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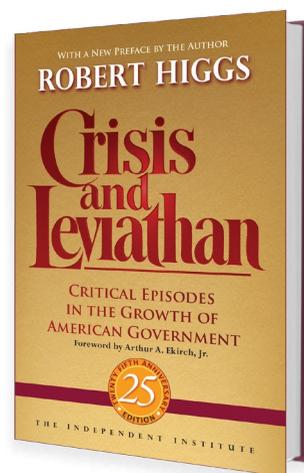
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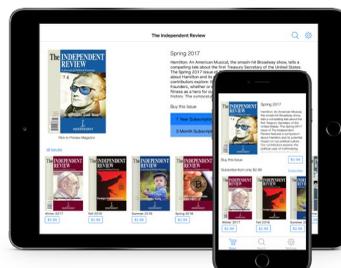
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Reconsidering Gabriel Kolko

A Half-Century Perspective

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ROBERT L. BRADLEY JR. AND ROGER DONWAY

Gabriel Kolko's *The Triumph of Conservatism* (1963) and *Railroads and Regulation* (1965) offered a revisionist interpretation of the business–government relationship in America during the late nineteenth and early twentieth centuries.¹ Kolko argued that leading business executives, working with their political counterparts, had promoted regulation to tame smaller business rivals and to stave off expropriatory threats from radical, antibusiness political movements. He resurrected the term *political capitalism* to designate business's use of government in place of free-market competition (Kolko 1963, 3).² And because he believed

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1 Kolko was also the author of an earlier book, *Wealth and Power in America*. Its thesis was twofold: (1) “Basic distribution of income and wealth in the United States is essentially the same now as it was in 1939, or even 1910” (1962b, 3); and (2) “The danger of excessive concentration of wealth arises from the economic power it brings. This has an enormous potential: it can be used to influence the mass media, to affect the political order, to stimulate economic cycles—to name just a few of its consequences” (6–7). Thus, Kolko's 1963 and 1965 books, arguing that great wealth *had* been used “to affect the political order,” can be seen as offering evidence for his 1962 book's contemporary warning that great wealth *can* be used “to affect the political order.”

2 Kolko notes that the term *political capitalism* was “first coined by Max Weber, but the meaning I have given to it throughout this book has been one that Weber would have strongly opposed” (1963, 294). The specific source of the term, although Kolko does not cite it, is Max Weber's *Economy and Society*. Weber scholar Richard Swedberg defines the three modes of political capitalism as (1) “predatory political profits,” such as financing raiders in exchange for a share of the booty; (2) “profit on the market through force and domination,” such as colonial plantations and tax farming; and (3) “profit through unusual deals with political authorities,” such as paying a bribe to get a legal monopoly (2000, 46–47).

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that the goals of such political capitalism in the Gilded Age were “predictability” and “stability” for capitalism’s ruling class, he characterized the successful result of such interventionism as “the triumph of conservatism.”³

Kolko rejected ipso facto the standard model that Progressive historians had propounded during the 1930s, 1940s, and 1950s: that the federal government’s economic interventions during the Gilded Age and thereafter resulted from high-minded reformers, both Populist and Progressive, who sought to curb the social ills of laissez-faire capitalism. According to Kolko’s version, such “progressive” reformers were actually political conservatives who worked with their business counterparts to create what today is called *crony capitalism*.

Kolko’s Reception

Kolko’s fundamental challenge to the dominant Progressive paradigm was coolly received in the academy. In 1976, he lamented: “With the unimportant exception of a few conservatives who ignored everything which undermined their case, no one paid much attention to my economic exposition” (399).

Conservatives? He meant *libertarians*. Although Kolko was a man of the left,⁴ Murray Rothbard embraced Kolko’s “political capitalism” as libertarianism’s standard model of American business history. Wrote Rothbard in 1965: “Despite the wave of mergers and trusts formed around the turn of the century, Kolko reveals, the forces of competition on the free market rapidly vitiated and dissolved these attempts at stabilizing and perpetuating the economic power of big business interests. It was precisely in reaction to their impending defeat at the hands of the competitive storms of the market that big business turned, increasingly after the 1900s, to the federal government for aid and protection” ([1965] 1974, 38). In short, Rothbard declared that Kolko had shown that free markets were the enemy of big business, not its friend. This conclusion was greeted enthusiastically by the libertarian movement during the 1960s and especially by younger libertarians who were eager to distinguish libertarianism from pro-business conservatism. Then, too, it seemed that Kolko had demonstrated that laissez-faire capitalism was *not at all* the system that had prevailed during America’s Gilded Age, as the Progressive historians had long claimed. This conclusion offered libertarians an alibi against charges that laissez-faire has caused the era’s economic ills.

