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Economic Regulation and Public Investment in Transportation Facilities

C. Budd Faught

ECONOMIC REGULATION AND PUBLIC INVESTMENT IN TRANSPORTATION FACILITIES

C. BUDD FAUGHT*

AIR TRANSPORTATION now serves as a primary method of intrastate, interstate, and international carrier movement, offering speed and efficiency to both the individual consumer and the commercial shipper. While the particular subject to be pursued concerns the impact of governmental regulation upon air transportation, it is quite clear that air transportation does not exist in a vacuum, but rather is only one of the many methods of transportation currently available. As such, it occupies a position on the spectrum of the national transportation system together with each of the other transportation sectors. Governmental regulation of any one of these particular sectors, thus, necessarily has an effect upon all segments, including the profitability of routes, quantity of traffic, per capita cost, and competitive use characteristics. When one considers the impact of governmental regulation on air transportation, one must also consider the impact of governmental regulation of *all* modes of transportation, because the orderly development of inter-modal freight and passenger movement and containerization is important to an efficient, total transportation system concept. The key to balanced economic regulation of transportation in such an environment lies within the development of a national policy on all levels from which regulation may come and a rational balance of public investment in transportation facilities.

The contemporary evolution of efforts in the federal government to develop a national transportation policy and considerations of balanced public investment in transportation facilities began with the Hoover Commission Reorganization Plan of 1950, which called for the establishment of the Office of the Under Secretary of Commerce for Transportation.[1] The objective of this reorganizational arrangement was to establish a Cabinet-level voice to develop a national transportation policy and provide a vehicle to develop and articulate transportation policy through the Secretary of Commerce.

As an Assistant to the Under Secretary of Commerce for Transportation during two separate administrations following the establishment of this office, this writer had the unique privilege of being an observer and

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*Director of Transportation and Communications, Chamber of Commerce of the United States; Former Assistant to the Under Secretary of Commerce for Transportation (1951-53; 1961-66).

[1] Reorganization Plan No. 21 of 1950 (May 24, 1950), enacted pursuant to Pub. L. 81-109 (1949).

serving as a participant in the evolving efforts to develop a truly national transportation policy.

One of the initial policy objectives developed by the Office of the Under Secretary in the early 1950s was the separation of the promotional aspect of federal transportation activity from the regulatory process. It had been determined that the mandate to promote interstate commerce or promote air commerce was not compatible with the economic regulation of transportation. In other words, it created a conflict for a transportation regulatory agency to also be a promoter of that mode of transportation, thus establishing a customer/client relationship between the regulatory agencies and the managed industries. In addition, regulation could not always be in the best "public interest" and continue to offer protection and sheltered growth to the industry. The result of this first policy initiative was the establishment of the Independent Maritime Commission as the regulatory agency with the preservation of the Maritime Administration as the promoter of the maritime industry in the Department of Commerce.

However, the overriding objective of the Office of the Under Secretary of Commerce for Transportation was to develop the legislative strategies and initiatives for the establishment of the often-recommended Department of Transportation which was finally established by Congress in 1966.[2] A key responsibility of the Department of Transportation in developing and articulating national transportation policy is to provide the necessary in-depth study and analysis in the overall national interest for a balanced public investment in transportation facilities, and the corollary "user fees" concept.

The user fee concept is a method of directly funneling public funds into transportation facilities. The charges to the transport user or the ultimate beneficiary through rate increases are calculated to cover the capital costs, interest and maintenance outlay for the facilities or services. This process provides newer and more modern facilities to all transportation sectors, with the first policy development establishing the interstate highway program through the highway trust fund. Previous utilization of the concept had included toll roads, bridges, waterways and locks.

The second development of this nature was the establishment of the aviation trust fund through the user fees levied by gas taxes on fuel used by private aircraft, airline ticket taxes, and air freight way bill taxes, flowing into the fund as a user charge payment system. For the most part, these user fees more directly reflect the costs of the airline transport services

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[2] 49 U.S.C. 1651 *et seq.* (1966).

provided to the user rather than being determined on the basis of the value of the commodity actually being transported as with the railways.

