

Who Runs The Railways?

The relationship between the government and the operators

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Introduction

The relationship between the railways and government in Great Britain has been a policy issue and the subject of political and economic analysis almost from the outset of the railway's emergence as a significant mode of transport. Political interest in this new form of transport was inescapable, because railway schemes needed the sanction of Parliament for the compulsory purchase powers that were required in virtually every instance to enable a line to be constructed. In a legal and political culture which attached a high importance to the rights of private property, interference with those rights was not lightly conceded. Consequently, the parliamentary Private Bill procedures obliged railway promoters to make a public interest case for their proposals, and if necessary to defend their case against hostile petitioners under Committee scrutiny. And because a company's enabling Act provided the statutory basis for all of its activities, the authorisation processes gave Parliament the opportunity to shape the framework not only for the building of each railway but also for its subsequent operation.

In principle, this was no different from the way in which canals, turnpikes, and other undertakings such as gas supply companies had been established, and indeed early railway Bills borrowed from canal precedents. Since parliamentary authorisation itself created specific rights, railways could share in the expectation of similar statutory undertakings that those rights would not subsequently be abrogated. However, it quickly became clear that railways differed significantly both in scale and scope from other existing forms of inland transport, and this made railway companies a unique focus of attention and criticism. While the railway interest soon became well-represented in Parliament, as the 19th century progressed the weight of the opposing constituency was sufficient to erode the railways' own political defences and leave them open to significant government interference.¹

The development of railway regulation

During the later 1830s and early 1840s government and Parliament built up their competence in their dealings with railways. Their understanding of this new industry and its impacts was informed through a succession of Select Committee inquiries, and once it was appreciated that the nature of steam railway technology gave the owner of the track an effective monopoly control of the traffic which it carried, the case for greater intervention in the affairs of this new industry could be justified on the grounds of protecting users against unreasonable charges and behaviour, and because of the economic effects of railways on other forms of transport and their users. Other reasons for intervention included public safety and amenity, and the environmental impacts of steam traction.

Initially, parliamentary process was used to increase the extent of regulatory control over railways. By applying increasingly stringent Standing Orders to the consideration of railway Bills and by requiring the inclusion of standard clauses in such Bills, Parliament obliged their promoters to accept a number of specific conditions.² These regulated matters as diverse as the manner in which railway companies could raise finance, smoke emissions from locomotives, and the manner in which railway lines could cross public roads.

These early methods of intervention were followed by general legislation which took two forms — the Clauses Consolidation Acts of 1845 which brought together a range of obligations which railway companies were obliged to accept as part of the authorisation process; and specific Acts which imposed new requirements or controls on the industry. The first of these was an 1838 Act which authorised the Postmaster General to order any railway to carry mail and to provide special trains or carriages for this purpose if required. This was followed by the Regulation of Railways Act, 1840, which gave the Board of Trade powers to inspect new lines before opening, to approve companies' bye-laws, to regulate the

connection of private sidings to existing lines, and to require railway companies to submit statistical returns. A further Regulation Act in 1842 strengthened the Board of Trade's powers, and also obliged railway companies to provide transport for troops and police when required to do so.

The best known of the general railway legislation of the 1840s is Gladstone's 1844 Regulation of Railways Act.³ This gave the government potentially sweeping deferred powers over railways authorised in that or subsequent sessions, enabling the Treasury to revise such a company's charges after 21 years if for the three preceding years its dividends had averaged 10 per cent or more, and also empowering the Treasury, after the same lapse of time, to acquire compulsorily any railway authorised in 1844 or later. In addition, the Act also required all passenger railways to provide at least one train in each direction daily calling at every station and conveying third-class passengers in covered seated accommodation at a fare of no more than a penny a mile and at an average speed of at least 12 miles per hour. Among other provisions, the Act also amended earlier legislation about the carriage of mail, troops and police, and obliged railways, if required to do so, to permit telegraph lines to be erected along their routes or to make their own telegraph lines available for government use.

Following the reconstitution of the small railway department of the Board of Trade into a Railway Board, there was a brave attempt in the parliamentary session of 1844–5 to intervene in the actual shaping of the network. This was done by grouping Bills geographically and providing the Committees considering them with the Railway Board's view of the merits of competing schemes. However, this experiment foundered, partly because of the weight of parliamentary business generated by the Railway Mania, but principally because of the lack of Cabinet commitment to supporting its own Railway Department's findings.⁴ At probably the last point in the development of Britain's railway systems where sustained intervention might have been effective in influencing the subsequent network map, the dynamic of economic trends and political events conspired against this attempt to nudge the promotion and parliamentary authorisation processes away from an ostensibly *laissez faire* approach.

Despite the failure of this attempt to strengthen government influence over railway schemes at the authorisation stage, virtually all of the remaining

agenda which defined the continuing relationship between the railways and the state in Britain had been established by the mid-1840s. The power of the legislature to determine the conditions under which railway proposals would be authorised was self-evident; in addition, government had asserted its right to regulate the operations and charges of railway companies and to require the provision of particular facilities in the public interest. It had also articulated its ultimate ability to take railways into public ownership.

While the option of state purchase was not exercised when it first became available in 1866, it was taken seriously enough for the Royal Commission on Railways which was appointed in 1865 to give consideration to this question when it reported in 1867. Though the majority of the Commissioners were against state purchase — partly on the practical grounds that the 2,320 miles of line authorised prior to 1844 were excluded from this part of Gladstone's Act — a minority report by Sir Roland Hill argued that the state should utilise its purchase powers. Interestingly, both the majority report and Hill assumed that if railway undertakings were acquired by the government, the actual operation of the resulting national system would not be retained in the public sector but leased out 'in convenient groups' to private companies:⁵ an early expression of the concept of railway franchising!