3 Kolko writes: “I use the attempt to preserve existing power and social relations as the criterion for conservatism because none other has any practical meaning” (1963, 2).

4 Kolko’s own philosophy remains hard to characterize. In 1994, he wrote: “While the term ‘socialism’ itself would warrant a replacement if a better definition could be devised, the much larger rationalist, internationalist, humanitarian, and radical tradition from which it evolved, and which long preceded Marxism and was ultimately irrevocably committed to the goals of equality and social cooperation both between nations and within them, remains more imperative than ever” (480–81). He has more recently written that socialism’s goals “remain as valid as ever. Indeed, the ways in which our civilization has developed make these objectives far more imperative than they were when they were articulated over a century ago” (2006, 2).

It seemed to follow from the preceding that all of America's Progressivist legislation had been entirely unnecessary. If the government had merely stayed out of the market, the operation of laissez-faire capitalism would by itself have eliminated big business's excesses.

Revisiting Kolko

This year, 2013, Kolko's *The Triumph of Conservatism* marks its fiftieth anniversary, and thus it is an opportune time to reconsider his thesis and the libertarian response critically. To that end, we consider here two major questions:

1. How much of Gabriel Kolko's (faulty) conceptual framework did libertarians ignore in order to embrace his thesis?
2. What types of weaknesses in Kolko's evidence did libertarians overlook in order to accept his assertion that big business sought special government favor to protect themselves from market forces?

To answer these questions, a reconsideration of the railroad industry's support for the Interstate Commerce Act of 1887 serves us as a test, although such a test has its pluses and minuses.

As already noted, Kolko's *The Triumph of Conservatism* was published in 1963 and *Railroads and Regulation* two years later. The former, ambitiously subtitled *A Reinterpretation of American History, 1900–1916*, is a far more extensive work and thus can offer a more extensive test of Kolko's thesis. It is unfortunately also a sweeping work of personal vision and consequently hard to pin down. *Railroads and Regulation*, in contrast, is an elaborated version of Kolko's Ph.D. dissertation (Kolko 1962a) and therefore offers the sharper focus and more extensive documentation typical of that genre. Its claims are much easier to weigh.

But we have narrowed our test of evidence even further: to Kolko's arguments regarding business support for the Interstate Commerce Act of 1887, which appear in the early chapters of *Railroads and Regulation*. Our reason for doing so is that it becomes difficult to say, even in principle, what the appropriate short-term political goals of a free-market businessman should have been once the Interstate Commerce Commission was in existence and its distortion of the free market had created new vested interests. And it becomes impossible to say how those goals might differ from the goals that Kolko designates as those of a "political capitalist."

One other preliminary: to revisit Kolko's evidence for Gilded Age corporatism is not to question the existence of business rent seeking in U.S. economic history, although the state of economic theory prior to 1974 would not have allowed the participants in such corporatism to understand their actions in those terms or indeed to understand that such actions were economically harmful. (The phenomenon of "rent seeking" was first described and analyzed as such by Gordon Tullock only in

1967 and named by Anne Kreuger only in 1974; for this history, see Henderson 2007.⁵) Examples undoubtedly do exist of businesses seeking government favor, whether a special tax deduction, a favorable regulation, or a check written on the U.S. Treasury. This history has been extensively documented in the field of energy, specifically with regard to oil and gas (Bradley 1989, chap. 30), electricity (Bradley 1996), and the Enron Corporation (Bradley 2009, 2–9, 292–319).

What Property Is Private?

The conceptual framework of Kolko’s case involves the following argument. Executives under free-market capitalism manage private property without government regulation. Executives who believe in free-market capitalism would therefore oppose government regulation of their management. Nineteenth-century executives did not protest the government regulation of their management. Therefore, nineteenth-century executives did not believe in free-market capitalism.

Although this argument raises many questions regardless of which nineteenth-century executives are considered, it is especially unsound when applied to nineteenth-century railroad executives. In the late nineteenth century, railroad executives knew that railroads were *not* private property in the same pure sense as a farm or shop. The railroads’ quasi-public character derived from the industry’s very origins in the United States. Thus, nineteenth-century railroad executives *could not* be full-throated advocates of *laissez-faire*, and so Kolko’s choice of railroad executives’ opposition to regulation as his dissertation’s focus necessarily skewed his findings.

