

Private Enterprise and State Control in trans-Atlantic Telegraphy (the early period)

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Introduction

In this paper we propose to examine the evolution of state control in trans-Atlantic telegraphy, with particular regard to its relationship with British free trade ideals. In order to expand on this we must distinguish between operational and strategic control. The former, which equates to the day-to-day running of business by state officials, is exemplified by the Royal Mail and also by telegraph operations on the Continent. The latter, involving strategic government intervention at a more subtle level, represents an important influence on the early telegraph companies in Britain – at least until 1870 when land telegraphs truly came under operational control.

Although cable financing, cable companies and cable-laying technology were totally British during the early phase, French influence on the developing communications network* might have been greater were it not for the Franco-Prussian war. So, as international cable telegraphy expanded after 1870, Britain remained the dominant power and the Government could have exercised strategic control had it chosen to do so. Instead, as Cain [1] and Headrick [2] have argued, this coincided with the aftermath of an apparent change of policy, when the Government appeared to move from a position of close involvement to one of no involvement with such enterprises. The reasons for this policy shift are easy to comprehend, although some of the manifestations are less clear and will be discussed here. Private enterprise had dominated the early forms of communications (canals and railways). In the context of state security international telegraph communications could be viewed as the first strategically important communications technology to arrive after the Great Year of Revolution (1848). But when the Government became financially involved in the early cable ventures (1857 - 63), the experience had not been good. Accordingly, during many years the Treasury successfully blocked any attempt at Government subsidy of projects, irrespective of their strategic merits. So, during the period of relative peace between 1863 and 1895 cable telegraphs remained the realm of private enterprise, although there were those (most notably John Pender) who were not beyond taking steps that might serve the strategic interests of Empire and thereby profit

* In 1865 Napoleon III convened the first meeting of the International Telegraphic Union which was held in Paris. Britain was not invited as it did not have a state controlled telegraph system.

his Eastern Group of Companies which became the major component of *Cable & Wireless* following the Imperial Wireless and Cable Conference of 1928*.

It was not until there had been several crises as imperial interests (British, French, Spanish, Dutch, German and Belgian) crashed into each other in the scramble for territory that the British Cabinet appointed a committee in 1898 "to consider the control of communications by submarine telegraph in time of war". This 112 page report [3] set out precisely what should be done. Their ideal was a form of operational control that did not hinder legitimate trade interests. The control of the flow of information, as Headrick [2] has demonstrated, became a very successful weapon of war, something that remained in place right up to the end of the telegraph era.

In spite of the perceptions at the time, the gradual extension of strategic control and the 1898 recommendations for All-Red Routes (cables which touched only British or Portuguese territory) and their total control, we will argue that there existed from the very beginning the legal instruments by which British telegraph companies could be required to pursue 'the public interest'.

In a future paper we will discuss the broad subject over the entire period for which telegraphy was a dominant means of trans-Atlantic communications. In this paper we will restrict ourselves to the early period and will argue that the potential for strategic control of submarine telegraphs by the British government existed from the very beginning. The key is to be found in the legislative framework that was in place, a framework that was intended to promote the interests of (British) free-trade and yet maintain a high level of behind-the-scenes state control.

The presentation of telecommunications history in terms of its legal background is not new. Kieve [4] discusses the nationalisation of the UK inland telegraph system in terms of the Parliamentary Acts that brought it about. Hall [5] has gone much deeper in his treatment of the development and regulation of all forms of telecommunications in Ireland. However, we believe that this is the first comprehensive analysis of UK control of international communications in term of the legal instruments that brought about the private companies that operated the cables.

Communications and the British political landscape in first half of the 19th century.

Time-Line 1 presents a brief summary of the early developments of communications systems in Britain. Against this background we must remember that canals had been started during the

* an example of strategic control by Government on the grand scale

Napoleonic wars. During this time there were two political factions: the Liberals* who were the champions of private enterprise (and the new middle classes) and the Tories, mostly conservative land-owners who favoured protective tariffs.

