

**PLUS ÇA CHANGE, PLUS C'EST LA MÊME  
CHOSE (OR WHY, AFTER MORE THAN A  
CENTURY OF DISPUTES, WE STILL MAY NOT  
HAVE GRAIN LOGISTICS RIGHT)**

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This is a paper about the history of logistical control of western Canadian grain, and how, despite 133 years of experience with railway regulation in general, and a century of often bitter disputes over the marketing and transportation of grain in particular, we still may not have the grain logistics system quite right. To understand why this is so, we will examine how rail regulation, grain transportation, and the end of the Canadian Wheat Board (CWB) monopoly all fit together to form one coherent story. We can then examine how, despite the fact that the recent changes to the CWB are what the advocates of reform have been pressing for since the 1970s, we may still not have it right, and may find, as the title of this paper suggests, the more things change, the more they remain the same.

**The historic background: rail regulation**

In western Canada, no story of rail regulation is complete without reference to the Crow's Nest Pass Agreement, and the story of the "Holy Crow" is inseparable from the story of the building of the CPR itself. Macdonald's bargain with British Columbia, using the promise of the railway as an incentive to join Confederation, and his dream of knitting British North America together to resist American aspirations over the whole of the North American continent, is the stuff of legend in Canada. As Fowke and Britnell put it, "the Canadian Pacific Railway Company was one of the foremost instruments created for the accomplishments of the national purpose" (Fowke and Britnell, 1960, 10),<sup>1</sup> and as such, were easily worth the price paid. "The wealth of patronage and privilege extended to the Canadian Pacific

Railway Company,” they said, “removed it from the category of ordinary private-enterprise railway companies,” but its purpose was “of extraordinary import,” and “[t]he price to the Canadian people for the assurance of success was little enough in comparison with the certain cost of failure” (Fowke and Britnell, 18, 19).

More germane to our story, however, is the contrast between the legislative provisions for rate regulation ca. the 1870s and the articles of incorporation of the CPR. The 1879 *Consolidated Railway Act* allowed Parliament to reduce rates on any railway if the company earned more than 15% on the capital cost of construction. In CPR’s case, section 20 of the articles of incorporation put the corresponding figure at 10%.

A further regulatory constraint was placed on the railway by the Crow’s Nest Pass Agreement, under which, in return for certain rate concessions, the government provided a subsidy to the CPR to construct a rail line from Lethbridge to the Kootenay region of British Columbia. In addition to the infamous grain rates, the Agreement required that all tolls levied on all traffic originating on, or destined to, points on the Crow’s Nest line itself “shall first be approved by the Governor in Council or by a Railway Commission, if and when such Commission is established by law, and shall at all times thereafter and from time to time be subject to revision and control in the manner aforesaid.” How and why did this section, and – even more puzzling – the restriction on grain rates, find their way into a contract whose fundamental purpose was to protect Canadian sovereignty over an isolated but prosperous area, and to provide the CPR with access to a lucrative source of new traffic? Although the conventional wisdom is that the Crow rates were designed to foster development in the prairies, it is also arguable that these sections were politically motivated, and were just one more step along the path of increasingly stringent regulation that had been followed since the emergence of railways as a viable mode of transport (Duncan, 1973).

Duncan MacGibbon traced the origin of regulatory control back to British common law which introduced the (still extant) common carrier obligation that requires all traffic to be carried without

discrimination. The first railway legislation in Canada, passed in 1851, required all tolls to be approved by the Governor in Council. This was followed by the inclusion of provisions in railway charters that allowed governments to reduce tolls if the company's returns exceeded certain specified levels (see above). Finally governments moved to establish regulatory agencies, which in Canada occurred in 1903 with the creation of the Board of Railway Commissioners. The Crow, he said, was something of an anomaly in this progression, being "neither a case of pure charter granting nor yet general law" in which, "for aid granted to one portion of its [network], it agreed to give reduced rates on another portion" (MacGibbon, 73 – 85).

The federal government, without doubt, was reacting to the chorus of criticism emanating from the West on freight rates. Complaints about rates arose as soon as the company issued its first tariffs in 1883. The freight rate for wheat from Winnipeg to Fort William and Port Arthur (now Thunder Bay) was set at 21.6 cents per bushel compared with the rate on grain from Toronto to Montreal, a roughly equivalent distance, of 10 cents per bushel, and with the water-competitive rate from Fort William/Port Arthur to the eastern seaboard of about 15 cents per bushel (Regher, 260).

