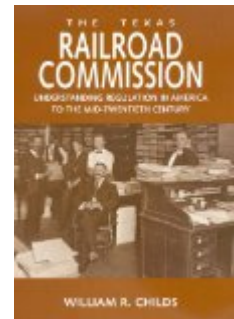


William Childs. *The Texas Railroad Commission: Understanding Regulation in America to the Mid-Twentieth Century.* Montague Series in Oil and Business History. College Station: Texas A&M University Press, 2005. x + 323 pp. \$35.00, cloth, ISBN 978-1-58544-452-6.



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Published on H-Energy (December, 2006)

The history of American regulation has been a contentious affair. The rancor of Americans over time regarding the wisdom and legality of government regulation of private business has been reproduced within the historical literature. Regulation has alternatively been seen as a success story demonstrating the power of the people, a conspiratorial move by capitalists to control competition, and an inefficient interference into business operations. Recent trends in the scholarship have focused on industry structure as the central factor in the development of regulation.[1]

Within the context of these debates, William Childs's new book, *The Texas Railroad Commission: Understanding Regulation in America to the Mid-Twentieth Century*, is a welcome addition to the literature. Without clinging to ideological extremes, Childs explores the history of the Texas Railroad Commission (TRC) in order to illustrate the rise of commission-style regulation in America. His account is a rich social history that combines law, politics, economics, policy, people, and culture to tell a complex and balanced story. In particular, Childs argues that law and culture

have shaped American regulation in ways that accounts focused on ideology or industry structure often fail to grasp. Childs argues that the rise of American regulation is best understood through the lens of "pragmatic federalism." This concept has two main components. First, in most cases American regulation was a practical rather than ideological affair. Regulators spent the vast majority of their time working with the regulated industries to improve operations, share best practices, and address consumer complaints. Radical activities like rate setting and court battles that have drawn the attention of contemporary and scholarly commentators were the exception rather than the rule. American regulation consisted mostly of negotiation, expert advice, and collaboration. Second, Americans debated whether regulation should be controlled by the states or the federal government. This question was resolved piecemeal in a gradual process that saw some powers allocated to the federal government and others left with the states. Constitutional law and judicial rulings were particularly significant in resolving these questions. In both cases, Childs argues that close attention to the historical record reveals that

practical considerations, local contingencies, and legal restrictions shaped the development of regulation.

Childs's analysis is grounded in a history of the TRC. For energy historians, this is a particularly attractive feature of the book because of the importance of the TRC in the history of oil production. Widely credited with controlling excess production in East Texas during the 1930s, the TRC is often called the most important institution in setting national and even global oil prices during the four decades spanning mid-century. The TRC has also been seen as a critical model for OPEC. A deeper knowledge of this agency, therefore, is important for anyone wishing to understand the development of our current global energy economy.

As Childs describes, the TRC was created by the Texas legislature in 1891 with the purpose of regulating railroads. Texas was following the lead of many other states which had established commission-style regulatory agencies in an effort to control the perceived abuses of the large railroad companies including unfair rates, poor service, and dangerous operations. The TRC's first commissioner, John H. Reagan, established a pattern of regulatory practice that would influence the agency for many years. Reagan believed that the TRC had two main goals: to protect consumers from unfair railway operators and to support the state's overall economic growth. The key to achieving these goals, he believed, was the collection of facts, direct negotiation with railway executives, and compromise. The agency did not have the legal authority to set rates, nor did it have the resources to spend much of its time in court battles. The carrot was far more important than the stick. As Childs shows through citing agency records, the day-to-day activities of the commissioners consisted mainly of writing letters, meeting with executives, and gathering data on operations.