The aristocratic land-owners were big proponents of canals, but we should not overlook the implications of such a venture. After all, a canal is a 'permanent' intrusion on someone's land. A private Act of Parliament was required to establish an incorporated company even before land could be acquired and these could be prohibitively expensive. Gladwin in his book on canals [6] cites a case where the legal costs of obtaining a private Act absorbed 9% of the capital. Most of the aristocratic land-owners were vigorously opposed to the advent of railways and this is quite understandable. They saw the new technology as both a financial and a social threat. Railways were dirty and they were noisy, but above all they were fast. They threatened to take business away from the canals and thereby damage existing investment. When they could not prevent the establishment of a railway, they 'milked' it and forced costs to escalate. The omission of a single step (e.g. failure to give proper notification to a small farmer along the route) might cause the Parliamentary bill to fail. And finally, when they had done all this, MPs opposed to a railway company Act might still amend a bill by insisting on the addition or removal of clauses.

Telegraphs and the first telegraph Acts

The Admiralty (Signals Stations) Act of 1815 [55 Geo III c.128] was intended to ensure that there were no obstacles to the establishment of lines of optical telegraphs that might be used to inform the authorities of the start of a large-scale French invasion [7]. Semaphore telegraphs, as they were also called, became less important after the Battle of Waterloo and so, for our next major development in this area, we must turn again to the railways. Kostal [8] provides an excellent account of the many private acts as well as the legislation relating to early railway companies. In this paper we will only concern ourselves with the Railway Regulation Act of 1844 [9] (see Time-Line 2). This contains a particularly relevant element in Section 13:

"And whereas Electric Telegraphs have been established on certain Railways and may become more extensively established hereafter and it is expedient to provide for their due Regulation: be it enacted That every Railway Company on being required so to do by the Lords of the said Committee** with Servants and Workmen, at all reasonable Times to enter upon their Lands and

* Exemplified by Gladstone who reduced tariffs and reduced taxes, but yet became more conservative in his thinking during his political career.

** Lords of the Committee of Privy Council for Trade and Plantations, later the Board of Trade

to establish and lay down on such lands adjoining the Line of Such Railway, a Line of Electric Telegraphs for Her Majesties Service and give to him or them every reasonable facility for laying down the same, and for using the same for the Purpose of receiving and sending Messages on Her Majesty's Service, subject to such reasonable Remuneration to the Company as may be agreed"

Section 14 dictates that electric telegraphs whether belonging to the railway company or some other company must be open to the public "all Persons alike, without Favour or Preference". Section 17 describes the actions that may be taken against a railway company for failure to comply with the requirement for the provision of telegraphs. It vests power in the Board of Trade to certify infringements to the Attorney General who would then proceed against the company. So, even at this stage in the history, the instruments for Government control of private enterprise in a form of mass communications are already in place.

The establishment of telegraphs was different in some respects to canals and railways in that they did not use land; they traversed it and therefore the same issues of land acquisition did not arise. However, the early telegraph companies (inland and international) also had to have special Acts of Parliament, although the process was somewhat easier than earlier as a result of the passing of the 1844 Joint-Stock Company Registration and Regulation Act [10]. In Time-line 2 we have identified the arrival of the Electric Telegraph Co (ETC), the pioneering company that grew out of the invention of Cook and Wheatstone. The British Electric Telegraph Co. was promoted in 1849 and although strongly opposed by the Electric Telegraph Co, received its Act of Incorporation in 1850. Of particular interest here is the fact that this Act includes mention of connection to other countries (the Dover-Calais cable was laid in November 1851). In 1855 these two companies merged to become the Electric and International Telegraph Co and Parliamentary approval for this was obtained under the Electric Telegraph Consolidation Act [11].

The Atlantic Telegraph Co Act followed two years later [12]. The content of this Act is worth examining in some detail. The early parts deal with the Company's corporate structure and it is only at section 39 that the actual purpose of the Company is mentioned. Although many of the sections are common to all Company Acts we would like to highlight the following. Section 25 stipulates that "The principal Office of the Company and its Corporate Domicile shall be in *London* (sic)". Section 32 permits the appointment of honorary directors who may be from the United States or the British Colonies of North America, but the upper limit for each is defined. The Treasury has power to appoint an ex-officio Director (Section 33), (who was given a power of veto to protect Government interests) and to approve the appointment of every new Director (section 38).