So far as the other provisions of the general legislation of the 1840s were concerned, most of the subsequent dialogue between government and the railways was about the extension of the scope of regulatory principles that had already been established. The only significant addition — the increasing involvement of the government in railway employment matters — was reflected in legislation in 1893, the Railway Regulation Act. While partly a response to wider changes in the accepted range of state intervention, in the railway sector such intervention could also be justified in the interests of protecting the public: the 1893 powers stemmed from concerns about the effects of excessive working hours on the performance of safety-critical staff such as signalmen and drivers.

The government's right to requisition railway transport in time of war was strengthened by two further Acts, of 1871 and 1888. The former, the Regulation of the Forces Act, gave the Secretary of State for War the power to take full possession of any railway in the United Kingdom in a national emergency. Safety regulation was gradually made more prescrip-

tive, extending into areas such as brake and signalling systems, while economic regulation was also progressively strengthened. Gladstone's initial foray into the field of social passenger transport was modified in 1883 with the Cheap Trains Act, which replaced the obligation to run one 'parliamentary' train daily with a requirement for a 'due and sufficient' proportion of accommodation at fares not exceeding a penny a mile. The Act also empowered the Board of Trade to require the provision of workmen's trains.

The statutory regulatory framework governing freight traffic required railways to act as common carriers by conveying any non-dangerous goods offered and to provide due facilities for such traffic (including facilities for through consignments between different railways). It also obliged them not to discriminate between customers in terms of charges or facilities. These requirements were given greater operational effect through the establishment in 1873 of a specialised court to deal with complaints about such matters, the Railway Commission (later the Railway & Canal Commission). In 1888 the Government took powers completely to abolish the maximum freight rates embodied in companies' enabling acts and to replace them with a standard classification of charges. Additional legislation in 1894 limited the companies' commercial freedom further by requiring them to justify to the Commission any increases in charges above 1892 levels even when these were within the new statutory maxima.

The ability of railway companies to manage their own businesses in their shareholders' interest was also curtailed through Parliament's increasing reluctance in the second half of the 19th century to sanction further railway amalgamations, or at least those involving substantial existing undertakings. Instead, the Select Committee appointed in response to a wave of such proposals in 1852 suggested that the national interest would be better served by permitting regulated working agreements between companies.⁶ The legislature was never entirely consistent in its approach to such matters: the amalgamation which created the North Eastern Railway was approved in 1854, even though this had been one of the proposals which had led to parliamentary concern in the previous session. However, it is significant that the two mid-Victorian waves of major amalgamation proposals — in the early 1850s and in the 1870s — both provoked a wider parliamentary scrutiny of the railway industry which was followed by a statutory strengthening of existing regulatory arrangements.

The acceptance of regulated monopoly

At one level, Parliament's strong influence on the outcome of the railway amalgamation movement of the mid-nineteenth century reflected the relative balance between the legislature and an executive which was only slowly developing the bureaucratic apparatus of modern government. It also appeared to imply a continuing belief in the efficacy of competition in protecting railway users against the companies, a belief which the railways themselves had done nothing to discourage by the periodic outbursts of price or service competition between rival routes and by their continuing willingness to promote new lines to invade the territory of another company.

But from the early days of the network there had been a recognition among thoughtful parliamentarians and Ministers, government officials, and railway companies themselves that the outlay of additional capital to dilute existing traffic flows did not make economic sense, and had ultimately to be paid for by railway customers as well as by shareholders. Consequently, the doctrine of 'equivalents' emerged, whereby established undertakings would be given a degree of protection in return for voluntary concessions on matters such as charges and facilities. Such a concept underlay Gladstone's negotiations with company representatives during the passage of his 1844 Act, and formed part of the Railway Department's dealings with the promoters of railway Bills.⁷

The notion that the public interest might be better served by a reduction in a railway's underlying costs than by perpetuating competition was slow in gaining general acceptance. However, once government began to interfere with railway charges and then with railway labour costs, by default it started to involve itself more directly in the financial performance of the industry. It then became more difficult to resist proposals which would have the effect of lowering the cost-base of railway undertakings, and this enabled working agreements and pooling arrangements between companies to be considered in a different light. Parliamentary approval in 1899 for the working agreement between the previously competitive South Eastern and London Chatham & Dover railways was the first significant indication of a shift in public policy, and this was followed by a number of substantial traffic pooling agreements in the first decade of the new century. A Board of Trade departmental committee examined the issue between 1909 and 1911, and reported that

the natural lines of the development of an improved

and more economical railway system lie in the direction of more perfect co-operation between the various railway companies, ... and the growth of co-operation and the more complete elimination of competition [is] a process at once inevitable and likely to be beneficial to the companies themselves, and, if properly safeguarded, to the public also.⁸

Railway companies themselves were prepared to accept modifications of their existing statutory powers and to make other concessions to users and indeed their workers if this was the price for accessing the benefits of working agreements. Such benefits could arise, for example, by sharing cartage resources, diverting trains on to more direct routes, and eliminating overlapping services.⁹ However, once the trend towards railway consolidation in the interests of greater efficiency had begun, it became more difficult to exclude from serious consideration the option of amalgamating all the companies into a single national network.

