FROM FREE MARKETS TO REGULATION AND BACK AGAIN: CYCLES IN TRANSPORTATION, GRAIN MARKETING, AND ECONOMIC THOUGHT

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> [T]he gains in technique and disciplinary cohesion [in economics] have come at the expense of marginalizing many of the issues about the market that are likely to concern reflective people. Jerry Muller

In 1881, in Bonfield, Ontario, the first spike was driven in the construction of the Canadian Pacific Railway. Sir John A. Macdonald immediately predicted that "the CPR can go on its own way for its own interests, and in the long run, the interests of the CPR and those of the Dominion are identical." CPR President William van Horne, however, expressed a different view when he defined the company's interest for a U.S. Senate committee. The railway, he said, "was built for the purpose of making money for shareholders and for no other purpose under the sun." Macdonald's statement was clearly political. Van Horne's might be classified as either a fond hope, a PR gambit, or something of a delusion. As historian Gerry Friesen observed: "The CPR was both a privately held, profit oriented corporation and a state enterprise … and when its board of directors, or the Canadian people, ignore the inconvenient half of the dualism, they merely open themselves to greater irritation" (Friesen, 177). Friesen's comment applies to more than the CPR; most transportation enterprises are partly commercial and partly a public service, and this same dualism runs through the history of grain marketing. Moreover, although we do not recognise it so often, it also runs through economic thought and public policy about free enterprise in general.

This paper will trace the way this dualism has manifested itself in both transportation and grain policy in Canada through a very long cycle from free markets to regulation and back, and how this cycle reflects parallel developments in economic theory, public opinion, and government policies, in both Canada and abroad. It ends with some reflections on what might be learned from these remarkable fluctuations in outlook.

I. FROM FREE MARKETS TO REGULATION AND BACK AGAIN

As railways developed in Canada, they were never – even at the beginning – free of some regulatory control. The first railway legislation in Canada, passed in 1851, required all tolls to be approved by the Governor in Council. Later, railway charters included provisions that allowed governments to reduce tolls for any company whose returns exceeded certain specified levels – in general, 15 percent; in the case of the CPR, recognising its special role in national development, 10 percent (MacGibbon, 1917, 73-85). These rather mild regulatory restrictions posed little restraint. "For all practical purposes," said Currie, "the railways themselves determined the level of freight rates, the charges for individual shipments, and the quality of their services" (Currie, 5). In short, they possessed sufficient market power to run their operations pretty much as they pleased and in their own interests.

Shippers' dissatisfaction was understandable and inevitable, and in 1895 the federal government appointed a special commission to investigate "complaints 'of exorbitant and unreasonable passenger and freight rates and of discrimination' " (Canada, 1895, 1). Although the Commission proved to be something of a whitewash, the federal government could not ignore these problems, and took various steps to deal with them. In 1897, the infamous Crow's Nest Pass Agreement was signed, firstly requiring that tolls for traffic originating or terminating on the Crow's Nest line "shall first be approved by the Governor in Council … and shall at all times thereafter and from time to time be subject to revision and control," and secondly including the better known provisions for rate reductions on settlers' goods moving into the prairies and on grain moving out. In 1903, the Board of Railway Commissioners was created with the power to disallow any tariff it considered to be unjust or unreasonable. In the west, the Board also had the power of "ordering cars into a congested area … if it appeared likely that the grain would deteriorate through delay in shipping" (MacGibbon, 1932, 47).

Canada was not alone in building a regulatory regime. Some ten years earlier, U.S. railroads had also come under regulatory control, and for much the same reasons; *viz.*, concerns of western farmers and shippers who "believed that the railroads possessed economic power that they systematically abused." In response, the Interstate Commerce Commission was formed in 1887, and its power grew steadily thereafter until, by the post-WWII period, it controlled "every aspect of the railroad business but labor relations" ("Interstate Commerce Commission").

During these same years, the western Canadian grain industry came into being, and its participants, even more than the railways, operated as free enterprise entities. By 1905, a grain futures market had been established in Winnipeg, and within another decade over 300 grain handlers and merchandisers were operating in the Canadian prairies. And just as free enterprise railways were found wanting by shippers, so a free enterprise grain industry was found wanting by farmers. The Winnipeg Grain Exchange (WGE) was seen as a "syndicate" that was able to manipulate grain prices, while elevator companies were accused of subjecting farmers to unfair weights and grades. Political agitation ensued, and regulation followed. The Manitoba Grain Act was passed in 1900, providing for the appointment of a "Warehouse Commissioner" to regulate grain handling, and was later superseded by the Canada Grain Act of 1912, creating the more powerful Board of Grain Commissioners.