The criticism did not stop even as freight rates declined, and in 1895 the federal government appointed a special commission to investigate "complaints 'of exorbitant and unreasonable passenger and freight rates and of discrimination in both the province of Manitoba and the North-west Territories' preferred by the Legislative Assembly of the North-west Territories, the Central Farmers' Institute and others." As even CPR Vice President Shaughnessy acknowledged, "[t]he subject of railway rates has been a leading source of discussion in Manitoba and the North-west Territories for a considerable time," and many participants "have assumed a position of hostility to the Canadian Pacific Railway." Although the Commission proved to be something of a whitewash, finding nothing wrong and claiming that "their [the CPR's] interests must be identical with those of its patrons" (Canada, 1895, 1, 15), the federal government could not ignore the situation and slowly responded with increasingly tight controls on the tolls.

What motivated the CPR to accept the regulatory regime of the Crow Agreement is a little harder to understand. However, it is likely that the deal looked rather good to the company at that time. By 1886, the 1883 rate of 36 cents per hundredweight from Winnipeg to the Lakehead had already declined to 28 cents, and it continued to drop almost every year thereafter. Moreover, as Friesen put it, “[t]he exciting atmosphere of the economic boom at the turn of the twentieth century turned heads in Canadian boardrooms and cabinet chambers” (Friesen, 192). Probably of greatest influence was the fact that the Manitoba government was in active negotiation with the Canadian Northern Railway to provide competition with the CPR (Canada, 1951, 247). So it can be reasonably inferred that the CPR anticipated that rates would continue to fall, and a toll that was still 40% over the comparable Toronto to Montreal rate, in a time of economic expansion, did not look particularly onerous.

#### **The historic background: grain marketing**

The Crow and the general regulation of the railways resonated in the farm community, where an anti-market mentality took root in the major farm organisations during the 1910s and 1920s. Typical of the language used to describe the feelings of farmers towards grain marketing was a 1925 article written by Manitoba Pool President, Colin Burnell, in the Pool’s news letter, *The Scoop Shovel*.

It is high time something was done to stop this fooling with the food of the people, this practice of playing ducks and drakes with the livelihood of the producers and the necessities of the consumers. ... That it should be in the power of any body of men to manipulate a market so as ... to be robbing at one time the men who have toiled to feed the world, and at another time those for whom the food has been produced, is one of the blots upon modern civilization and a crushing indictment of the competitive system.

This kind of rhetoric had been promulgated in the farm press since the early 1900s, but reached a crescendo following the government control of wheat markets during WWI. The result of the farmers’

agitation was the formation of United Grain Growers (UGG) in 1906, and the three provincial Wheat Pools in 1924. These organisations were voluntary cooperatives, but with the Great Depression came demands for “A 100 Percent Pool by Legislation,” a demand that was partially met in 1935 when the Conservatives, under R.B. Bennett, created the Canadian Wheat Board. Although the Board’s initial mandate was quite narrow, being confined to purchasing wheat at a minimum price if open market prices fell too low, it was expanded under wartime conditions, to include regulatory control over transportation (in 1942), and monopoly marketing powers (in 1943). Although both were intended to be temporary, these powers were retained after the war, partly to implement a wheat marketing agreement with Britain, and partly because of political pressure from western farmers to end the open market altogether (Wilson, 1980a 1980b). Then, in 1947, the CWB Act was amended, to make the Board’s regulatory control over transportation permanent.

These developments were received quite happily by the Pools – and most probably, at the time, by the majority of farmers. As Vernon Fowke observed in 1957, “[t]he conviction of the western wheat grower ... rested on a belief – diametrically opposed to the free enterprise tenets underlying national policy – that the open market or competitive system, the system of freely moving prices, ought not to govern the marketing of western grain” (Fowke, p. 192). Heavy regulation of the railways, and the sacrosanct status of the Crow, were completely consistent with this philosophical position.

Of course, as Fowke was also very aware, this was only half the story. There were people in the farm community and in the grain industry who did not buy into this anti-market mentality at all, and in fact the grain business has always been characterized by a deep and unbridgeable ideological divide between those who rejected, and those who embraced, the core values of free enterprise. Table I shows the opposing values of these two camps, between which communication was exceedingly limited (Earl, 1992) – a phenomenon that can be explained, said sociologist Karl Mannheim, because ideologues end up “‘talking past one another’ [and] overlook the fact that their antagonist differs from them in his whole outlook,

and not merely in his opinion about the point under discussion” (Mannheim, 280). Fowke saw this same phenomenon develop in the western grain industry, alleging that the two factions “did not come to grips [in their disputes] because they persisted in talking about different things while apparently convinced they were talking about the same things” (Fowke, 195).