Thus, the Interstate Highway System, in essence, is a federal transportation facility developed through the concept of user fees and the highway trust fund. The airway system is a federally-operated facility supported by the way bill, gas tax fees and the airway trust fund.[3] The inland waterways, built and maintained by the Corps of Engineers, are also a federal transportation facility, but are not supported on the basis of user fees. Compare the railroads, many of which are in a serious financial situation where estimates of the deferred maintenance of facilities would require up to $11 billion to fully rehabilitate the tracks and facilities into an efficient transportation system. While such fiscal policies of governmental investment create more efficient service channels, there looms the ever present question of the government ownership upon transportation in the future. Surely, the distribution of user fee funds serves to regulate indirectly to the same extent that written regulations are promulgated by an administrative agency or policies are developed by the legislative or executive branches.[4]

Since the federal government will undoubtedly continue its involvement in the ownership and maintenance of interstate highways, airways, and inland waterways, some basic transportation policy questions continually arise: Can we reverse the trend from government ownership of transportation facilities and payment and maintenance of these facilities by the way of user fees? Will there be a single transportation trust fund or a rail trust fund to cover public investment in rail facilities? Will the airway trust fund remain autonomous or will it ultimately be merged into a single transportation trust fund capable of efficient central management?

These are basic questions that need to be answered, and ones that would, in essence, determine the future national transportation policy and balanced public investment in public transportation facilities. Included are debates regarding nationalization by way of quasi-government corporations to operate transportation systems, such as AMTRAK,[5] and the question of whether the Consolidated Rail Corporation (Con Rail), now being es-

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[3] Further federal funding is available from several sources including the Airport Development Aid Program (ADAP). The program was created by Congress in 1970 and calls for the expansion in facilities primarily funded by taxes on airline tickets and noncommercial fuel over a 10 year period with a total allocation of over $2.8 billion.

[4] The National Chamber of Commerce is supporting up to four billion dollars over a period of six years for rehabilitation of railroad track and facilities, and up to two billion dollars in guaranteed loans for the procurement of freight cars, locomotives, coal hoppers, etc.

[5] *See*, Miller, *An Economic Policy Analysis of the Amtrack Program*, PERSPECTIVES ON EQUAL TRANSPORTATION POLICY 145, 161 (J. Miller, ed, 1975).

tablished in the reorganization of the bankrupt Northeast railroads, will ever become a viable privately-owned and operated railroad system.

Of significant importance to a discussion of regulatory reform and economic regulation of transportation is a recent study by the General Accounting Office which identified 32 federal agencies with important functions relating to the transportation system. Eight of these are constituent parts of the Department of Transportation. This study classified federal transportation programs into five functional groups: financial assistance; provision of facilities and supporting services; economic regulation; research and development; and safety. The breakdown of these transportation function classifications is as follows:

(1) Seven federal agencies provide financial assistance for the construction, operation, and maintenance of transportation systems.

(2) Twenty-two federal agencies provide facilities and supporting services for the United States transportation system.

(3) Five federal agencies have roles in economic regulation of transportation, all of which are independent of the Department of Transportation.

(4) Twelve federal agencies have transportation research and development activities.

(5) Seven federal agencies have transportation safety programs.

This proliferation of bureaucratic empire-building is costly, creating tremendous duplication of reports, and multiplying the paperwork burden and the costs related to the preparation of reports to comply with the regulations promulgated by these agencies.

The federal government's role in transportation has developed through increments over many years. Each federal program is based on specific public laws enacted by the Congress in response to public concern about specific transportation problems. The resulting body of public law is complex and is considered by many critics to be the source of conflicting goals and objectives for federal transportation programs. As a result, criticism of the adverse economic effects of federal economic regulation is an issue of national debate; however, many criticisms are matched by strong defenses of the present regulatory system.