The American railroad industry had been from its early nineteenth-century beginnings an essentially “feudal” enterprise—in the transhistorical sense of *feudal* that we set forth in our article “Capitalism, Socialism, and the Middle Way: A Taxonomy” (Bradley and Donway 2010). That is to say, railroads, being part of the national infrastructure, were generally conceived to be an undertaking logically governmental in nature, but one that might nevertheless be entrusted to private, profit-seeking organizations.⁶

Railroads existed, therefore, only because they held a commission from the state to create transportation on behalf of the state. Nothing was inherently nefarious or corrupt about this approach.⁷ Americans merely chose a “feudal” political-economic format for creating their railroad infrastructure. Having begun with a “feudal” concept

5 For economists’ failure to acknowledge prior to 1967 the economic harm of rent seeking, see Tullock 1998.

6 In this transhistorical sense, today’s “privatized” operations of government, whether actual or envisioned, would probably be “feudal.” They would be truly private only if government foreswore any concern with whether the operations were performed or not.

7 Of course, the ability to grant state money and privilege might prompt the corruption of public employees. But a businessman might equally well bribe a private employee not to give “honest services” to his employer.

of their business, however, railroaders could not later in the nineteenth century turn around and defend their property as wholly capitalist. As James W. Ely writes, “Railroads emerged when the distinction between public and private enterprise was cloudy. . . . Railroads were clearly not treated as ordinary private enterprises. The creation of railroads by special charter from the state legislature reinforced the notion that these corporations were expected to perform some duties of a public character. A number of these charters declared that railroads were to be regarded as common carriers, a status that had long entailed particular obligations. Both individual railroad charters and general railroad incorporation acts contained regulatory features” (2001, 16–17).

Even Thomas Cooley, possibly the most *laissez-faire* jurist of the late nineteenth century, wrote in 1878 that the following four types of business are “affected with a public interest” and thus subject to some form of regulation: “1. Where the business is one the following of which is not a matter of right, but is permitted by the state as a privilege. [He cites, as two examples, “giving shows” and “setting up billiard tables.”] 2. When the state, on public grounds, renders to the business special assistance by taxation or otherwise. 3. When, for the accommodation of the business, some special use is allowed to be made of public property or of a public easement. 4. Where exclusive privileges are granted in consideration of some special return to be made to the public” (256). Clearly, no one could deny that the railroad industry was “affected with a public interest” under 2, 3, and 4. An interesting note here is that Thomas Cooley became the first head of the Interstate Commerce Commission.

Class Analysis

A second difficulty with Kolko’s conceptual framework when seen according to a libertarian perspective is that his analysis of political capitalism includes actions by which businessmen seek government protection of their private property. Consider this example: “The Great Strike [of 1877] focused attention on the new problems of an economy susceptible to intensive depressions, and especially on the growth of a working class capable of subverting and destroying by political, or even more direct means, the existing power structure. During this first industrial conflict in the United States the presumably democratic commitments of the dominant economic classes were strained to the breaking point” (Kolko 1965, 11–12).

Seeking government protection of one’s property from mobs or expropriatory voters differs categorically from seeking legal protection against economic competition, and therefore the two cannot be coherently combined into a single syndrome called “political capitalism.” The former involves the protection of natural individual rights; the latter involves the violation of natural individual rights. Yet the two forms of activity *are united* in Kolko’s thesis about American economic history, given a class analysis that sees private property as merely a social construct that favors capitalism’s ruling elite. Ignoring this aspect of Kolko’s conceptual

framework was the first and most fundamental error that Kolko's libertarian followers committed.

Kolko's class analysis of property rights also destroys the whole libertarian conception of market freedom as a manifestation of neutral justice. As he has written recently, "The question is not the state's role in the economy but rather on whose behalf it will act, and even on the relatively infrequent occasions when it stays out of the economy, some interests gain thereby" (Kolko 2006, 94). In short, the only significant analytical questions for Kolko are "Who?" and "Whom?" And he applies them as much to government *non*intervention in the economy as to government intervention.

Class analysis quickly impinges on a yet more fundamental aspect of libertarianism: methodological individualism. Kolko writes: "The business and political elites knew each other, went to the same schools, belonged to the same clubs, married into the same families, shared the same values—in reality, formed that phenomenon which has lately been dubbed The Establishment" (1963, 284). As innocent and intuitive as that statement may seem, it is problematic. Libertarian theory treats individual adults as separate entities who are responsible for their own thoughts, values, choices, and actions. It looks at groups only as aggregations of individuals.

Thus, one might invoke Kolko's statement about "the Establishment" to explain *why* two or more individuals thought or felt or acted the same way, namely, because they shared a common background. But his generalization cannot be used to prove *that* two or more individuals thought, felt, or acted the same way. It cannot justify citing one individual as the spokesman for a group of individuals linked only by "class." Analysis must take each individual's statement as representing only his own thinking, unless his statement is uttered precisely because he has been chosen as the spokesman for a group. Kolko's characterization of methodological individualism as "amoebic" may be accurate if unkind (1969, 6).