While railway nationalisation had formed part of the programme of the Labour Party from its formation in 1906, the issue subsequently gained currency more for pragmatic than for ideological reasons. The Liberal government secured an end to the first national railway strike in 1911 by agreeing with the companies that their charges could be increased to meet the resultant higher labour costs. But when the railways insisted on delivery of this commitment, which was implemented through the Railway & Canal Traffic Act of 1913, there was such hostility from their freight customers that the government set up a Royal Commission to examine once again the relationship between the railways and the state. It was generally understood that nationalisation would be one of the topics that the Commission would consider.¹⁰

The outbreak of war in August 1914 led to the suspension of the Royal Commission, which never reported. However, the application of the powers of the Regulation of the Forces Act brought the national network directly under government control, which was exercised through a Railway Executive Committee of ten leading railway managers. The effects of this unified control were so positive that there was a wide consensus that a return to the industry's fragmented pre-war structure of ownership and management was unthinkable, and before the general election of 1918 leading members of Lloyd George's coalition government gave strong indications that nationalisation was the favoured option.¹¹

The need to settle future policy, coupled with the

requirement to establish an acceptable basis for compensating the owning companies for the backlog of wartime maintenance, resulted in an extension of the emergency control arrangements until 1921. The Ministry of Transport Act, 1919, which authorised this extension, also established the new department of that name, with an elaborate initial structure which could indeed have lent itself to the supervision of a state-owned network.¹² However, during parliamentary debates on the Bill Ministers also made it clear that there was as yet no firm commitment either in favour of or against nationalisation, but that this issue would be resolved before government control was ended.¹³ In the event, the White Paper published in 1920 rejected nationalisation but instead proposed the compulsory grouping of the railway industry into seven area groups (one of which would be the London underground railways).¹⁴

There was undoubtedly a shift to the political right within the coalition, and this was coupled with a growing national mood that government should withdraw from its close involvement with industry that had become necessary during the war. But it is difficult to avoid the conclusion that one of the specific factors which influenced Lloyd George's cabinet to proceed with railway grouping rather than nationalisation was a wish to limit its financial exposure to the companies' shareholders. Initial estimates had suggested that the compensation that was due to the railways because of wartime control could be as high as £150 million;¹⁵ to this, of course, would have to be added the costs of buying out existing shareholders. For their part, the companies (or at least the larger undertakings) were prepared to negotiate about the actual level of wartime compensation in return for a more acceptable group structure. The same legislation which established the four eventual grouped mainline railways, the Railways Act of 1921, also fixed the wartime compensation at £60 million.

In one respect the Grouping was simply an extension of the principles of traffic pooling and working agreements that were becoming established before the war. Its underlying logic, which was accepted by the industry as well as by government, was that the rationalisation and savings that should result would enable all parties — shareholders, railway workers, the industry's customers, and the government — to benefit. The Act initiated a complete overhaul of the railway charging structure, supervised by a new Railway Rates Tribunal, with the object of allowing the grouped companies to earn pre-

established standard revenues. The legislation also revised the industry's collective bargaining system, to the extent that ultimate control over the wage rates of railway employees rested with the Central and National wages boards rather than with their employing company.¹⁶

But while many of the policies embodied in the Railways Act carried forward trends that had already been established prior to the war, in one fundamental respect the Grouping demonstrated how far the pre-war framework for determining the balance between the railways and the state had been superseded. While both the composition of the Groups and the modified regulatory apparatus within which they would work was on the face of the Act, the four grouped companies which it created owed their detailed constitution and financial structures not to directly to Parliament, as had been the case in every previous statutory amalgamation, but to secondary legislation in the form of schemes submitted to the Minister and approved by an appointed body, the Railway Amalgamation Tribunal. The LMS, LNER, GWR and SR were, therefore, in a very real sense creatures of the state as well as of statute.

Such an outcome might ultimately have been more acceptable to the long-suffering ordinary shareholders of the grouped companies if the state had subsequently recognised how far the railways' operating environment had also changed from pre-war days. Besides the greater economic uncertainties of the inter-war years, the railways had to cope with new and vigorous competition from a road transport sector that was largely unregulated until 1930,¹⁷ and with profound changes in the political, industrial, and social geography of the British Isles.

These factors undermined the revenue assumptions that had formed the basis for the financial reconstruction of the railway industry into the grouped undertakings,¹⁸ but the Big Four companies were left within a regulated financial framework which was more appropriate to the railways' virtual monopoly of inland transport prior to the first world war than to the competitive realities of the inter-war years. The only significant advantages which the railways gained from their changed relationship with the state were the 75% reduction in their rates burden in 1929, the belated abolition of Passenger Duty the same year, and access to grants and cheap loans in the 1930s which were aimed at stimulating employment by encouraging investment in public works.

The achievement of state ownership

In 1914 the railways had been plunged into wartime government control from the peak of their pre-war prosperity. In 1939 they were at a financial nadir when the outbreak of the Second World War saw the reimposition of control on virtually the same basis, with a largely similar outcome. Traffic multiplied in response to wartime demand and the reduction in competing road transport and coastal shipping, but at the same time renewals and maintenance expenditure was curtailed to meet other priorities, while the railways' pool of male labour was depleted by the demands of the Forces and of wartime manufacturing.

As in 1918, government control was extended after hostilities ended, but this time there was an explicit postwar political agenda for the railways. Attlee's Labour government, elected in 1945, had a clear ideological commitment to nationalisation, but in the case of transport this commitment was also founded on the belief that unrestrained competition between different modes was essentially inefficient and that the public interest would be better served by a coordinated approach in which passenger and freight transport was undertaken by the mode that was best suited to meet the particular requirement. The London Passenger Transport Board, established in 1933, already provided a model of successful public sector passenger transport integration.