Evidently the law was not fully effective. 1901 and 1902 saw record crops, and in an effort to maximise movement the CPR ignored the provisions of the Manitoba Grain Act on the distribution of rail cars. In response, a group of farmers formed the Territorial Grain Growers Association which then took the CPR to court over the issue, and, in the famous "Sinaluta case," won. The farmers did not stop there. In 1906 they formed the Grain Growers Grain Company (GGGC) to compete with the private grain trade. The GGGC (later known as

United Grain Growers, or UGG) was the first large agricultural co-op to appear on the prairies but was soon followed by the Saskatchewan Co-operative Elevator Company in 1911, and the Alberta Farmers' Co-operative Elevator Company in 1913. By 1916/17 these three companies were handling about 30 percent of the wheat crop.

By the start of WWI, the march toward a regulated grain handling and transportation system in western Canada was well underway. "The grain trade," said MacGibbon, "had ceased to be regarded as purely private business," and had been "placed under comprehensive regulation" that "had put the handling of grain into the same class of controlled enterprise as chartered banks and railways" (MacGibbon, 1932, 47). One part of the industry, however, remained outside this "comprehensive regulation," namely grain merchandising which was left fully within the private sector. That, however, was soon to change, and did so in four stages.

The first occurred during WWI when grain markets collapsed, and British government wheat purchases rendered the WGE inoperable. At the behest of the Exchange, the federal government appointed the Board of Grain Supervisors to take over the marketing of wheat. Wheat prices rose as a result of wartime conditions, but a number of farm leaders in western Canada associated high prices with government control and became convinced that grain marketing should rest permanently with a government monopoly. In the 1920s came the three Prairie Wheat Pools and with them a much more critical view of laissez faire than had previously prevailed. While most of the Pool leadership, including the Presidents of both the Saskatchewan and Alberta Pools, Alexander McPhail and Henry Wise Wood, eschewed such radicalism, many within the organisations wanted the end of open market trading of grain. The third stage saw these moderate attitudes evaporate as the ravages of the 1930s Depression eroded faith in capitalism – not only among prairie farmers, but throughout the Western world. By 1935, even Conservative Prime Minister, R.B. Bennett, a former owner-operator of a large grain company, became convinced that grain markets had been permanently damaged, and that grain henceforth should be sold by a government marketing agency. It was an epiphany of the most extreme kind. In its dying days, the Bennett government created the Canadian Wheat Board (CWB), but concerted opposition denied the Board the monopoly powers Bennett sought (Wilson, 442-487).

The fourth step was brought about by the exigencies of WWII. While, in 1939, both the Tories and the Liberals wanted to terminate the CWB, the threat, and then the reality, of wartime disruptions made it imprudent and then impossible. In 1940 the CWB imposed quotas on farmers' deliveries of grain; in 1942 it was given control over the allocation of rail cars; and in 1943, the Winnipeg futures market was closed, and wheat marketing became the responsibility of the Board. Almost immediately after the war, the Liberal government, fearful of the dropping prices that had followed WWI, signed a five year agreement with Britain to supply wheat under what appeared to be favourable terms, and the CWB's life was extended again. The Board emerged from the war with a very favourable reputation for the way it had handled wheat marketing, and it was at this point that the Liberal government switched policies and dropped its intention to reinstate the open market (Wilson, 846-887).

By 1945, therefore, grain handling, transportation and marketing had largely been removed from the private sector, and a highly centralised and regulated regime had emerged in which the essential functions of moving grain from farm to export were under government control.

The effect of the heavy regulation in both transportation and grain was both inevitable and predictable, *viz*., a chronic inability of both industries to adapt to new economic realities. The 1961 MacPherson Royal Commission on transportation recognised the problem, identifying competition as "a major factor in Canadian transportation" (Currie, 18) and recommending that the railways be allowed more commercial freedom. The 1967 National Transportation Act (NTA) followed, implementing many of the Commission's recommendations. The NTA was to be the first of three major revisions of Canadian transportation law, each of which advanced the cause of deregulation. Similar steps were taken in the U.S., culminating in the "massive deregulation" of the Staggers Act in 1980 ("Interstate Commerce Commission").

In the grain industry, the negative impact of the regulated environment was more severe. After 1945, the network of country elevators, which had been built in the 1920s and 1930s, remained virtually unchanged for the next two decades, and even thereafter, modernisation continued at a snail's pace until the 1990s. While an analysis of this situation is complex, the most important factors were the Crow's Nest Pass rates and the CWB's regulatory powers over car allocation. The first made it impossible to offer incentives to attract grain into a central facility, and the rigid rules of the second made it difficult to ship grain out. Both the Crow and the CWB were above criticism in the farm community in western Canada in the postwar years. As former Deputy Minister of Transport, Arthur Kroeger put it, "the Crow was sacred and whosoever laid his hands upon the Ark of the Covenant of 1897 would be struck dead" (Kroeger, 7). Similar attitudes prevailed with respect to the Wheat Board.