But his criticism of it does not follow: "The basically amoebic description of the phenomenon cannot be stopped until we have reached a point of absurd reductionism and considered everyone" ([1966] 1971, 105). This claim is true only if one accepts the now trendy bottom-up view of history. It is not true if one adopts the more traditional view that only a few people are historic figures who truly shape the course of history.

What Is Political Capitalism?

Not only were free-market aficionados of Kolko slow to grasp that his "political capitalism" can include the defense of property rights, but many also failed to understand that "political capitalism" does not subsume all business support of government subsidies and regulation. To count as political capitalism, *regulation must be sought by an industry's leading firms in order to achieve or secure "predictability" and "stability" in the industry via dominance of smaller competitors.*

To understand this outlook, one might classify business lobbying for regulation according to two dimensions: Was it undertaken by a subordinate firm in an industry or by a leading firm? Was it aimed against forces external to the industry or against forces internal to the industry? If one considers lobbying by a subordinate firm against external forces, one finds the ordinary lobbying for advantage against suppliers, customers, consumers, or taxpayers in general. If one considers lobbying by a subordinate firm against internal forces (such as a leading firm), one may find lobbying for regulations that apply only to firms over a certain size. A well-known form of lobbying in this category is called “Baptists-and-bootleggers” lobbying (Yandle 1983). Minor firms in an industry (such as bootleggers) rely on do-gooders (such as Baptists) to demand that regulators impose restrictions on an industry that only small firms (perhaps only black-market firms) can fill.

If we consider lobbying by a leading firm against external forces, we may find a clash of titans: a transportation giant against a shipping giant, for example, or a retail giant against a wholesale giant. This clash might be considered a manifestation of political capitalism, but the implied fracturing of the Establishment suggests that it would be atypical in the context of Kolko’s theory. Only when we consider lobbying by a leading firm against internal forces and particularly against subordinate firms within an industry do we find Kolko’s thesis of political capitalism at its purest.

Why restrict the term in that way? Why not call all anti-free market lobbying “political capitalism”? Well, in the first place, as noted earlier, the category “interventionism” is a superficial one for Kolko. He understands all governmental acts—interventionist or noninterventionist—only in terms of their class beneficiaries. In the second place, lobbying by leading firms is the only lobbying that truly matters. Only leading firms are efficacious because only they are members of the ruling class or Establishment. Kolko writes: “In the political as well as in the economic competition between small and big business, the larger interests always managed to prevail in any specific contest” (1963, 283).

In Kolko’s view, then, lobbying by leading firms ultimately shapes the economy and brings about the entrenchment of the status quo: the triumph of conservatism. Robert Wiebe, a fellow chronicler of business lobbying, therefore provided no support for the Kolko thesis when he wrote: “The business community was the most important single factor—or set of factors—in the development of economic regulation” ([1962] 1989, 217). Indeed, in a review of *The Triumph of Conservatism*, Wiebe criticized Kolko precisely for believing that “a handful of big businessmen monopolized national political power during the progressive era [*sic*]” (1964, 122).

The foregoing discussion concludes our analysis of the conceptual framework that libertarians ignored when they embraced Kolko’s thesis of political capitalism. What types of evidence did they fail to review critically? In answering this question, one must bear in mind a major consideration: what was said in the past may well have been said in a context or manner that, although understood by people or at least by the speaker at the time, is opaque to contemporary readers. In particular, people in

the past thought and spoke in the context of the likely alternatives they faced. Two sorts of alternatives may be classified as “the gun behind the door” and “What sort of commission?”

The Gun behind the Door

When analyzing the motives behind business statements and business actions, scholars must pay close attention to what Thomas McCraw has termed “the gun behind the door” (1984, 35). The principle is simple. A person in real danger from a thug may say sincerely without being prompted, “Take my money.” But to cite that statement as an indication that the person wished to give up his money to the thug would be to disregard its critical context.

Businessmen threatened by government coercion occupy a similar position. A railroad executive in testimony before Congress may advocate a lesser violation of his property rights if a more drastic one is in the offing. He will probably not say: “Of course, I would rather you did not violate my rights at all, but” Historians may wish that people spoke in that more precise way, but they rarely do.

Indeed, even when we are dealing with the earliest proposals for national regulation of the railways, it is difficult to factor out “the gun behind the door” or “the lesser of two evils.” Many proposals existed simultaneously, and they threatened different levels of coercion against the industry.

