

The Texas Railroad Commission: Understanding Regulation in America to the Mid-Twentieth Century. By *William R. Childs*. College Station: Texas A & M University Press, 2005. x + 323 pp. Index, notes, maps, photographs. Cloth, \$35.00. ISBN: 1-585-44452-9.

Reviewed by Andrew W. Foshee

William R. Childs's *The Texas Railroad Commission: Understanding Regulation in America to the Mid-Twentieth Century* is an insightful study of the development of commission-style regulation. Childs made a conscious decision not to focus on economic analysis. The primary exception to this rule is a discussion of rate-of-return regulation, including the thorny related problem of valuation of assets. However, even this discussion is undertaken to highlight the fact that the TRC was a pioneer in valuation work and to call attention to the disagreement between the TRC and other regulatory agencies over valuation methods. Limiting the space allotted to economic analysis serves Childs's larger purpose: to broaden the scope of inquiry to include "the daily operations of the regulatory commission," which, he maintains, were "the essence of regulation in America" (p. 3).

A substantial portion of the book, then, is devoted to detailed discussion of the evolution of dual-management regulation of railroads and of the petroleum, natural gas, and motor-transport industries. Childs describes dual management as a process of give-and-take that was accomplished through frequent informal communications between the TRC and regulated businesses. By such means, problems were identified early and were usually resolved without having to resort to more costly solutions through judicial or legislative action. In dual-management regulation, conflicts were minimized and various interests balanced in ways that benefited both industry and the public. Although dual management ultimately was unable to deal with rapid changes in markets, as they became bogged down in the details of the day-to-day operations of regulated businesses, Childs contends that it remained the "essence" of commission-style regulation until mid-century (p. 141). His assertion "that the power of regulatory commissions has been more constrained than most observers have recognized" may be valid, but he still provides

ample evidence of the solid influence that the TRC exercised, albeit in varying degrees, over the industries it regulated (p. 4).

An equally important theme of Childs's book is the imperative to go beyond the kinds of studies that have emphasized the impact of the economic structure of regulated industries. Childs suggests that by emphasizing "federalism, politics, the law, and culture," he can tie the history of regulation more effectively to "the role of 'the state' in policymaking" (p. 5). The framework he devises for this task is excellent. The argument takes shape in Childs's investigation of the "pragmatic federalism" that emerged as American federalism and American law formed alongside evolving market forces, presenting regulators with the challenge of carrying out their tasks in an environment that required striking a balance between state and federal policymaking (p. 6). At both the state and national levels, Childs examines court cases, legislative history, political maneuvering, and the interactions of their respective regulatory commissions to argue that regulators were being responsive to a much greater range of pressures and constraints than is usually acknowledged. He suggests that from 1887 to 1920 pragmatic federalism emerged as the solution to the conundrum posed by the desire to centralize control while still preserving state police powers. The pattern for a new American institution—the regulatory commission—was heavily influenced by the TRC, which in its early years helped to establish a regulatory culture based on one of the core processes of pragmatic federalism, that is, "investigation, consultation among regulators and businesses, and experimentation in administrative controls" (p. 139).

Childs suggests that an overemphasis on economics and administration has contributed to a cynical view of regulators as belonging to a professional category whose "emphasis on the law [was] an unwarranted interference with market forces and administrative efficiency" (p. 257). He subsequently claims that he has exposed "the limited utility of purely economic analysis" by showing that regulation in the form of pragmatic federalism "had become an American habit" by the middle of the twentieth century" (p. 262). Whether or not one ultimately agrees with Childs on these points does not alter the fact that his book provides a new and valuable framework for the study of the political economy of regulation. That framework is crystallized in the lists of issues and propositions that Childs believes should be included by scholars in their "analytical

narratives” (pp. 257–64). Space prohibits reproducing those lists here, but their value is evidenced by Childs’s very effective application of them to his study of the TRC. A brief examination of one the items contained in these lists may suggest the breadth of his work.

Childs argues that cultural forces and the roles played by particular individuals are essential to a proper understanding of the evolution of commission-style regulation. With regard to the unique role of the TRC, Childs suggests that Texans’ own sense of “exceptionalism” separated Texas from its earlier identification with the South and facilitated the expansion of the commission’s regulatory tasks from railroads to oil. As he explains, “It was this cultural force of Texas nationalism that helped the TRC present the illusion that it controlled the price of oil; that illusion, in turn, enabled the agency to control oil production in Texas, even when doing so reduced revenues” (p. 9). He opens the book with a 1986 story taken from the pages of the *Wall Street Journal*. The story perpetuates what Childs regards as a myth, a myth promoted by Texans like Ernest O. Thompson, aka “Mr. Petroleum,” who served on the TRC from 1932 to 1965. Childs recounts Thompson’s remark in 1935 that the East Texas oil field gave Texas “the absolute dominant control of the world price of petroleum and its products” (p. 224). The perpetuation of this myth fifty years later in the *Wall Street Journal* is significant, because it was just this type of bravado that characterized the shift to a “regulatory politics of personality” that came about as the TRC became multidivisional and began to regulate petroleum as well as other industries. Childs argues that this shift was partially responsible for undermining the integrity and respectability of the TRC (p. 145).

By way of contrast, he devotes considerable space to the career and character of the first chairman of the TRC, John H. Reagan, whose departure weakened the TRC’s commitment to professionalism and dual management. Reagan, a former farmer, lawyer, congressman, postmaster general of the Confederacy, and an admirer of Jefferson and Jackson, resigned his U.S. Senate seat at the age of seventy-two to take charge of the newly formed TRC in the spring of 1891. Childs asserts that Reagan’s leadership advanced a regulatory culture that emphasized “cooperative negotiation” between interests and promoted improvements in the administrative procedures of dual management. Reagan, along with his colleagues at the TRC, experimented with

procedures that contributed “to the development of administrative due process in both state and national commissions and thus to the evolution of pragmatic federalism” (p. 69).

By integrating his sources and detailed arguments within a new framework for the study of the political economy of regulation, Childs has produced a book that is essential reading for anyone interested in the early history of commission-style regulation. Future studies in the field will no doubt reflect the influence of this work.

Andrew W. Foshee is professor of economics at McNeese State University. His publications include articles on environmental regulation, international trade, entrepreneurship, and normative economics. At present he is working on topics in Catholic economic thought.