Accordingly, the 1947 Transport Act nationalised not only the railways (and the private-owner wagon fleet), but also most canals and road haulage. (Own-account road haulage and some local carriers were excluded.) Nationalisation of the railways also brought with it the substantial stakes in bus companies which the Big Four had built up between the wars, and the British Transport Commission (BTC) which was established by the Act used its powers to acquire other bus undertakings by agreement.

At vesting day on 1 January 1948 the British railway network became part of a publicly-owned national transport system. The former shareholders of the nationalised companies were compensated with fixed interest securities which were a first charge on the revenues of the BTC but which were guaranteed by the government. After more than a century, the issue of who runs the railways had apparently been unequivocally resolved in the state's favour.

That is not to say that the transfer of ownership resolved all the issues between the nationalised railway industry and successive governments — relations between British Railways and its sponsoring

government department and Ministers were complex and at times fraught.¹⁹ The doctrine that a publicly-controlled railway network should be managed at arm's length from government was well established,²⁰ and the wartime Railway Executive Committees provided a precedent for professional management of a nationally-controlled system that was echoed in the title of the Railway Executive, one of the BTC's six functional agencies. The 1947 Transport Act also perpetuated separate economic regulation of the nationalised railway industry, in the form of the quasi-judicial determination of passenger fares and freight charges by the Transport Tribunal. The interface between the state and railway operations therefore remained fertile territory for dispute even when the government was the railways' sole shareholder.

Despite the rhetoric of integration which underpinned transport nationalisation and which formed part of the BTC's statutory duties,²¹ the BTC's Executives were organised on modal lines, with the exception of the London Transport Executive, which took over the responsibilities for London's buses and underground network that had previously been exercised by the London Passenger Transport Board. Strategic policy direction and coordination therefore rested at BTC level, and although limited progress was made in some parts of the country in rationalising and integrating the respective roles of rail and road transport, Labour's political aspirations for the nationalised transport sector were interrupted by the change of government in 1951. The Conservative's Transport Act of 1953 partially denationalised road haulage and abolished the Railway Executive, making the BTC directly responsible for the railways but superimposing appointed Area Boards on the regional management structure which had been established at nationalisation.²²

The sale of much of the BTC's road haulage interests exposed British Railways to renewed competition for freight at a time when increasing car ownership was also beginning to undermine rail's market share of passenger traffic. In addition, during the 1950s the railway system had still to recover from the investment and maintenance backlog of the war years and the period of austerity which followed. In 1956, the BTC made an operating loss on its railway activities for the first time, and the problem of railway deficits increasingly became a political issue.

The response of the Conservative government to the problems of the nationalised railway industry which it had inherited was consistent with the switch

of political ethos from a coordinated to a competitive approach to the transport sector. It significantly liberalised the railway freight charging regime, and in 1962 abolished the railways' historic common carrier obligations. The government also eased BTC's debt burden, and in 1955 approved its £1,240 million railway modernisation programme, designed to overcome the investment backlog and to equip Britain with a faster and more efficient railway system which could compete on better terms with road transport.

This 'dash for freedom' failed for two reasons. Firstly, it was probably too late in the trend towards the increasing use of road transport for both passenger and freight traffic for even a modernised railway to compete more effectively in purely financial terms with these alternatives. Secondly, despite a reappraisal of the modernisation programme in 1959, the BTC failed fully to grasp the strategic opportunities presented by the long-awaited availability of investment funds. Some of the more massive monuments of the modernisation programme can still be seen in the redundant acreage of the new freight marshalling yards of that period.

In a penetrating report in 1960, the Select Committee on Nationalised Industries criticised both the BTC and its government sponsors for the state of the railways. Most fundamentally, however, it pointed out that the lack of clarity in the Commission's objectives, and in particular the failure to distinguish between social and economic aims, had contributed significantly to the financial and policy confusion in which the industry found itself.²³

This report was the prelude to another government-inspired financial and structural reorganisation of the nationalised railways. In 1962 the BTC was replaced by the British Railways Board (BRB) and its other transport interests hived off into separate undertakings, thus ending the last vestiges of the coordinated approach adopted in 1948. These changes also led to the large-scale line and station closure programme associated with Dr Beeching and which continued even after the return of a Labour government in 1964, resulting in the biggest reduction in the physical extent of the network in the 20th century.

More positively, however, the report of the Select Committee moved the debate about the national role of the industry back into an area that had been largely sidelined since the 1840s. By emphasising that transport had social as well as economic functions, it paved the way for Barbara Castle's seminal transport

white papers of the mid-1960s²⁴ and for the further reorganisation of the bus and railway industries in the 1968 Transport Act. The coordination objective enjoyed a revival in the merging of the BRB's cartage and Freightliner businesses into the road-based National Freight Corporation and also in the facilitation of passenger transport integration in the main conurbations. However, the new policies also restated the rationale for state intervention in the transport sector in terms of the need to address issues which were not fully reflected in the commercial transactions of individual transport users, or which arose out of the wider social case for ensuring adequate mobility.

Using the techniques of formal cost-benefit analysis, this approach justified explicit subsidy for particular transport operations on the basis that the value of doing so outweighed the costs of the alternatives, whether in terms of road congestion, environmental damage and accidents avoided, or the time savings and other welfare benefits that would result from retaining a rail service rather than a bus alternative or nothing at all. In common with earlier interventions in the affairs of the railway industry, it took market failure as its justification. In this changed world, however, the relevant market failure was not the monopoly power of a dominant railway industry that without state intervention was in a position to extract high charges from users and could suppress alternatives such as canals and local carriers. Instead, it was the failure of road user charges to reflect the wider external costs of car and lorry transport. This new approach also amounted to an explicit acknowledgement, which would have been unthinkable in 1921 or 1947, or even in 1953, that Britain's railway system could no longer hope to finance itself completely from passenger and freight revenues, except at the cost of service withdrawals on a far larger scale than the Beeching cuts.