Railway Commissions

In 1887, the Interstate Commerce Commission was created. A reader of Kolko’s book might carelessly assume that this commission was by and large the body envisioned by everyone who was arguing about a “commission” before 1887. But making that assumption would be an egregious mistake.

Before 1887, there were at least four types of railroad commission. The first (Type A) was a one-shot investigatory commission to look into complaints against the railroads. In 1849, the New Jersey legislature had appointed such a commission to look into charges made against the Camden and Amboy. Such investigatory commissions have been used throughout American history. Their members might include a mix of legislators and experts, as did the West Point Commission of 1860, or consist wholly of experts, as did the Pacific Railway Commission of 1887 as it investigated the financial conditions of railroads that had received aid in the form of government bonds. Obviously, no railroad executive, however *laissez-faire* in his leanings, could have any grounds for opposing such a body.

The second sort of commission (Type B) was exemplified by the Massachusetts Board of Railroad Commissioners established in 1869 and headed (as of 1872) by Charles Francis Adams Jr. It was a standing investigatory commission that heard complaints and if necessary recommended legislation or suits to correct problems.

Thomas McCraw has dubbed it a “sunshine commission” (1984, 1). Again, even the most laissez-faire railroad executive could hardly object to such a commission because behavior inconsistent with free-market principles might have been occurring in the industry, and the commission might usefully recommend legislation or judicial action necessary to strengthen the free market. Such a Type B commission really did no more than what the press did, although the commission did have official standing and the power to demand information. Albert Fink, head of the Eastern Trunk Line Association, positively yearned for such an expert commission so that Congress might legislate intelligently in the field.

The third type of commission being discussed at the time (Type C) was obnoxious to businessmen because it had a vague mandate and a power to act on its own to “correct abuses.” However, if it were staffed with men truly knowledgeable about railroading, some executives thought, a Type C commission might not be unbearably oppressive. In this regard, it is impossible exaggerate the degree to which railroad men believed that the complaints against them were the product of sheer ignorance (popular and political) and thus the extent to which they trusted that a panel of true experts would do no harm to their property rights. Kolko quotes Charles Francis Adams Jr. as saying in 1884: “If you only get an efficient Board of Commissioners, they could work out of it whatever was necessary. No matter what sort of bill you have, everything depends on the men who, so to speak, are inside it [the board of commissioners], and who are to make it work. In the hands of the right men, any bill would produce the desired results” (1965, 37). For this statement, Kolko calls Adams a “cynic” (1965, 37). One might better say that he was confident of the railroaders’ innocence.

The worst sort of commission (Type D) was the sort that Wisconsin established in 1874 under the Potter law, a commission empowered to classify cargo, specify rates for different categories, and enforce those rates (Ely 2001, 86–87). In the eyes of railroad men, the only thing worse than a Type D commission was outright political control of the railroads, and in some ways expropriation of the railroads would actually be more honest because it would force the government to run them.

Misunderstanding Capitalism

With those ground rules for interpretation in place, we may proceed to ask what evidence Kolko offers for the proposition that in order to avoid competition railroad men sought government regulation of their industry in the late 1870s and early 1880s. The evidence is contained in the first two chapters of his *Railroads and Regulation*. Without maintaining that Kolko offers no good evidence for this proposition, one can note several ways in which he exaggerates the amount of evidence. In the first four examples we give here, he relies on several different mistaken ideas about capitalism. In the fifth example, he relies on statements that seem clearly to reflect “the gun behind the door.” In the last two examples, he relies on evidence that, when scrutinized carefully, turns out to be much weaker than it seems.

1. *Failure to distinguish capitalism from competition.* Kolko quotes “one railroad president” as saying: “The point reached since the beginning of 1884 in the prevailing contagion of depression and loss, from the effects of ruinous rates, which were uncontrollable from a lack of adequate protection of railroad interests in the past, is not to be remedied by waiting upon “the survival of the fittest.” This misapplied phrase of the scientists cannot furnish appropriate data in any recognition and adjustment of difficulties which may attend the commercial affairs of a people” (1965, 38–39).

Kolko’s evidence here seems to be the railroad man’s rejection of competition that results in the “survival of the fittest.” But capitalism involves only the *right* to compete—that is, the absence of legal monopolies. Nothing in capitalism requires the existence of actual competition, much less competition that ends in a winner-take-all “survival of the fittest.” Precisely that mistaken notion is the fallacy behind antitrust legislation. The presence of actual competition, if any, is a matter that laissez-faire capitalism leaves entirely to the market, and if the market reduces or eliminates actual competition, it may do so either by competition among rivals (“survival of the fittest”) or by combination among rivals. Neither route is more inherently laissez-faire than the other.

