air service" to small communities under government subsidy for a ten year period.

The fourth political factor which Brown emphasizes regards what he calls "strategic staffing." This involves recruiting individuals for key government positions who are committed to, or at least are not actively opposed to, termination of the existing regulatory framework.¹⁹ Brown credits CAB Chairman Alfred Kahn with filling key staff positions at the agency with active opponents of regulation. These individuals then prepared the agency for an unprecedented process of "administrative deregulation" while Congress was still considering deregulation legislation. As Brown puts it, the CAB's performance between 1975 and 1978 "violated much of the conventional wisdom about the behavior of regulatory agents. The proposition that bureaucratic behavior is motivated by organizational survival was challenged as the CAB became progressively committed to the idea of deregulation."²⁰ As one principal tenet of the revisionist view is that an agency is driven by the individuals who make it up and not necessarily by external political forces,²¹ this factor can provide a lesson for future regulatory reform movements.

Brown concludes that a "reevaluation of revisionist as-

¹⁸ *Id.* at 146.

¹⁹ *Id.* at 151.

²⁰ *Id.* at 18.

²¹ C. PERROW, *COMPLEX ORGANIZATIONS: A CRITICAL ESSAY* 152 (2d ed. 1979).

sumptions is needed,"²² since "[r]evisionist explanations tend to ignore the possibility that, though the composition of interest groups in a policy area may be stable, the policy preferences of those groups may change."²³ Brown presents a compelling critique of the revisionist theory of regulatory politics, using airline deregulation as a case in point. Although Brown's work is theoretically sound, his style is somewhat disappointing. He relies more upon quoting and citing the works of others than upon developing and presenting his own thought and analysis. Nonetheless, this is an important book that should be of interest to both reformers and students of regulatory policy.

²² Brown, *supra* note 1, at 161.

²³ *Id.* at 172.