**TABLE I**

<b>COOPERATIVE VALUES</b>	<b>FREE ENTERPRISE VALUES</b>
Wealth and poverty should not co-exist	Unlimited personal wealth is acceptable
Human beings are social by nature	Human beings are individualistic by nature
Human nature is cooperative and people are motivated to serve	Human nature is self-centred and people are motivated to acquire (“economic man”)
Economic interests are antagonistic (because they are a zero sum game)	Economic interests are harmonious (“a rising tide lifts all boats”)

The most important things to realise about this list of values is that they are assumptions that can be – and are, in a vast literature on the subject – challengeable (see, for example, Heilbroner, and Myrdal), and that neither represents the only truths about human behaviour. Everyday experience bears this out, showing for example, that people sometimes behave selfishly, and sometimes cooperatively. Together, they describe complementary aspects of human nature, and both value sets are necessary to guide life in any kind of civilized society.

**The historic background: grain logistics**

The 1947 amendment to the CWB Act gave the CWB the power to “provide [by order] for the allocation of railway cars available for the shipment of grain at any delivery point to any elevator, loading

platform or person at the delivery point.”<sup>2</sup> Whether this provision gave the CWB sufficient authority to exercise the control that it did, or to perform the role that it eventually filled in regulating grain logistics, is questionable, but exercise that power it did (Earl, 2010). What followed 1947 was an increasingly regulated system, with the inefficiency that tends to accompany over-regulation, and six and a half decades of often bitter disputes over the fairness of access to cars, arguments and counter arguments over the role of regulation in inhibiting the rationalisation of the grain handling and transportation system, and attempts by those who favoured a more market-oriented system to reduce the CWB’s level of control over logistics. These issues generated no less than ten major studies on grain logistics alone – over and above the endless studies on the Crow itself and its effect on branch line and elevator rationalisation. The following thumbnail sketches of the ten major studies are based primarily on personal knowledge gleaned from close to three decades of intense involvement in the Byzantine world of grain transportation.<sup>3</sup>

- **1957:** Conducted by former Manitoba Premier, John Bracken; examines how shipping orders and rail cars were allocated among grain companies; initiated because many more shipping orders were placed than there was grain to move or cars available to move it; the key issue is access to available shipping; recommends that orders and cars be allocated in proportion to farmer deliveries.
- **Mid-1960’s:** Conducted by the grain industry itself; initiated by a near-breakdown caused by record volumes moving to new markets in the Soviet Union and China; the industry finally recognises that shipping orders should match sales, grain supplies, and cars available; results in “The Block Shipping System” in which the CWB assumes a much larger role in controlling logistics.
- **Early 1970s:** The federal government forms a small interdepartmental committee called “the Grains Group” to study grain marketing, production and transportation; initiated because the system is at the point of total breakdown, largely due to the non-compensatory level of the Crow rates; Booz Allen Hamilton and IBI conduct a major study of logistics; no operational changes

ensue from this study, but major dysfunctionalities in the control of logistics are documented.

- **1979:** MP Jack Murta and two colleagues follow up on the Grains Group's work with a study to find solutions to the system inefficiency and dysfunctionality; results in the formation of the Grain Transportation Authority (which later becomes the Grain Transportation Agency, and later still the Western Grain Transportation Office) (Canada, 1979).
- **1975 - 1980:** The Authority takes over, and makes major changes to, the logistical control of grains marketed outside the CWB; initiates a major change in the sorting and switching of cars of canola (then known as rapeseed) in Vancouver; a few industry people begin to recognise that the problems of rationalisation and inefficiency will not be solved without changes to the control of logistics (Earl, 1983).
- **1982 - 1984:** Transport Deputy Minister, Arthur Kroeger, manages the preparation and passage of the Western Grain Transportation Act (WGTA) which ends the Crow rate and provides subsidies to the railways for the movement of grain (Kroeger); a special committee develops a logistics proposal that would create a less regulated regime; this work is shelved as the task of changing the rates swamps the effort to change the control of logistics.
- **1994:** The WGTA becomes untenable because of fiscal constraints and pressures from international trade agreements; the federal government asks the industry to take over the logistical functions performed by the Western Grain Transportation Office; this study creates an industry body called the Car Allocation Policy Group.
- **1997 - 1998:** Retired Supreme Court Judge Willard Estey conducts a review of grain logistics after the massive system failure of the winter of 1996/97; it is recognised that the CWB's control of transportation is a major cause of the failure to rationalise the grain handling and transportation system, and of system breakdowns like that of 1996/97; Estey identifies the CWB's centralised control as



“the bedrock issue” of his review; his key recommendation is that the CWB’s role in transportation be terminated.