2. *Failure to understand that pooling represents the right of contract.* In early 1882, the House Committee on Commerce held hearings on the Reagan bill, which “absolutely banned rebates, pooling, and long haul-short haul differentials” (Ely 2001, 91). Kolko quotes Albert Fink as declaring in his testimony: “The first step . . . should be to legalize the management of the railroad property under this [pool] plan and to abandon the antiquated notion that a government, or combination as it is called, of this kind is against public policy. It can be clearly shown that it is absolutely required for the public interest. The great defect in the present plan, and its great weakness, is that the co-operation of these railroad companies is entirely voluntary, and that they can withdraw from their agreements at pleasure” (1965, 27).

Most states did not forbid pools, but they would not enforce contracts that established pool agreements. This stance was a relic of common-law precedent that went back at least to the early 1300s. But such legal remnants of medieval economic understanding were clearly *wrong* from a classical-liberal perspective.

Kolko’s quotation from Fink’s 1882 testimony continues: “I do not propose that the government shall compel the railroad companies to transact their business in the way I have described, but simply compel them, in case they voluntarily adopt that plan, to comply with the terms of their agreements. . . . This step alone I think would be sufficient to accomplish the purpose, because the self-interest of the railroads requires the adoption of this plan, and it is only the absence of authority to compel them to adhere to it that leads to disruption. . . .” (1965, 27–28, ellipses in Kolko). Nothing in this statement is contrary to laissez-faire capitalism.

3. *Failure to distinguish legislation from regulation.* Kolko writes: “The House Committee on Commerce hearings of 1882 revealed disagreements among railroad

men on particulars, but few indicated their opposition to legislation on any terms, and most had specific legislative alternatives to the Reagan Bill” (1965, 29). Nothing in this statement indicates an opposition to free enterprise. Albert Fink, to take the most notable example, did not indicate his “opposition to legislation on any terms.” He wished Congress to pass legislation that would extend the right of making legally enforceable contracts to pool agreements.

4. *Failure to distinguish supervisory commissions from regulatory commissions.* Kolko quotes the congressional testimony of New York Central’s attorney, Chauncey Depew: “I think I can safely speak for the whole railroad interest of the United States that whatever may be the constitutional objections to the power of Congress, and they are certainly very great, and from the legal side I have grave doubts about it; however, from the practical business side, if there was a national board, with supervisory powers, fully authorized to investigate and report to Congress, I do not believe that there is a railroad, great or small, within the limits of this republic that would raise that constitutional question” (1965, 35). Again, this statement seems to be the same red herring. Depew is apparently speaking of a sunshine commission that would do nothing the press was not doing: reporting on complaints and, if necessary, recommending congressional action. The big difference, from the railroad men’s point of view, is that the commissioners who received public complaints would be people who knew railroading, not journalists or politicians.

The four types of evidence cited so far pertain to Kolko’s misunderstanding of the nature of laissez-faire capitalism. In addition, he employs evidence that is less than wholly persuasive when considered in its full context.

5. *Ignoring the gun behind the door.* Kolko makes use of remarks that were uttered in full awareness of “the gun behind the door.” To be properly evaluated, these remarks need to be read in this context, but Kolko typically omits the context.

According to Kolko, New York Central attorney Chauncey M. Depew said that he “‘became convinced of their [the commissions’] necessity . . . for the protection of both the public and the railroads” (1965, 16–17). Kolko adds that Depew converted William H. Vanderbilt to the same point of view, and at the very beginning of his next paragraph he writes: “In 1877, the main danger posed to the railroad was . . . from cutthroat competition, rate wars and the manipulators of stock” (1965, 17).

Depew’s statement was made in his 1922 memoir, so it is difficult to say exactly what sorts of commissions and what sorts of powers he had in mind. But we should note that Kolko, not Depew, is the one who says “the main danger posed to the railroad was . . . from cutthroat competition.” Moreover, Kolko leaves out several parts of Depew’s statement that clearly suggest Depew was thinking of a quite different danger. Here is Depew’s statement with its context restored: “I became convinced of their necessity. The rapidly growing importance of railway transportation had created the public opinion that railway management should be under the control and supervision of some public body. . . . It seemed to me that it was either a commission or government ownership” (Depew 1922, 241–42). Given this “gun

behind the door,” even the most perfervid advocate of laissez-faire is unlikely to disagree with Depew’s choice.