Once we get to the purpose of the Company, then the extent of the government powers continues to become apparent: "*Company to lay down Lines to London in case the Government requires it*" (section 41), "*Plans to be approved by the Admiralty*" (for any work within three miles of the shore of Britain or Ireland) (section 46), "*Admiralty may order local Survey at Expense of Company*" (section 47), "*Electric Telegraphs to be open to the Use of Her Majesty's Government at all reasonable Times*" (section 55). Section 57 is of particular interest, as it vests power in the Treasury to make arrangements and enter into agreements on behalf of any Government Department*.

Section 62 gives the Government sweeping powers and will be reproduced in full.

"At all times from and after the Period of Twenty-five Years from the opening of the said Lines of Telegraphic communications for the Transmission of Messages, whenever One of Her Majesty's Principal Secretaries of State for the Time being shall be of opinion that Circumstances render it expedient to vest in Her Majesty's Government the Control of the Operations of the Company, it shall be lawful for such Secretary of State, by Warrant under his Hand, to cause Possession to be taken of all the Telegraphs and Telegraphic apparatus of the various Stations of the Company, their Licensees or Assigns, for the space of One Week from the Date of such Warrant, for the Purpose of preventing any communication being made or Signals given, save such as shall be directed and authorised by any such Secretary of State, and also by further successive Warrants to cause Possession of the said Telegraphs and Telegraphic Apparatus to be retained from Week to Week so long as any such Secretary of State shall deem such Possession expedient for the Public Service: Provided always, that for every such Week which Possession shall be so retained the Company, their Licensees or Assigns, shall receive from and be paid by the Lords Commissioners of Her Majesty's Treasury the same Amount of Profits as the Company would have made in case they had continued the working of the said Telegraphs, such Profits to be computed upon an Average of the weekly Profits of the Company for Three Months immediately preceding the issuing of the First of the said Warrants."

UK telegraph legislation might be viewed as an incremental accretion of power, the assertion of increasing levels of strategic control no less potent but more subtle than the great nationalisation programmes of the 20th century British Labour governments. Control and regulation was the spirit of the Liberal Government and this is quite clear even in the title of the 1863 Telegraph Act [13] "An Act to regulate the Exercise of Powers under Special Acts for the construction and

* Although it is quite specific as to what these relate to, its interpretation by Treasury officials may explain the 'dead-hand' which that Department wielded over subsequent cable proposals [1,2].

Maintenance of Telegraphs". It was mainly concerned with land telegraphs and the main thrust of Act was to give generic powers to all telegraph companies so as to save the Parliamentary time and Company expense of seeking individual Private Acts. One of its provisions (section 6) stated "The Company shall not be deemed to acquire any Right other than that of User only in the Soil of any Street or public Road under, in, upon, over, along or across which they place any Work". This was designed to prevent the telegraph companies from acquiring any property right e.g. by limitation of actions (when the land-owner's action for trespass, ejection etc has run out of time) or by prescription (long user)*. The Act is of particular interest for present purposes because it vests power of control over any telegraph company with the Board of Trade, who may direct a company to lay lines for Government service, if required. The Government retains the right to take over the telegraphs in the case of emergencies and section 52 has some similarities in content to section 62 of the Atlantic Telegraph Act. However, it is even more specific in the manner that control may be exercised:

" . . . the Secretary of State, by warrant under his Hand, may direct and cause the Company's Works, or any Part thereof, to be taken possession of in the Name and on behalf of Her Majesty, and to be used for Her Majesty's Service, and, subject thereto, for such ordinary Service as may seem fit; or may direct and authorise such Persons as he thinks fit to assume the Control of the Transmission of Messages by the Company's Telegraphs, either wholly or partly, and in such Manner as he directs. . . . "

Certain powers were extended downwards within the Government hierarchy. The Act specifies that if the Board of Trade, a Principal Secretary of State or other Department of Government requires the transmission of any message on Her Majesty's Service, then this shall have priority and that all other traffic must be suspended until transmission of such messages has been completed.