The new transport policy orthodoxy of the 1960s had a sound pedigree in the economic literature. It was also consistent with the underlying approach of the European Community, which the United Kingdom joined in 1973 and which required that any form of state aid had to be for explicit purposes. The formal relationship between the government and the railways therefore moved closer to that between a client and a contractor, in which the state at both national and local levels purchased non-commercial railway services or facilities in pursuit of other policy objectives, allowing the BRB to get on with the core business of running the 'commercial' railway in

competition with other modes of transport as efficiently as possible.

This was the theory. Inevitably, however, a large state-owned railway could not be entirely ignored by government in its wider management of the economy. Consequently, during the 1970s and 1980s the commercial interests of the BRB had to be subordinated at different times to the government's need for price or wage restraint, or to contain public sector borrowing. In addition, the new grant arrangements did not wholly eliminate deficit financing, particularly in times of economic downturn.²⁵ Nevertheless, within these parameters, the policy framework that was established by the 1968 Act proved in practice to be remarkably stable. In particular, it soon largely stemmed the trend of passenger service withdrawals that had preceded it: the Serpell report of 1983 was the last significant overt review of the size of the network, and was effectively pigeon-holed.²⁶ The more 'commercial' and less politically visible railway freight business, however, continued its decline, as a consequence of industrial change, the progressive liberalisation of the road haulage sector, and the growth in the motorway network.

The return to a private sector railway

As noted above, the post-1968 railway remained in practice part of the apparatus of the state. But the purchaser/provider basis of the new financial arrangements between government and the BRB could apply equally to a private sector contractor that was supplying transport services to a government. The monolithic status of the nationalised railway industry began to be eroded during the 1980s for a number of reasons: the prevailing political attitude of the Thatcher government; the BRB's increasing focus on what it regarded as its core railway business; and the opportunities to generate disposal proceeds (and avoid public sector investment) from selling-off peripheral activities. During the 1980s several large ancillary functions that had traditionally been associated with the railways were sold to the private sector. These included the BRB's shipping subsidiary, Sealink, sold in 1984; its hotel portfolio, disposed of individually between 1982 and 1984; and British Rail Engineering Limited, sold in 1989.²⁷

During the 1980s the Thatcher government developed its programme of privatising the nationalised utilities. However, while the concept of denationalising the core rail business was already being discussed in some political and civil service circles,

it did not form part of the Conservative's manifesto proposals in either of the two general elections of that decade, apparently because of the Prime Minister's personal caution about adopting such a policy.²⁸ The BRB, in the throes of reorganising into business-led sectors, instead put its faith in improving its own commercial efficiency and in attracting private investment partners into those areas of the railway which provided suitable opportunities for 'privatisation from within', such as the provision of freight rolling stock and terminals, or airport rail links.²⁹

In 1988 railway privatisation began to be discussed publicly by Ministers, and in 1990 became a firm government commitment, assisted by the change of Prime Minister in that year. However, despite the experience that had been gained from earlier privatisations, there was at that stage no agreement within government about the form or objectives of railway privatisation. In particular, given the complexities of the railway industry and the inevitability that it would continue to require public subsidy, there would be difficulties in reconciling various conflicting objectives. These included maximising privatisation proceeds; minimising ongoing subsidy needs; retaining network benefits; and delivering customer and efficiency benefits through competition and market liberalisation. Options ranged from the selling-off of British Rail as a whole or the sale of vertically-integrated track and operating businesses on either a regional or sectoral basis to the separation of infrastructure from train service provision and the disposal of the latter in a manner which would encourage competition between different operators.³⁰ Whatever the form of privatisation, however, a continuing role for the state would be required, in managing subsidy and the passenger service obligations that subsidy was intended to purchase (including the delivery of network benefits); in regulating competition within the industry; and of course in continuing to oversee railway safety.

In the event, having somewhat unexpectedly won the general election of 1992, the Conservatives were forced to crystallise proposals rapidly in order to achieve rail privatisation within the life of the new parliament. A white paper in 1992 set out the intention to separate infrastructure from train operations and sell these to the private sector.³¹ The necessary legislation, the Railways Act, followed in 1993.

The privatisation process has been described in a number of studies,³² and it is not the purpose of this article to discuss in detail how BRB's engineering and operating activities, and its remaining ancillary

businesses, were transferred to the private sector between 1993 and 1997. However, four key aspects of the Conservative government's chosen privatisation model had a significant influence both on subsequent events and on the nature of the relationship between the state and the privatised railway.

First, the government embodied its political views and its experience of previous privatisations by disaggregating the new industry structure wherever possible in order to provide opportunities for competition and the potential efficiency gains and widening of customer choice that would result. This was seen, for example, in the disposal of the BRB's track maintenance and renewal activities in the form of regional companies which would have the scope to compete between themselves and with new entrants to the market when their 'dowry' of initial contracts expired, or in the transfer of passenger rolling stock assets to three leasing companies.

However, this model failed when it came to the disposal of the BRB's main freight business: this was divided into three companies, but market conditions dictated their sale to a single purchaser, which under the title of English Welsh & Scottish Railways (EWS) re-integrated the three businesses, together with its separate purchases of BR's mail and express parcels division and Railfreight Distribution. This left Freightliner as the only substantial competitor to EWS, although since railway freight was privatised on a notionally commercial basis the market was open to competition from new entrants, which did in fact emerge.