6. *Taking concessionary remarks seriously.* Kolko quotes from Albert Fink’s 1882 testimony: “I am free to say, however, that I have little faith that any law prohibiting the payment of rebates will be of much use[.] . . . Still a law of this kind could do no harm; it would aid me in performing the duties imposed upon me by the associated roads of the Joint Executive Committee” (1965, 28, ellipses in Kolko). Here, it appears, Fink is arguing for a law legalizing pools by saying two things and implying a third: (1) a law prohibiting rebates will not work because there are too many ways to circumvent it; (2) any good effects it might have will simply be through strengthening pools; (3) so why not go ahead and legalize pools? The sentence that ends the paragraph, which Kolko pointedly does not quote, is: “I have, however, greater faith in the practical plans adopted by the railroad companies themselves to assure the maintenance of agreed tariffs” (Fink 1882, 189).

7. *Using citations that are weaker than they appear.* Kolko says that the first regulatory bill was introduced at the behest of the oil producers (the railroads’ customers), but of course his thesis of political capitalism by leading firms requires him to demonstrate that the railroads welcomed the regulation of their industry. And he tries to prove that claim as follows. He tells us that House Resolution 2755, which forbade rebates and rate discrimination and which was introduced in early 1876 by Representative James H. Hopkins of Pittsburgh at the behest of independent Pennsylvania oil producers, was “apparently written by the attorney of the Philadelphia and Reading Railroad” (1965, 21). So who was this “apparent” railroad man? Who gave him the job of drafting a bill for the oil producers? And why he was given such a job? Kolko does not answer these questions.

Instead, he cites a 1957 article by Gerald D. Nash in *Pennsylvania History*. And what does Nash say? “The actual bill reputedly was prepared by one of the legal counsel of the Philadelphia and Reading Railroad” (Nash 1957, 184). So Kolko has elevated “reputedly . . . prepared by *one of the* legal counsel” of the Philadelphia and Reading to “*apparently* written by *the* attorney” of the Philadelphia and Reading.

What is Nash’s source? It is not a legal document or sworn testimony, but a newspaper article. And it is not even from Pennsylvania, but from Chicago. And it was not published contemporaneously with the events about which it speculates, but four years later. And it is unsigned. And the newspaper column’s anonymous author does not claim to know the fact in question (“Reagan’s Bill” 1880). Thus, the evidence for the railroad’s involvement in launching House Resolution 2755 turns out to be weak, indeed.

8. *Misquoting statements.* In an attempt to prove businessmen’s opposition to competition, Kolko says: “. . . the “trust,” wrote James J. Hill in 1901, ‘came into being as the result of an effort to obviate ruinous competition’” (1963, 13, ellipses in Kolko). But that is not what Hill wrote. Kolko has cut out Hill’s subject and verb with an ellipsis and then has deleted a conjunction from Hill’s sentence without inserting

an ellipsis. As quoted, then, the adverbial phrase “as the result of an effort to obviate ruinous competition” appears to modify “the trust came into being.”

But in Hill’s sentence, it does not. What Hill wrote was: “*It began* when the ‘trust’ came into being *and* as the result of an effort to obviate ruinous competition” (Hill 1901, 646–47, emphasis added). “It,” not “the trust,” began “as the result of an effort to obviate ruinous competition.” And what is “it”? One has to follow Hill’s paragraph back several sentences, but the matter is not in doubt. “It” is “a general feeling of hostility towards the railroad and industrial consolidations.”

Hill’s contention here is not at all what Kolko’s misquotation makes it seem: that the trust was a good thing because it sought to obviate “ruinous competition.” Hill’s contention instead is that the “general feeling of hostility” toward industrial consolidation is understandable because the old-fashioned trust “was not on its face a healthy arrangement” (1901, 647).

The Verdict on Evidence

How shall libertarians judge Kolko’s evidence that railroad executives sought federal regulation in place of *laissez-faire*? We raise eight considerations.

1. Lamentations about competition are not lamentations about capitalism. The business of businessmen is to fight their competition, and they often find doing so to be difficult or even irksome. That difficulty does not mean that they favor legalized monopoly. Yet Kolko writes: “Although there was a formal commitment to varieties of *laissez-faire* in most of the academic world, big businessmen developed their own functional doctrine very much opposed to competition as either a desirable mechanism or as a goal” (1963, 13). It should go without saying that competition is not “a goal” under capitalism; only the right to compete is. The existence of actual rather than potential competition is a matter for the market to determine. What about competition as a market process? It is one market process, but not the only one. Capitalists may seek to eliminate rivals by competition, but they may eliminate them through merger. Both processes are equally “capitalist.”