The first major assault on the status quo did not occur until the 1970s when the federal government initiated a major study of grain policy by an interdepartmental body known as the Grains Group. In 1970, the transportation specialist in the Group, R.J. Shepp, presented a paper to the annual meeting of the Canadian Transportation Research Forum in Winnipeg showing that, from the point of rail operations, the existing 5000 country elevators could be replaced by as few as twenty large inland terminals. The Grains Group exercise was succeeded by a series of studies and federal inquiries which dealt with branch lines (the Hall Commission), rail costs (the Snavely Commission), and the Crow Rates (the Gilson study). All this led to the 1984 Western Grain Transportation Act that ended the Crow regime by subsidising the railways for losses on grain and shifting part of the costs to farmers. In 1995 the subsidies were terminated and a new and more flexible freight rate regime was introduced. Following a virtual breakdown in grain movement in 1996, a review of grain transportation by retired Supreme Court Justice, Willard Estey, recommended that the CWB's role in controlling grain movement be terminated.

Along with the steady criticism of, and changes in, transport, was an increasing dissatisfaction over grain marketing, and in 2012 the Conservative government ended the CWB's monopoly.

There were only two recent retreats in the march towards deregulation. In 2000, following the publication of Estey's report, a "revenue cap" was imposed on the total earnings that the railways can realise from grain, and in the wake of the inability to move the record crop of 2013 (see below), movement quotas were set for the railways and penalties imposed if these quotas were not met. Otherwise, the grain industry, and its relationship with the railways, was more or less restored to the way things were in the late 1880s.

II. THE HISTORICAL CONTEXT

How, then, were these swings in grain marketing and transportation policy related to trends in economic thought and public policy in other parts of the world and in other sectors? There is not room in this short paper to explore these relationships in any depth, but the following are indicative.

First: Serious criticisms of laissez faire began in the mid-nineteenth century, Marx's being among the more famous – and the more virulent – with his condemnation of the "immiseration" of labour. However, John Stuart Mill, and even before him, Adam Smith, both advocates of free enterprise, had noted the advantage that the owners of capital had over labour (Heilbroner, 41, 75). Over time, these criticisms gave rise to various market interventions through labour laws and unions.

Second: In the period prior to WWI, although the concerns of grain farmers centred on the market power of the railways and the private grain trade, these concerns were expressed in terms common in public discourse in the U.S. a decade or two earlier. During the so-called "gilded age" of the late 19^{th} c., critics had pointed to both the emergence of "a few large corporations" that became known as "trusts" that limited competition and "dominated in steel, oil, sugar, meat and farm machinery," and to the power of wealthy "robber barons” whose “fortunes were made at the expense of the working class” (“Gilded Age”). This kind of language was later appropriated by the western Canadian farm press in the first decade of the 20th c.

Third: In the 1920s, the more radical critique of laissez faire that emerged in the Pool membership was heavily influenced by British cooperativism and European socialism, both imported from the U.K. Moreover, the Pools’ marketing system originated in California where it had first been implemented by orange growers, and the idea of a national wheat growers cooperative – the goal of many in the pooling movement – was widely discussed in the U.S. (Taylor).

Fourth: As noted above, the 1930s’ loss of confidence in free enterprise was more or less universal. The circumstances created by the Depression led to a number of public sector responses, including relief, public works projects and the CWB in Canada, and the “New Deal” in the U.S. Increased government regulation and market interventions became the order of the day and they were not confined to the Canadian grain industry or the transport sector.

Fifth: In the immediate post-war years, there was a great deal of faith in the public sector. The Allies had won the war; free enterprise was in disrepute from the Depression; and after the travails of war and economic devastation, there was, as Maynard Keynes put it, a widespread “craving for security” (Judt, 192) that led post war political leaders to create a number of institutions – the Bretton Woods agreement, the UN, the International Monetary Fund – whose hoped-for purpose was to prevent the kind of catastrophes that marked the first half of the 20th century. The widespread adoption of Keynes’s ideas on the role of the public sector was part of this phenomenon.

