

TRANSPORTATION AND POLITICS

A STUDY OF LONG-AND-SHORT-HAUL POLICIES
OF CONGRESS AND THE INTERSTATE
COMMERCE COMMISSION



CALVIN CRUMBAKER

UNIVERSITY OF OREGON
EUGENE

UNIVERSITY OF OREGON MONOGRAPHS

Studies in Economics

No. 1. June 1940

**Published by University of Oregon
Oregon State System of Higher
Education, Eugene, Oregon**

Copyright 1940 by
Calvin Crumbaker

All rights reserved, including the right to reproduce this book
or portions thereof in any form.

FOREWORD

THIS study was first undertaken several years ago under the direction of Professor Henry Trumbower of the University of Wisconsin. The author has found the subject of such great interest that he has revised his original monograph on three different occasions, as changes in materials or interpretation promised profit from additional study. Since the later revisions, including this one, have not been seen by Professor Trumbower, the author is solely responsible for the general direction of the study and the specific conclusions therein.

The monograph disagrees with much expert opinion on the question of whether certain acts of the Interstate Commerce Commission, most noticeably in the transcontinental cases, were in fact legislative and not administrative. However, my purpose in discussing these cases is not to demonstrate that the decisions were wrong, but to point out the evidence that an entirely new note has been struck which, if applied generally enough, will revolutionize regulation.

The consensus of current opinion is probably against the contention. It is highly probable that the courts would refuse to set aside orders of the Commission on the basis of the arguments set forth in this study, if for no other reason, because the practical exigencies of regulation preclude their consideration. So the burden of proof is heavy upon the author to establish his contention that acts which the Commission insists are purely administrative, and which are usually taken for granted to be so, are in reality legislative in nature.

But, if there is any basis for such suggestions as the author makes, the recognition of that fact will do much to clear the ground for constructive legislation by Congress to cover the field which the Commission now feels it must cover by administrative orders. Failure to provide such constructive legislation might lead to the gradual elevation of the Commission to the position of economic dictator, apportioning and allocating economic opportunities among individuals, groups, and localities.

If, as has been held, the true policies of Congress are concealed in a hodgepodge of miscellaneous legislation, rather than in straightforward transportation legislation, it is high time for Congress to come out into the open and assume the responsibility for a broad, constructive transportation policy.

That the contentions of the author have never been argued before the Supreme Court, or charged against the Commission, or seriously

discussed by students of regulation, does not refute them. Examples cited in the text show that many groundless statements have been generally accepted without question and repeated over and over by members of the Commission and others; and yet no one has taken the trouble to check them against the facts to see if the statements are justified. A case in point is the assertion that the *Alabama Midland Case* nullified Sec. 4 of the Act of 1887. Another example is the statement that fourth-section discrimination was the cause of the disappearance of inland water competition. Others will appear in the discussion.

It may well be that the general tendency to take for granted the assumption that the functions of the Interstate Commerce Commission are administrative, rather than legislative, has led students to a less critical analysis of the acts of the Commission than is justified by facts. Accordingly, the author, with the foreknowledge that experts in the field, whose opinion he values highly, challenge his conclusions, presents them herewith for what they may contribute to a general understanding of the whole problem. It is his belief that a careful checking and rechecking of matters which have too long been taken for granted will support his contentions and conclusions.

Eugene, Oregon, Dec. 1939.

CALVIN CRUMBAKER.

On April 9, 1940, after the type for this monograph had been set, the Maritime Commission handed down a decision in Docket No. 514, in which minimum rates were fixed for common carriers in westbound intercoastal commerce, and certain reductions in westbound rates, proposed in Docket No. 534, were ordered canceled. Interesting data on the deplorable state of intercoastal carriers as a result of the competitive regime theretofore in force is contained in the report of the Commission in this case.

June 1940.

TABLE OF CONTENTS

	<i>Page</i>
FOREWORD	iii
I. RELATION OF POLITICS TO TRANSPORTATION	1
II. NATIONAL REGULATION OF CARRIER COMPETITION : 1887-1906	6
III. CARRIER COMPETITION AND MARKET COMPETITION	15
IV. NEW "TEETH" FOR THE FOURTH SECTION : ACT OF 1906 ..	24
V. MORE POWER TO THE COMMISSION : ACT OF 1910	30
VI. POSTWAR REGULATION OF COMPETITION	44
VII. LONG-AND-SHORT-HAUL COMPETITION SINCE 1920	58
VIII. PRESSURE GROUPS AND TRANSCONTINENTAL COMPETITION	78
IX. DENIAL OF RELIEF TO TRANSCONTINENTAL RAILROADS.....	91
X. USURPATION OF LEGISLATIVE POWER BY THE COMMISSION	106
XI. THE COMMISSION AND CONGRESSIONAL PRESSURE METHODS	136
XII. THE FUTURE OF CARRIER COMPETITION : POLITICS OR ECONOMICS	154
INDEX	167