Finally, section 35 covers cable landings:

"The Company shall not place any Work under, in, upon, over, along, or across any Estuary, or Branch of the Sea, or the Shore or Bed of any tidal Water, except with the Consent of all Persons and Bodies having any Right of Property, or other Rights, or any Power, Jurisdiction, or Authority in, over, or relating to the same, which may be affected or be liable to be affected by the Exercise of the Powers of the Company (which Consent where Her Majesty in right of her Crown is interested, may be given on behalf of Her Majesty by the Commissioners for the Time

* There is of course an interesting comparison with railway companies, who purchased the land and thus had full ownership rights in fee simple over railway land.

being of Her Majesty's Woods, Forests and Land Revenues, or One of them, in Writing signed by them or him)."

Conclusion

A detailed inspection of the Acts that have been cited here lead us to some interesting conclusions. Even at an early stage the Government was aware of the strategic benefits of the new means of transport and communication, both as isolated and as integrated technologies: railways for the rapid transfer of troops, railway lines for the construction of telegraph lines and telegraphs for information exchange. In general, however, railways and telegraphs were seen as business ventures and the Acts specify the close involvement of the Board of Trade. Thus the association of the Treasury with the Atlantic Telegraph Co seems somewhat out-of-step with the practice at the time. On the other hand, control passing from the Treasury to the Board of Trade would be consistent with a desire to put telegraph companies at a more arms-length distance from Government, i.e. Treasury control might involve funding whereas Board of Trade control involves government regulation of independent and (crucially) financially self-determining enterprise.

The Atlantic Telegraph Act seems to have been relatively generous to the Company in relation to the possible level of Government control. However, the 1863 Act appears to have been much more stringent in its provisions. This is quite understandable. In granting generic powers to everyone the 1863 Act could have led to (i) floodgates risks and (ii) risk of abuse – both potentially watering down vested property interests to an unacceptable level. These risks were much reduced when specific powers were given to the Atlantic Telegraph Company alone.

Many Acts contain 'dead wood' i.e. provisions (sometimes grossly illiberal) which are quietly repealed after 100 years never having been used, but which are inserted 'just in case' they are needed. This is slightly less of an issue in the 19th century than in the 20th and 21st centuries – and UK legislation is much less notorious for this than some other countries. It might be argued that some of the provisions that we have highlighted may be 'dead wood' and that it is dangerous to rely entirely on black letter law to make historical conclusions. Nevertheless, we believe that the points which we have raised suggest that that even three years before trans-Atlantic telegraph communications became a reality, the UK Government had acquired all the powers that it might need to exercise either operational or strategic control over private companies at any time in the future. How this developed during the remainder of the cable telegraph era, particularly when foreign (American) companies became involved will be the subject of a future paper.

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Time-Line 1

Early communications in Britain

Date	Medium	Enactment	Notes
1750 - 1800	canals	special Acts of Parliament	
1801	semaphore telegraphs	Admiralty Telegraph Act	
1835	start of railways	special Acts of Parliament	
1840	modern postal system		government control
1845	high point of railways	special Acts of Parliament	(followed by slump)
	incorporation of ETC	special Act of Parliament	(1846)
1849	incorporation of BETC	special Act of Parliament	"other countries"
1851	Dover-Calais link		successful
1855	ETC becomes EITC	special Act of Parliament	Electric Telegraph Consolidation Act
1856	incorporation of ATC	special Act of Parliament	
1857/8	1st T-A attempts		failures
1865	last attempt by ATC		failure
1866	formation of AATC	no special Act used	cable laying success
1868	moves to nationalise UK inland telegraphs		

Time-Line 2

Government control of telegraphs

Date	Act	Control	Special requirements
1844	Railway Regulation Act		Provision of telegraph for Government and public use
1846	ETC		
1849	BETC		
1855	E.T. Consolidation Act		
1856	Atlantic Telegraph Act	Treasury Secretaries of State	Govt. priorities, where offices must be, who can be on Board,
1862	Companies Act		
1863	Telegraph Act	Board of Trade Secretaries of State Any Govt. Department	Govt. priorities, sale/lease/transfer
1866	(AATC)		
1868	Telegraph Act	Post Office	
1870	Telegraph Act	Post Office	
1885	Submarine Cable Act	International	Rights of belligerents