Sixth: As this trend reversed, and regard for the public sector eroded over the last half of the century, deregulation occurred, not only in the Canadian transportation and grain industries, but in much of the Western world. Criticism of government and an uncritical belief in the efficacy of markets were the hallmarks of the so-called “Thatcher-Reagan” revolution. There was, of course, a sound rationale for much of the swing back. The western Canadian issues centred on the stifling effects of the Crow and the CWB control of transportation. In Britain, the term “British Disease” referred to the fact that labour unions were not immune to the abuse of power that had previously been attributed to “plutocrats” and “robber barons.”

The point of this exceedingly inadequate review of the broader historical context in which the cycle from free markets to regulation and back again occurred, is simply to show that events as they played out in Canadian transportation and grain marketing were not isolated or autonomous, but were part of a broad set of economic and political forces that operated within much of the Western world.

III. WHERE ARE WE NOW? WHAT IS TO BE LEARNED?

The policy decisions of the last half century have brought transportation and grain marketing back to where they were *ca*. the late 1880s. How, then, do shippers and farmers see the systems that have evolved? Thus far, among grain farmers, concerns over deregulation, seem to be muted, and confined to former defenders of the CWB who are still angry over losing the central desk. On the transport side, however, it is a different story.

To begin with, allegations of lack of competition and the resulting market power of the railways have re-emerged as a key issue. The submissions to the 2008 Rail Services Review from both farm and shipper groups lacked only the rhetorical flourish of earlier times to differentiate themselves from western Canadian complaints at the turn of the 20th century. The lack of competition was cited by the Western Canadian Shippers Coalition (WCSC), the Canadian Canola Growers, the Grain Growers of Canada, the Shipping Federation of Canada, the Western Grain Elevator Association (WGEA), the Alberta government, the Canadian Industrial Traffic League, and the Forest Products Association of Canada. The WCSC submission cited the Canada Transportation Act statement that “competition and market forces … are the prime agents in providing viable and effective transportation services” but said that “‘market forces’ are in reality market dominance by rail carriers.” One of the most striking submissions came from the WGEA. Although many of its members, as part of the so-called "SEO Group," had been ardent supporters of deregulation (Earl, 1996, 364), the brief 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." According to Alberta, which is not a left-wing government, shippers saw the railways as "too focused on meeting financial and operating targets set by financial analysts to protect their stock prices" and failing to "share the benefits of their improved efficiencies."

More dissatisfaction emerged when 2013 turned out to be something of a replay of 1901, featuring a record crop which was beyond the railways' capability to move. It was not, of course, entirely the railways' fault. In the first place, the winter of 2013/14 was the coldest in over a century, severely curtailing rail capacity. Moreover, it would have been financially imprudent to invest in sufficient capacity to move all the grain grown in a year of record production. There is no question that moving a record crop during a record winter was not feasible, and, indeed, there is no reason to doubt the railways' claim that many commodities suffered from the weather problems.

These arguments, however, did not fully satisfy the critics. In November of 2014, WGEA Executive Director, Wade Sobkowich alleged that: "The railways have been increasing their profitability by reducing their capacity, which means we can't get the rail cars we need. Even in warm weather we're not getting the service we need. So the government must get involved with meaningful sanctions." Andrew Paterson, CEO of Paterson GlobalFoods, charged that "CN and CP are not providing timely service. And there's very little the farmer can do about it because he is a captive shipper. He has no options. The railways make good money hauling grain, but they can take their own sweet time hauling it" (MacDonald).

Even acknowledging the difficulties of a large crop and inclement weather, therefore, questions still remained. Could the railways have moved more grain? Did they allocate to other traffic the resources that might have been used to move more grain? If so, in whose interests were such decisions made? A comment by Canadian Pacific

CEO, Hunter Harrison in the spring of 2014 is suggestive. He acknowledged that bulk commodities had been "modestly" affected by the severe weather but said that container traffic had not, "[b]ecause that's one commodity that we're sensitive to. If you miss, you miss. It's not like grain or it's not like coal, [where] if you're a little bit late you're still going to haul it" (Atkins).

So did the railways discriminate against grain traffic in the severe winter of 2013/14? These comments by both carriers and shippers prove nothing. What is important to realise, however is that if they did, it would have been a completely rational and appropriate commercial decision, and precisely what the Canada Transportation Act policy environment instructed them to do. It is a fundamental economic principle that when resources are in short supply, they are to be devoted to the demand that yields the highest return. In short, having created a commercial system, no one should be surprised when commercial decisions are made.

Were these decisions in the best interests of the Canadian economy? Clearly the federal government thought not, because it established grain movement targets and imposed penalties for non-compliance.

So what is to be learned from this brief review?