INDEX

- Act of 1887, 7
- Act of 1906, 24
- Act of 1920, 30
- Act of 1920, effect on Sec. 4, 28
- Act to Regulate Commerce,
 - emasculatation of, 14
- Administrative function contrasted
 - with legislative, 106ff.
- Aitchison, Clyde B., 24
- Alabama Midland Case, 9, 13, 20, 159
- Aldredge, J. H., 150
- Amendments of 1936, 141
- America's Capacity to Produce*, 154
- Basing point rates, readjustment
 - of, 61ff.
- Barge competition and discrimination, 74ff.
- Barge Line Case, 75
- Behlmer Case, 159
- Birmingham, Ala. and market
 - competition, 17
- Blanket rates as factor in
 - destructive competition, 162
- Campbell, Johnston B., 80, 157
- Certificate of public convenience
 - and necessity, 55
- Chicago, disadvantages of, 85
- Circuitry, as basis for
 - discrimination, 68ff.
- Classification territory and
 - discrimination, 72
- Collateral losses, Automobile
 - Cases of 1935, 104
 - cases of 1922, 98
 - propriety of, 131
- Columbus, Ga., 10
- Commission held bound by law, 11
- Commission orders made binding, 27
- Committee on Interstate Commerce,
 - influence of, 151
- Commodity classification for
 - discrimination, 40
- Competition, excessive, 9
 - of distribution, 16
 - of markets, illustrated, 19ff.
 - of railroads after 1920, 49
 - of supply, 16, 64ff.
 - right of railroads to, 41
- Competitive tonnage, 80ff.
 - in intercoastal service, 79
- Comptroller General, report on
 - sale of government ships, 88
- Conflict in interest, long-and-short-
 - haul discrimination, 78
- Congress, uncertain factor in
 - regulation, 14
- Congressional hearings affecting
 - transportation, 148
- Co-ordinator, proposals of, 4, 155ff.
 - views of on regulation, 147
- Cullom Committee, 6
- Cummins, Senator Albert, 45, 53
- Dayton-Goosecreek Case, 54
- Discrimination, basis for after
 - 1914, 33
 - and water transportation, 157
 - effect of pressure groups on, 78
- Dissimilarity of conditions justifying
 - discrimination, 12
- Division of joint rates, 55
- "Dry land" rates in South, 61
- East Tennessee, Virginia and
 - Georgia Railway Case, 20
- Eastbound rate discrimination,
 - readjusted in 1912, 34
- Eastman, Joseph B., on influence
 - of Congressional pressure
 - methods, 136ff.
 - on market competition, 15
 - theory of commission powers, 114ff.
- Effect of competition on
 - discrimination, 15
- Egg Case, Tennessee, 62
- Equidistant requirement waived
 - in certain cases, 72
- Esch-Cummins Act of 1920, 44
- Esch, John J., dissenting opinion,
 - 1926, 130
 - rejection of, 151
- Excessive competition, 9
- Exporters, Pacific Coast, 86
- Federal-aid highways, 50
- Field v. Clark, 108
- Fourth-section rates removed in
 - 1916, 42
- Geographic advantage, 71, 127ff.
- Granger laws, 6
- Gray's Harbor Case, 66ff.
- Hampton v. U. S., 108
- Henderson, Senator, 51
- Hepburn Act of 1906, 25
- Hershey Sugar Case, 74
- Highway Carrier Act amended
 - in 1938, 145ff.
- Highway carriers, favoritism for, 143