Secondly, the passenger business, although disaggregated into 25 franchises based on the regional or line-of-route profit centres into which the BRB had restructured its passenger sectors in preparation for privatisation, carried with it a number of specific obligations to which the government had committed itself in order to secure the passage of its privatisation legislation. Chief among these was the understanding that passenger train services would not be reduced as a result of privatisation, but undertakings were also given that key fares would be pegged at an annual rate of increase of 1% less than inflation; that tickets would be interavailable between different operators; and that service quality standards would be maintained. In addition, the statutory rights of the Passenger Transport Executives in the major conurbations to specify fares and the level and quality of passenger services in their areas was confirmed in the privatisation legislation.

Unlike rail freight, the passenger businesses there-

fore brought with them some very specific service delivery obligations when they were privatised. Virtually all of them would also require government financial support, which would need to be increased if the threat of additional competition increased their riskiness as business propositions. So while the subdivision of BR's passenger businesses ensured that there would be competition for some point-to-point traffic (eg between London and Birmingham), and also over shared sections of common route (eg between Newcastle and York), the government decided that the existing passenger businesses would be generally protected from new entrants until 1999.³³ Consequently, the point at which competition would be secured would be when the individual passenger businesses were disposed of to the private sector. Financial orthodoxy dictated that in order to maintain the effectiveness of such competition, the operation of passenger services should be retendered periodically.³⁴

In contrast with the disposal of BR's freight businesses as an outright sale, the state therefore retained ultimate 'ownership' of passenger services. What was sold were franchises to operate groups of services under specified conditions for given periods, in return where necessary for public subsidy. These franchises were offered to the market in a competitive bidding process, which was handled by a new government agency set up for this purpose, the Office of Passenger Rail Franchising (OPRAF). OPRAF laid down the minimum Passenger Service Requirement that bidders were obliged to operate, and financially-based performance regimes were put in place to incentivise franchisees to maintain service quality. The other requirements for each franchise were either likewise directly included within the specifics of that franchise agreement or formed part of the general licence conditions that all operators had to satisfy.

Despite initial doubts about the feasibility of the timescale, all 25 franchises were let between December 1995 and February 1997, and the last passenger services operated under the auspices of the nationalised BRB ran at the end of March 1997. The franchises were sold to a variety of private sector owners,³⁵ among which bus companies predominated. The financial terms varied from the payment of a premium by the franchisee to OPRAF, either from the outset or over the life of the franchise, to ongoing (but generally declining) financial support. Some of the new owners, such as National Express Group, Prism, and First Group, had interests in several franchises, though these were often geographically

dispersed. In three cases (Anglia, Chiltern, and GNER) the franchise went to an owner with no other franchises.

The freight companies and passenger franchises were sold with rights to use the track, depots and stations which they needed to operate their services. This reflected the third distinct element of the Conservative's approach to railway privatisation: in order to ensure the opportunities for on-rail competition that were built into the disposal plans for the BR freight business, and remained the longer-term objective for passenger services (and also, in its view, to meet European requirements for international train movements and the financial separation of railway infrastructure provision from train operation) the government considered that it would be necessary to have a separate track authority. Consequently, Railtrack was created on Ministerial instruction from within the BRB organisation in 1993–4 and established as a separate government-owned company on 1 April 1994.³⁶ Unlike the disaggregated approach to the BRB's other functions, Railtrack was created as a single undertaking covering the whole of Britain, with ownership of all operational land, track, structures, signalling, stations and depots, together with responsibility for managing, maintaining and renewing these assets.³⁷

The fourth element of the government's railway privatisation policy resulted from its decision to establish Railtrack as a monolithic undertaking. Because Railtrack would be a single supplier, with a range of potentially competing customers seeking to use its assets, it would be necessary for the sale of access rights to be regulated in the public interest, to ensure that the network operator did not abuse its monopoly power or discriminate between its customers. It would also be necessary to put in place and monitor a performance regime, to incentivise Railtrack to deliver the necessary quality of outputs to its train operator customers and to ensure that there was correspondence with any penalties or incentive payments arising out of the OPRAF performance regimes when Railtrack's under- or over-performance affected TOC performance. Accordingly, the Railways Act provided for the appointment of a Rail Regulator, primarily to oversee the price and conditions for network access, but also with responsibilities under competition legislation and for licensing railway operators, and with some consumer protection functions.

The British rail privatisation model was therefore

complex, and involved striking a balance between public interest considerations and the free play of market forces — an almost constant theme of the state's relations with the railway industry from the outset. Issues of public finance also played an important part, again a significant element of the relationship from the 1920s onwards. To manage these balances and deliver railway privatisation the Conservative government created two new public bodies, the Office of Passenger Rail Franchising and the Office of the Rail Regulator. It also maintained the long tradition of state safety regulation of the railway industry through the Railway Inspectorate, now part of the Health & Safety Executive.

A further complication in the privatisation programme arose from the fact that the original political intention had been to retain Railtrack in the public sector in the medium term at least, albeit as a lean business which would access private sector efficiency gains by outsourcing most of its engineering activities. This would have enabled Railtrack to add value in the public interest by taking a strategic view of the network as a whole, in a role which had some similarities to that of the Highways Agency in England and Wales. State ownership would also have made Railtrack a perhaps more appropriate custodian of the railway industry's group standards, certain system obligations such as the maintenance of the published national timetable, and of delegated responsibilities in the safety case processes. Finally, its retention in public ownership would have had the additional advantage of returning a significant portion of the subsidy paid to the private sector TOCs to the public sector in the form of track access charges and station lease payments.