2. There is nothing anticapitalistic about seeking the legal right to enter into enforceable pool agreements. On the contrary, such a right is an essential element of market capitalism.

3. Expressions of support for some sort of (often undefined) commission are not anticapitalist. Kolko quotes Chauncey Depew as saying that a national sunshine commission would not be contested by the railroads, and he quotes Albert Fink as recommending a sunshine commission. But there need not be anything contrary to capitalism in support for such commissions.

4. There is nothing inherently anticapitalist in the fact that, in Kolko’s allegation, “few railroad men indicated their opposition to legislation on any terms.” Why should they? Legislation is not the same as regulation. Legislation that legalized pools

would actually have increased the extent of *laissez-faire*. And legislation that instituted a sunshine commission would not have contradicted it.

5. We can go further. If “few railroad men indicated their opposition to legislation on any terms,” that posture must be put in the context of the age. Undiluted libertarianism hardly existed at that time even among philosophers, much less among practical men. Yale professor William Graham Sumner has always been considered the purest and most principled American advocate of *laissez-faire*. Yet even Sumner quite sensibly wrote: “When we go over to statecraft, we go over to art—to the domain, not of truth but of expediency, not of scientific laws but of maxims. . . . This is the domain of ethics also. *Laissez-faire* belongs here. . . . If the statesman proposes to interfere with exchange, then *laissez-faire* comes in as a general warning, not as an absolute injunction” ([1886] 1963, 31).

6. Some of the evidence Kolko offers seems clearly to reflect “the gun behind the door.” For example, he quotes Depew’s 1922 memoirs as saying that Depew (at some point) became convinced of the necessity of commissions. But in words excised by Kolko, Depew said that he saw commissions or public ownership as the only two alternatives. Thus, he can hardly be cited as “wanting” government regulation. Kolko similarly says that the idea of a commission was attractive even to the “die-hard” Charles E. Perkins (1965, 28), but Perkins was contrasting a commission with a “communistic” scheme, suggesting that he too (like Depew) feared the gun behind the door (Kolko 1965, 29).

Kolko also quotes several remarks by Fink that suggest that Fink was thinking of the gun behind the door. Fink, of course, believed that legally enforceable pooling was the answer to all the complaints against railroads, and so he may have been too quick to accept other proposals, believing they would be superfluous if pooling were allowed. For example, Kolko quotes Fink as saying that although he had no faith in a law prohibiting rebates, the measure could do no harm. Fink presumably expressed this thinking because he believed a legalized pool would do away with rebating.

7. Kolko also offers evidence that simply cannot be assessed. For example, he says that the Hopkins bill of 1876 was “apparently” written by a lawyer for the Reading railroad. But we do not know this claim for a fact, and when we follow the trail of evidence, we find little.

8. Last, we note that many of Kolko’s quotations come from 125-year-old congressional committee transcripts that (as we found) are extremely difficult for scholars to check. But Kolko’s mangling of Hill’s quotation suggests that all of Kolko’s quotations must be checked.

Conclusion

A half-century ago Gabriel Kolko burst on the scene with a revolutionary thesis about American capitalism. On his telling, leading companies proposed and promoted the so-called Progressive legislation of the late nineteenth and early twentieth centuries in order to overcome competition by smaller rivals. In other words,

the titans of industry used the political system to achieve what they could not achieve in the economic marketplace.

Libertarians, adopting anti-Establishment and anticonservative attitudes during the 1960s, quickly adopted Kolko's theses as an alternative to the then-regnant Progressive historians' views. Adopting Kolko's theses seemed to give libertarians three precious bullets of intellectual ammunition: (1) the large and allegedly evil corporations of the late nineteenth century had in fact been enemies of free markets; (2) the economic ills of the late nineteenth century could not be associated with capitalism strictly understood; and (3) had government done nothing, free markets would have redressed the ills and evils of the late-nineteenth-century economy.

Kolko, however, dismissed the libertarians for having misunderstood his thesis and his evidence. And, indeed, as our reconsideration of Kolko's argument and evidence has shown, libertarians were likely guilty as charged. Kolko's class-oriented theoretical framework contradicted the libertarian acceptance of methodological individualism. His concept of "political capitalism" combined actions that defended individual rights and actions that *violated* individual rights. And much of his evidence that businessmen advocated regulations seems less compelling when subjected to closer scrutiny.

Our reinterpretation of Kolko in light of libertarian thought should not take away from Kolko's success in amending the simplistic Progressivist interpretation of American history. The present review merely points out that a libertarian, anti-Progressivist interpretation of Progressive legislation should be freed from Kolko's leftist framework and supported by better evidence.

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