To begin with, we apparently do not learn from history. For over 50 years, between the latter part of the 19th and first half of the 20th centuries, farmers and shippers struggled against the market power of the railways. And yet, as one who spent many years working for a more commercial grain handling, transportation and marketing system for western Canadian grain, the author of this paper does not recall a single serious discussion about the concerns of excessive market power. It was as if we were oblivious to the long half century when farmers and grain companies had become increasingly aware that excess power in the marketplace had to be curtailed.

Secondly, we can see that extremes do not work well: neither the largely unregulated systems of the late 19th c., nor the tightly regulated system of the middle 20th, worked well for shippers or for farmers. Gerry Friesen was right that the CPR was both a commercial and state enterprise and that forgetting its dual function leads to problems. However, what Friesen said about the CPR is in fact true of all commercial entities, and it is not just people on the left who espouse this view. In 2002, three distinguished business professors wrote: "corporations, are economic entities, to be sure, but they are also social institutions that must justify their existence by their overall contribution to society" (Mintzberg *et al.*, 69). Of course, extremes work well for some players. In the 1880s and '90s, the CPR did not complain about its ability to set rates and service standards; in the last half of the 20th c., the CWB was not upset about the stifling effect of regulation. Criticisms do not come from those with power. That is why an economically healthy society needs both a commercial and a public sector, and a balance between regulation and free markets, in order to function well.

Finally, it is important to realise that, as damaging as the over-regulation of 1945 was, the effect of the long and acrimonious debate over deregulation in the grain industry was worse. The tenacity with which the opponents clung to their positions did enormous damage to the grain industry. This kind of tenacity is fueled by self-interest, to be sure, but it is immeasurably strengthened by the narratives woven to support a priori beliefs. In the 1920s, critics of free enterprise developed a very complicated narrative about the open market for grain. It told how speculators on the grain exchange were able to entice grain out of the hands of farmers at low prices, and to manipulate the market to provide themselves with exorbitant profits. The narrative was not fully accurate, because it was based on a fundamentally erroneous assumption about how futures markets actually operated (Earl, 2011). However, it was not all wrong either because certainly, in the 1930s, farmers were reduced to hapless price-takers in a system that brought even strong supporters of free markets (R.B. Bennett, for example) to conclude that the system had to be replaced. These narratives are supported by simple phrases and slogans that purport to help explain one's position. This narrative was promoted under the slogan of "orderly marketing," which was empty of real content, but stood for the alternative marketing system of the Pools, and was sufficiently powerful to be incorporated into the

Wheat Board's legislation where it remained until the legislation was repealed.

The opponents of regulation, of course, had their own narratives that were based on liberal economic theory. In 1935, prominent grain entrepreneur James Richardson told the Parliamentary committee considering Bennett's CWB legislation that he was defending "the principle of the free market." To him and his colleagues, this meant that free markets were always good for everyone, notwithstanding that Depression conditions had devastated rural communities in the west, and that he was forced to admit that prevailing prices were not "satisfactory" for farmers" (Canada, 1935, 115, 110). In contrast, UGG President, Mac Runciman, also a strong supporter of open markets, was to say many years later: "Nobody, in a wealthy society, should have to be subjected to the hardships that people were subjected to in Saskatchewan in the '30s, it's as simple as that" (Earl 2000, 36). Like "orderly marketing," the narratives of liberal economics also enter common discourse as slogans, such as "creative destruction" and "a rising tide raises all boats," the import of which, as Gunnar Myrdal put it, is: "Whenever someone increases his income, all benefit. For he can only succeed by offering to his fellows better and cheaper services than his rivals; hence consumption guides and directs production. For classical economists this argument had almost a religious character" (Myrdal, 1954, 44, 45). In other words, don't worry about income inequality or power imbalances; they benefit everyone and your fortunes will rise too.

These narratives are extremely powerful, infusing our cherished beliefs (that corporations exist only for making money for shareholders, as Van Horne thought, or that centralised selling can extract higher prices from the producers of wheat, as some farmers thought) with a "religious character," and induce us to try to make sense of the world without putting too much thought into it. This was famously illustrated by retired U.S. Federal Reserve Chairman, Alan Greenspan in 2008 in the wake of the financial meltdown. "Those of us who looked to the self-interest of lending institutions to protect shareholders' equity, myself included, are in a state of shocked disbelief," he was reported to have said (Andrews).

Perhaps the key lesson from the past is the ever present danger of too easily accepting the narratives of the milieu in which we find ourselves: of our discipline if we are in academia; of the commercial world if we are in business; of current policies if we are in government; or simply of the received wisdom of our own society, class or nation. When we do so, we demonise our opponents and, as historian Jerry Muller put it in the epigraph at the head of this paper, marginalise, and hence ignore, the concerns of "reflective people" who sometimes see issues to which our own narratives make us blind.

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