One can well understand the public's concern that federal transportation programs are uncoordinated and counterproductive. Public concern may also result from the complexity of federal transportation laws, when one recognizes the complexity of the administrative and legislative structure of

32 federal agencies and 12 major congressional committees attempting to coordinate the federal transportation programs.

If we are ever to move towards a unified transportation policy and an organizational structure suited to developing a balanced public investment in transportation facilities, we must begin by the transfer of the Maritime Administration to the Department of Transportation, because the Department is a three-legged agency as long as the Maritime Administration remains in the Department of Commerce. Once a more unified national transportation policy moves toward reality, a necessary correlative requires unified budgeting considerations in order to facilitate multi-level fiscal coordination and control and to promote congressional review.

It is important to point out in this discussion that the Chamber of Commerce of the United States has actively supported a rational approach to regulatory reform designed to eliminate costly and unnecessary regulatory practices and procedures. Over a year ago, the National Chamber urged the President to appoint a "blue ribbon committee" to study all aspects of the regulation of business with the object of reducing uneconomic costs imposed upon business by outmoded, unneeded and unduly complex orders, regulations, and procedures of regulatory agencies of *all* types, including health, energy, and environmental regulations.

The barriers to productivity and efficiency created by excessive government regulation of business must be eliminated. To this end, a multitude of viewpoints continually emerge calling for the promulgation of a variety of initiatives dealing not only with the transportation industry, but also other business related industries which are currently being regulated to some degree. As perceived by this writer, the thread of continuity flowing through all of the proposals regarding regulatory reform is an increased reliance upon market forces for purposes of making economic decisions. Other aspects of the continuity of proposals, some of which I have already mentioned are:

(1) the need to include economic impact assessments in regulatory decisions;

(2) reforms in outdated procedures now followed by regulatory agencies;

(3) a desire to encourage competition in regulated industries; and,

(4) reduction of scope of regulatory control where it is no longer needed.

With regard to transportation, most of the regulatory reform proposals have varied but similar ingredients. Basically, they take the regulatory agencies, which are quasi-cartel managers for their industries, and phase them toward a competitive regime over a period of years to allow adjustments for investment and capital. All the proposals seem to introduce rate flexibility, again phased in over a period of time, and further seem to create area no-suspend zones so that new rates which a company feels are responsive to consumer demand can be put into effect without concern over suspension at the outset by a regulatory body. Generally, these proposals induce a certain zone of reasonableness in rate making. Many of the proposals reduce the barriers for new entry and new competitors. There are also relaxed standards for exit for companies which, because of their involvement in the regulatory system, have wound up with non-profitable segments, locations, and systems. In short, the proposed relaxed standards for re-entry and exit would allow companies to respond to a competitive condition and economically rationalize their activities. Thus, the proposals appear to rely heavily on anti-trust laws as the regulatory process is relaxed or reduced, having provisions for conventional antitrust standards for assessing mergers and agreements.

Whether the relaxation and flexibility in entry and exit of the air carriers in response to market and profit motivations is socially acceptable as furthering the public interest has yet to be seen. The equality and availability of service to all areas seems to find a greater chance of success in a unified rather than a segmented transportation system, although ease of entry would create an opportunity for new carriers to grow in a comparatively uncompetitive market.

Most of these proposals would change the basic statutory mandate of regulatory agencies so that the mandate would be in terms of competition with concern in the first instance about the effect of granting or denying route authority or rate changes. These appear to be the basic ingredients of all proposals and they are common because most of the problems are common in the transportation industry.

These wide ranging proposals require in-depth analysis and consideration; therefore, they should be the subject of study for a "blue ribbon commission" on regulatory reform before an uncoordinated piecemeal implementation is considered either individually by the regulatory agencies or through the legislative process. In any event steps should be taken to ensure that the final policy determination with reference to *deregulation* does not create an irreversible path of impractical utilization of our transportation resources.