In the first decades of the twentieth century, the mission of the TRC was expanded to include

regulation of oil production, motor carriers, and the natural gas industry. To accommodate these new tasks, the TRC became a multi-divisional agency, expanding from 12 permanent employees in 1916 to more than 560 by 1939. For a while, TRC commissioners sought to apply similar models of pragmatic federalism to regulation of the oil industry, for example working with companies to suggest ways they could grow by controlling waste. Nothing in the TRC's history, however, prepared it for the challenge of the "black giant" oil field in East Texas in 1930. With its mammoth output, production soared, the market flooded, and the price of oil dropped from more than a dollar to less than twenty-five cents. Chaos erupted in the industry as profits evaporated, transportation and storage facilities were overwhelmed, and the environment was tarnished with overflowing oil. While the TRC tried desperately to work with producers to restore the price of oil, their efforts were of little avail and the governor was forced to call in the state militia.

The crisis was resolved through a new approach in regulation—the rise of a personality-based agency. Ernest Thompson charged to the top of the TRC through the force of his personality. His claims were not to facts and figures, but to Texas pride. By appealing to a mythic ideal of Texas's role in the global oil order—Childs calls this the civil religion of Texas oil—he cajoled, harangued, and browbeat recalcitrant producers into compliance with the TRC's prorationing orders. The legal status of these orders was suspect, and many of the central ideas had come from sources outside of the TRC. However, none of this prevented Thompson from arguing to the rest of the world that the TRC was the most influential institution in controlling oil production. While Childs shows that the TRC did play an important role in resolving this crisis, he argues that Thompson's fiery rhetoric has tended to overplay the agency's importance and understate the influence of organizations such as the Interstate Oil Compact Commission. With Thompson as head of the

TRC from 1932 to 1965, the agency's influence became based more on personality and mythic ideals than the practices of pragmatic federalism.

Childs argues that a balanced understanding of the rise of regulation is key to analyzing events since the middle of the twentieth century, which have been dominated by trends towards deregulation. Although he does not make this point explicitly, it is clear from the tone of his book that Childs believes regulation still has an important role to play in negotiating between citizens and industry. His writing evokes nostalgia for the era of John Reagan when experts acted pragmatically to negotiate and compromise in order to forward everyone's interests. One senses that Childs wants to place some of the blame for the downfall of regulation at the hands of Thompson by labeling him an egomaniac and suggesting that he undercut the legitimacy of commission-style regulation. Given the important stakes of the deregulation debate and the number of implicit references he makes to the issue, it would have been useful to see Childs be more forceful in articulating his views on the topic.

There are several compelling features of this book. Childs is extremely knowledgeable about American regulation during this period, bolstering his argument with frequent comparisons to other state and federal agencies. Childs also looks beyond rhetoric to understand what the actual practices of regulation looked like. He shows that regulators spent much of their time negotiating, gathering data, and offering advice, rather than engaging in the public and contentious acts of rate-setting and court battles. In addition, he advances the study of American regulation by arguing forcefully for the importance of law, people, and culture in addition to the traditional focus on industry structure and ideology. Finally, Childs provides a nuanced understanding of the TRC and its role in the development of the oil industry, highlighting its history, capabilities, and limitations.

This book is highly recommended for anyone interested in learning more about the history of American regulation. In particular, energy historians examining the role of regulation in energy markets as well as the history of the TRC will find this work very valuable.

Note

[1]. Thomas K. McCraw, *Prophets of Regulation: Charles Francis Adams, Louis D. Brandeis, James M. Landis, Alfred E. Kahn* (Cambridge: Belknap Press of Harvard University Press, 1984); Gavin Wright, "Regulation in American History: The Human Touch," *Reviews in American History* 14, no. 2 (June 1986): 163-68; and Richard H. K. Vietor, *Contrived Competition: Regulation and Deregulation in America* (Cambridge and London: Belknap Press of Harvard University Press, 1994).

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Citation: Chris Jones. Review of Childs, William. *The Texas Railroad Commission: Understanding Regulation in America to the Mid-Twentieth Century*. H-Energy, H-Net Reviews. December, 2006.

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