- **2001:** The federal government accepts Estey and appoints Arthur Kroeger to lead an implementation process; the pro-reform participants foresee a difficult fight but, as one of my colleagues says, “this is a hill to die on”; the federal government then changes its mind, and opposes Estey’s key recommendation; the reformers do die on Kroeger’s hill, and the CWB retains control over grain logistics.
- **2011:** The Conservatives win a majority, and promise to end the CWB’s monopoly on wheat marketing and its regulatory control over transportation; Agriculture and Agri-Food Canada forms an industry committee to advise on how this is to be done, including how “access to elevators, rail and ports” is to be managed without CWB control (Canada, 2011); compared with the Kroeger, Estey, WGTA, Grains Group and Block Shipping System studies, this one is short-waisted indeed; the committee starts work in the summer of 2011, and its final report is issued on September 22<sup>nd</sup>; legislation to end the CWB monopoly is passed before the end of the year.

There are three important points that flow from this (admittedly inadequate) account of these studies. The first is their sheer number and frequency (on average one every six years), evidence of how intractable the logistics issues were. The second is the tenacity and innovativeness with which the CWB extended and retained its control of grain movement. The third – which would really take a much more detailed account than this to demonstrate – is the way the disputes were infused with the ideological divisions shown in Table I, and how the two sides, in Mannheim’s words, “talked past each other,” or in Fowke’s, “did not come to grips,” neither recognising the other’s issues or point of view.

The industry is now in transition to a new regime, not only in grain marketing, but in terms of the management of grain logistics. The era of highly regulated, centrally controlled, transportation of grain will end on July 31 of 2012.

So do we now have it right? Is the logistical control of grain movement finally established on the basis that the reformers want, and will it now work smoothly to create the efficient and effective system that they so strenuously advocated for so many years?

The answer depends on which of the two ideological camps a person occupies. For those who embrace the values of laissez faire, the answer is yes: we can now look forward to the prosperity and efficiency that has been denied us for so long as we were trapped in the cooperative madhouse. To those who clung so long to the status quo, the reforms are nothing short of disaster. However as transportation professionals, it is our responsibility to rise above ideology and evaluate policy proposals on their merit, not on whether they conform to preconceived ideas. In the present case, where major changes are being made to the mandate of the Canadian Wheat Board, *inter alia* terminating its control of grain movement, we must ask whether we have even yet, got things quite right.

#### **Alors, parlons-nous toujours de la même chose?**

To answer that question, let us first ask whether we are indeed always talking about “the same thing.” Is there a common theme that ties together the farmers’ views on grain marketing and transportation, the long history of rail regulation, the bitter disputes in western Canada over grain logistics, and the current changes to the mandate of the CWB? The answer is, yes there is, and that theme is market power. To see why that is so, we can start with the statement of National Transportation Policy contained in the *Canada Transportation Act* which unequivocally declares that “competition and market forces ... are the prime agents in providing viable and effective transportation services.” It is likely that very few transportation professionals would disagree with this statement, and it is certain that no one who appreciated the damage that over-regulation did to the grain handling and transportation system, over many decades, would disagree with it either.<sup>4</sup> It also true that Canada has been on a relatively steady path of deregulation of transport since the first *National Transportation Act* was passed in 1967. For those of us who fought so hard for

change in grain marketing and transportation, this has been a laudable process. However, it seems that some organisations which previously supported this trend are having second thoughts.