- Highway competition and discrimination, 73
Hoch-Smith Resolution, 57
- Intercoastal traffic, extent of, 79ff.
Intermountain cases, 32, 106, 113, 117
Interstate Commerce Commission, dependence upon law, 3
discretionary powers of, 113ff.
- Jackson Traffic Bureau Case, 62
Jobbers, attempt of to secure water rates, 52
intermountain, 87
Pacific Coast, 85
- LaFollette, Robert M., Sr., 45
Land, Rear Admiral Emory, 88
Legal discretion of the Commission, 119
Legislative activities of Commission, evidence of, 152
Legislative discretions not granted in Act of 1910, 32
Legislative power, exercise by the Commission, 106ff.
delegation of, 106
illegal delegation of, 110ff.
usurpation of, 106ff.
- Lewis, Commissioner, 49
Long-and-short-haul, attitude of Commission to, 8
report of Commission on cases, 58
cause of discrimination, 7
conformity to public interest, 9
illustration of, 6
limits of, 8
Lorenz, Max O., 80
- Mahler v. Eby, 109
Mandatory powers conferred in 1906, 25
Mann-Elkins Act of 1910, 30
Manufacturers, Pacific Coast, 86
Market competition, 11, 126
bases for discrimination, 15
cases of 1922, 95
cases of 1926, 101
form of carrier competition, 16
hypothetical illustrations of, 19
involved in transcontinental rates, 37
test for legality of, 38
Maximum charges of water carriers, 93
Memphis-Southwestern investigation, 63ff.
Middle West, interest of, 84
Minimum rates for water carriers, 133
Minimum rate powers factor in destructive competition, 161
Mississippi Barge Line Cases, 75
Montgomery, Ala., 10
and market competition, 17
Myers, Henry L., 44
- National transportation system, 46, 56
New England Divisions Cases, 55
Nominations of commissioners, 148
Opelika, Ala., 10
- Pacific Coast discrimination, 73
Pacific Coast rates readjusted, 34
Panama Canal, inadequate tolls, 88
Panama Refining Co. v. Ryan, 110
Pettengill Bill, 137
of 1936, 146
Pitt readjustment, 61
Poindexter, Senator, 51
Political parasitism, effect on railroads, 166
Portland-Pendleton Petroleum case, 73
Potential competition, 10, 36
defined, 75ff.
outlined, 52
Presidential recognition of pressure groups, 149
Pressure groups and discrimination, 78
before Commission, 121
Pressure methods of Congress, 136ff.
- Railroads agencies for national transportation, 45
Rate groupings as grounds for discrimination, 70
Rate wars, fear of, 133
threat of in cases of 1926, 102
threat of in cases of 1935, 105
Readjustment of discriminatory rates in the South, 59
Reasonably compensatory rates, how defined, 96ff.
Recapture clause, 54
Regulation, meaning of, 1, 5
relation of Supreme Court to, 3
Reno Case of 1911, 35
Right to make discriminatory rates, 118
- Schechter Corp. v. U. S., 112
Sec. 3, text of, 7
Sec. 4, modified in 1920, 46
Sec. 4, text of, 7
Sec. 14, amended, 26
Sec. 15, amended, 26
Sec. 15a, as amended, 146
cases of 1922, 98
cases of 1926, 102
favoritism of to water carriers, 139
relation of to general rate structure, 124
Sec. 16, amended, 27

- Sec. 500, Act of 1920, 50, 116
 effect on Section 4, 53
 in automobile cases of 1935, 105
 Secrecy as to water traffic, 79
 Secretary of Agriculture, administrative duties of, 109
 Secretary of War, administrative powers of, 109
 Ship subsidy, influence on
 Commission decisions, 140
 Short and weak lines, rates for, 61
 Short haul, requirements for, 139
 Skinner and Eddy Case, 53
 Southwest, readjustment of rates in, 62ff.
 Spokane Case of 1892, 8
 Supreme Court, relation to regulation, 3

 Tennessee Egg Case, 62
 Tidewater roads, 84
 Ton-miles involved in water competition, 80
 Transcontinental application of 1921, 91
 Transcontinental automobile cases of 1935, 141
 Transcontinental cases of 1926, 99ff.
 Transportation facilities, overdevelopment of, 2
 Transportation, effects of development of, 1
 period of development of, 2
 political development of, 1
 Transcontinental railroads, interests of, 83
 Transcontinental rates, changes in, 84

 Transcontinental relief withdrawn, 89
 Trumbower, Henry R., 1

 Union Bridge Co. v. U. S., 109
 U. S. v. C. M. St. P. & R. Co., 125
 U. S. v. Grimaud, 109

 Vested right in illegal rate denied, 12

 Walsh, Thos. J., 44
 Water carriers, absence of regulation of, 92ff.
 Water Carrier Act of 1938, 141, 145
 Water carriers as pressure group, 87
 protected from excessive competition, 10
 subsidy of, 88
 Water transportation, destruction of, 158ff.
 disadvantages of, 92
 explanation of destruction of, 158ff.
 growth of, 87
 preservation of, 50
 special treatment of, 47
 Water rates, discriminatory nature of, 103
 Wichita R. R. and Light Co. v. P. U. Com., 109
 Willapa Bay-Gray's Harbor Case, 126
 Windom Committee, 6
 Wisconsin Paper Cases, 64ff., 123, 126
 Wisconsin Passenger Fares Cases, 54
 Woods, Cyrus E., rejection of, 151
 Woodworth, J. G., 86
 World War, effects on transcontinental rates, 120

 Zone system and rate discrimination, 39