However, at relatively short notice the Major government decided to privatise Railtrack in 1996. While the immediate motive may have been the short-term benefit to the Exchequer that would result from an additional asset sale before a general election that could not be delayed beyond May 1997, another political advantage was that this would complicate any attempt by an incoming government to reverse rail privatisation.³⁸ While ostensibly implacably opposed to the Conservative's railway policy, the opposition front bench's attitude became increasingly ambivalent as the privatisation programme proceeded. Railtrack's prospectus contained a statement from the shadow transport secretary which merely warned prospective investors that a Labour administration would use regulatory and contractual mechanisms to increase government influence over the network

and made any extension of public ownership and control over Railtrack 'dependent on the availability of resources and as priorities allow'.³⁹

Railtrack was duly floated in May 1996, and the rapid increase in its share price from the initial offer price of £3.90 not only appeared to confirm the criticisms of those who argued that the network, in common with other railway assets, had been disposed of too cheaply, but also put the cost of renationalisation more firmly beyond the financial reach of an incoming Labour government which was committed to fiscal prudence. More seriously from the longer-term perspective of the railway industry, it transformed Railtrack from being a public interest steward of the network into a profit-maximising commercial player in the market, with a regulatory regime and financial structure that in the view of a later Rail Regulator was not fit for purpose for the undertaking's changed status as a private sector company.⁴⁰ Somewhat ironically, the changed status of Railtrack also created a new role for the British Railways Board, which had been left with mainly residuary functions after the disposal of its main operational activities but which the Labour government was able to utilise as a source of strategic advice on the future role of Britain's railways within an integrated transport strategy.

Despite the gloomy predictions of some of the opponents of rail privatisation, and expectations within government that the railways were a static or declining industry, the new freight and passenger operating companies were able to achieve significant traffic growth after privatisation, aided by a track access charging structure which enabled extra services to be operated at marginal cost, and by a generally buoyant economy. Railway passenger-kilometres grew by 30% between 1995 and 2000, and freight tonne-kilometres by 38%.⁴¹ However, not surprisingly, this rapid growth in the volume of traffic handled by a network that had a history of under-investment resulted in a deterioration in punctuality. This, coupled with the profits that were enjoyed in some parts of the privatised industry either as the result of business growth or as a consequence of the resale of franchises or privatised assets, fuelled political demands within the government for greater intervention in the railway industry. In particular, there was felt to be a need to provide more effective strategic direction for a mode of transport that was seen as central to the delivery of government transport objectives but at the same time continued to absorb substantial amounts of public funding.⁴²

This new direction was to be provided by merging the functions of OPRAF and the BRB into a new Strategic Rail Authority, which was ultimately legitimised by the Transport Act, 2000 but operated in 'shadow' form after the appointment of Sir Alastair Morton as chairman of the BRB and chairman-designate of the SRA in April 1999. Sir Alastair's vision, however, remained that of a private sector railway, in which the state provided a more stable environment for investment by lengthening franchise periods. By this means network and rolling stock capacity would be enhanced to give long-term performance benefits; in the shorter term, alterations to the performance regimes would incentivise franchisees and Railtrack to deliver better operational performance.

Unfortunately, before progress could be made in delivering this vision, the fatal high-speed accident at Hatfield in October 2000 led a crisis of confidence in the railway industry. The widespread imposition of speed restrictions across the network for safety reasons had a catastrophic effect on performance and passenger patronage, adding to the financial problems that a number of franchisees were already experiencing as a result of difficulties in containing costs within the levels forecast in their franchise bids. The additional liabilities and costs faced by Railtrack following the Hatfield accident, together with other problems, principally the cost overruns on the West Coast Main Line project, led ultimately to that company's financial collapse in October 2001. Substantial additional funding was required for a number of franchises, to the extent that the value-for-money offered by the passenger rail industry began again to be called into question.⁴³ The freight businesses also suffered financially and in volume terms from post-Hatfield disruption of the network.

Despite its policy stance when in opposition, the Labour government has persisted with the privatised model it inherited from its predecessor, choosing to establish Network Rail (Railtrack's successor) as a private sector company limited by guarantee, and maintaining the franchising of passenger services, albeit that the SRA has adopted a more prescriptive

approach to new franchises and has taken one franchise back into direct operation pending the creation of the Integrated Kent Franchise.⁴⁴ More recently, following the Rail Regulator's Interim Review of track access charges, which has identified the requirement for a substantial increase in Network Rail's income over the next five years (much of it because of the financial consequences of Railtrack's collapse), the Secretary of State for Transport has announced a further review of the structure of the railway industry.⁴⁵

At the time of writing, the outcome of this review cannot be anticipated. It is clear, however, that privatisation has not reduced the interaction between the state and those who operate Britain's railways — if anything, the railway industry is currently higher up governmental agendas than during much of its life as a nationalised undertaking. Terry Gourvish commented in 2002 that 'the demands of public policy ... made it inevitable that privatisation would be at best partial, and that whether through regulation or subsidy the government would continue to play a major role in the railways' fortunes'. He added: 'Government intervention is still with us; only the hoops are different.'⁴⁶

Those hoops have continued to evolve over the life of the railway industry, reflecting changes in its status and economic power, in the expectations of its direct customers and of the wider community, and in the requirements of government. Present concerns arise primarily from the scale of the financial demands that the railway is now making on public funds, and from questions about its ability to deliver the objectives that it has been set as part of the government's wider transport policies. This is, however, just the latest demonstration of the political importance of railways in Britain, and in one particular respect the wheel has come full circle. Once again, any change in the existing framework which the state has set for the railways could have profound effects on the financial interests and outlook of private sector investors whose resources are currently committed to this industry and to its future development.