Submissions to the Rail Freight Service Review are illustrative, with many of the shipper briefs referring to the lack of competition in the rail sector. The most striking example of such a change of heart is the submission from the Western Grain Elevator Association (WGEA), many of whose members had been ardent supporters of deregulation, and, through the creation of the “Car Allocation Policy Group” referred to earlier, had tried to develop plans for a more commercial, post-WGTA, grain logistics system (Earl, 1996). The WGEA submission bluntly stated that “because there is no competition and no commercial market for rail freight in the grain trade, it needs to be controlled by regulation or legislation” (Western Grain Elevator Association, 8). The lack of competition was also cited by the Western Canadian Shippers Coalition (WCSC), the Canadian Canola Growers, the Grain Growers of Canada, the Shipping Federation of Canada, the Alberta government, the Canadian Industrial Traffic League and the Forest Products Association of Canada. The WCSC, referencing the CTA policy statement, alleged that “‘market forces’ are in reality market dominance by rail carriers” (Western Canadian Shippers Coalition, 5). Alberta, which is not a left-wing government, found in its surveys of the transport sector that shippers perceive that “the railways do not share the benefits of their improved efficiencies,” and that “the railways are too focused on meeting financial and operating targets set by financial analysts to protect their stock prices” (Government of Alberta, 4<sup>th</sup> and 9<sup>th</sup> pages), a sentiment that farmers in the 1920s would have empathised with and fully endorsed.

The common theme, therefore – “la même chose” – that lay behind the earliest forms of regulation, that was feared to the point of paranoia by farmers in the 1920s, that motivated – literally to a fault – the regulatory activities of the CWB, and that echoes repeatedly through the submissions to the Rail Services Review, is an ubiquitous concern that the benefits of competition could be nullified by the market power of very large corporations who do not face effective

competition in the marketplace. Which brings us finally to the “new” Canadian Wheat Board and the new world of grain logistics.

**The end of the CWB monopoly: how new is the new world?**

The government’s stated intentions with regard to its changes to the CWB were: (1) to give farmers the opportunity to market outside the Board (which the new legislation will do); (2) to end the CWB’s regulatory control over grain handling and transportation (which it will also do); and (3) to create a viable voluntary CWB (which is where questions arise, one of which is how the concern about market power that has reverberated so strongly through the history of both rail transportation and grain marketing might once again rear its ugly head).

While the details of how the “new” CWB will operate are yet unclear, it will presumably continue to buy grain from farmers and sell it into the world market. Presumably some farmers will continue to patronise the CWB as an alternative to dealing with private sector grain companies, just as they once patronised the Wheat Pools and UGG and continue to patronise farmer-owned terminals. But the CWB, in order to move the grain to market, must contract with those same private companies for transportation and handling services. The three largest of these are Viterro, JRI and Cargill, and while there are other smaller companies, the CWB will almost certainly need to deal with these three in order to provide its geographically dispersed farmer-customers with a network of elevators to receive their grain. At the same time, all three of these organisations will be competing with the Board for the farmers’ business.

So the question that arises, and is directly related to the issue of market power, is this: is there a parallel between the allegedly unsatisfactory level of competition that members of the Western Grain Elevator Association say they face in dealing with two large railways, and the level of competition that the CWB will face in dealing with three large grain companies? And if there is a parallel, can a voluntary CWB survive when it has to rely on a small number of strong competitors for services it needs? The companies allege

that there is no comparison, and that suitable contracts can be readily worked out.<sup>5</sup>

Perhaps. But perhaps not. As one who, for several decades fought for deregulation of grain marketing and transportation, I can say unequivocally that the realities of market power was steadfastly ignored by the proponents of change. However, anyone who rises above the ideology of perfectly functioning markets, must recognise the reality of market power. Add to that the reality of “the iron law of unintended consequences,” and one is forced to contemplate the possibility – and perhaps the likelihood – that, despite having achieved the deregulated state that so many of us fought for, we still may not have got things quite right, and that the seemingly endless debates about grain transportation may not yet be over.<sup>6</sup>

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<sup>1</sup> Written by Fowke, and adapted by him and Britnell to be a submission by the Saskatchewan government to the McPherson Royal Commission on transportation. This document is one of the more complete accounts of the origin of the Crow's Nest Pass Agreement and the Crow's Nest Pass Act.

<sup>2</sup> "Car allocation" is the term widely used in the grain industry to refer to the entire process of controlling the movement of grain from origin to destination. It is arguably a misnomer, which is why the this paper uses the term logistics.

<sup>3</sup> Because much of this paper is based on personal knowledge, I will sometimes, as I do here, depart from the protocols of academic writing and unabashedly use the first person.

<sup>4</sup> Of course there were those on the left who deny that any damage was done, and who as steadfastly ignored the concerns of reformers as the reformers ignored the concerns of the left.

<sup>5</sup> The CWB has just signed the first such agreement with Cargill (Winnipeg Free Press, Friday, March 2, 2012).

<sup>6</sup> Debates I happily leave to my successors.