Notes and references

1. See G Alderman, *The railway interest*, 1973.
2. O C Williams, *The historical development of Private Bill procedure and Standing Orders in the House of Commons*, 1948–9, I, 58–75, 103–6.
3. 7&8 Vic c85: *An Act to attach certain conditions to the construction of future railways, authorised or to be authorised by any Act of the present or succeeding Sessions of Parliament; and for other purposes in*

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4. Parris, op cit, 61–86.
 5. C 3844: *Report of the Royal Commission on railways*, 1867, xxxv, cx–cx1.
 6. E Cleveland-Stevens, *English railways: their development and their relation to the state*, 1915, 179–204.
 7. McLean & Foster, loc cit, 319–22; Parris, op cit, 77–83.
 8. Cd 5631: *Report of the departmental committee on railway agreements and amalgamations*, 1911, para 185.
 9. M C Reed, *The London & North Western Railway*, 1996, 173.
 10. Alderman, op cit, 209–18.
 11. D H Aldcroft, *British Railways in transition*, 1968, 40.
 12. W A Simnett, *Railway amalgamation in Great Britain*, 1923, 26–7, 130.
 13. *House of Commons Hansard*, 2 July 1919, col 667; 10 July 1919, cols 1293, 1342.
 14. Cmd 787: *Outline of proposals as to the future organisation of transport undertakings in Great Britain and their relation to the state*, 1920.
 15. Simnett, op cit, 31.
 16. 11 & 12 Geo V c55: *Railways Act* (19 August 1921).
 17. T C Barker and C I Savage, *An economic history of transport in Britain*, 3rd edn 1974, 181–5, 192, 202–8.
 18. *Ibid*, 158.
 19. T Gourvish, *British Railways 1948–73*, 1986, 102–5, 183, 185–7, 358–60, 566–76; T Gourvish, *British Rail 1974–97*, 2002, 13–17.
 20. Simnett, op cit, 127–30; H Morrison, *Socialisation and transport*, 1933, 137–48.
 21. The statutory purpose of the BTC was to provide ‘an efficient, adequate, economical and properly integrated system of public inland transport’.
 22. With the separation of Scotland as a ‘region’, and the division of the English part of the former LNER into North Eastern and Eastern regions, this geographical structure largely followed the original grouping proposals of 1920.
 23. HC 254 (1960): *Report of the Select Committee on Nationalised Industries – British Railways*, paras 222, 413–27.
 24. Cmd 3057: *Transport policy*, 1966; Cmd 3439: *Railway policy*, 1967; Cmd 3470: *The transport of freight*, 1967; Cmd 3481: *Public transport and traffic*, 1967.
 25. Gourvish, *British Rail 1974–97*, 152–3, 262–6.
 26. *Ibid*, 174–81. However, further discussion of branch line closures took place between the BRB and government after the Serpell report. See Gourvish, *British Rail 1974–97*, 201–2.
 27. J Shaw, *Competition, regulation and the privatisation of British Rail*, 2000, 46.
 28. *Ibid*, 47–52.
 29. Gourvish, *British Rail 1974–97*, 366.
 30. For detailed analysis of these issues, see Gourvish, *British Rail 1974–97*, 365–400, and Shaw, op cit.
 31. Cmd 2012: *New opportunities for Britain’s railways*, 1992.
 32. Eg Shaw, op cit; Gourvish, *British Rail 1974–97*, Chapters 12–13; R Freeman & J Shaw, *All change: British railway privatisation*, 2000; C Wolmar, *Broken rails: how privatisation wrecked Britain’s railways*, 2001.
 33. Shaw, op cit, 141–2.
 34. Competition should in principle be maximised if retendering takes place at relatively short intervals, and this was the Treasury’s view. However, this approach flew in the face of the realities of railway operation, which involved assets with relatively long lives and lengthy lead times for service development. See Shaw, op cit, 87–93. The compromise was to offer seven year terms for most initial franchises, and to deal with the problem of the residual value of rolling stock assets by vesting these in the rolling stock leasing companies so that operators could lease rolling stock for the duration of their franchises rather than being obliged to acquire it outright.
 35. There was political controversy over whether the BRB should itself be allowed to bid, since the legislation effectively left it as operator of last resort. In practice the Board was debarred from bidding, but BR staff were encouraged to submit management-employee buy-out proposals for franchises. See Shaw, op cit, 117; Gourvish, *British Rail 1974–97*, 411, 442.
 36. Gourvish, *British Rail 1974–97*, 394–7, 434–5.
 37. For pragmatic reasons, maintenance and operation of the isolated Isle of Wight network was leased to the franchised train operator. Operation and routine maintenance of most stations transferred to train operating companies under the terms of the stations leases which governed their use of this part of the Railtrack infrastructure, but the largest passenger stations were retained under direct Railtrack management.
 38. Gourvish, *British Rail 1974–97*, pp 437, 440.
 39. S B C Warburg, *Railtrack share offer prospectus*, 1996, 101–4.
 40. Office of the Rail Regulator, *The periodic review of Railtrack’s access charges: final conclusions*, 2000,

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41. Railway Forum, *Facts and figures*, 2001.
42. J Shaw & J Farrington, 'A railway renaissance?' in I Docherty & J Shaw, *A new deal for transport?*, 2003, 110–17.
43. *Ibid*, 130–1.
44. Strategic Rail Authority, *Franchising policy statement*, 2002; Press release 8 November 2003: 'SRA confirms transfer from Connex to South Eastern Trains'.
45. *House of Commons Hansard*, 19 January 2004, cols 1075–8.
46. Gourvish, *British Rail 1974–97*, 434, 449.