

The War on Kolko

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Part I: Practice

“Mona tried to tell me, ‘Stay away from the train line.’
She said that all the railroad men just drink up your blood like wine.”
– Bob Dylan

In an ongoing war against the late radical historian Gabriel Kolko (1932-2014), economists Robert L. Bradley and Roger Donway have attacked on two fronts.¹ They claim that Kolko was short on correct theory and failed (as a Marxist) to understand “capitalism” – laissez-faire or otherwise. Further, they charge Kolko with selecting bad evidence and misreading or knowingly distorting his sources. Their conclusion: given such recklessness, no one² should depend on Kolko in any way whatsoever. Since these critics mean their accusations to be damning, we begin by examining in detail their most important claims about evidence. (For theory or ideology, see Part II.) Throughout, Bradley and Donway contest Kolko’s main thesis, namely, that late 19th-century industrial capitalists gradually learned how to turn Progressive reform to their own self-interested advantage, ultimately creating a system of “political capitalism.”³

The Weak Citation of Gerald Nash and Mr. Nobody

Describing Kolko’s account of the first proposed federal railroad legislation, they write:

¹ Robert L. Bradley Jr. and Roger Donway, “Reconsidering Gabriel Kolko: A Half-Century Perspective,” *Independent Review*, 17:4 (Spring 2013), 561-576, and “Gabriel Kolko’s ‘Political Capitalism’: Bad Theory, Bad History,” November 2, 2015: <http://econlib.org/library/Columns/y2015/BradleyDonwayKolko.html>

² They are especially eager to divorce libertarians from Kolko.

³ Gabriel Kolko, *The Triumph of Conservatism* (Chicago: Quadrangle, 1967 [1963]), “Introduction,” esp. 3.

Yet we know that the drive for federal railroad regulation began in 1876, when independent oil producers persuaded a Pennsylvania congressman to introduce a bill banning rebates and rate discrimination. Kolko's explanation? "The bill ... was apparently written by the attorney for the Philadelphia and Reading Railroad." His evidence for the railroad's involvement is a passage in Gerald Nash's "Origins of the Interstate Commerce Act of 1887." But why cite a secondary source? Perhaps because Nash's primary source was an anonymous newspaper column, published four years after the 1876 bill in Chicago, not Pennsylvania, and rife with factual inaccuracies.

Specifically, the article by the *Chicago Daily Tribune's* anonymous Washington correspondent mentioned the supposed drafting of the 1876 bill by a P&R attorney only in order to explain why it was "not strange" that the House Commerce Committee testimony given in January 1880 by "Mr. Gowan, representative of the Philadelphia & Reading Railroad" advocated "the general principles of the Reagan bill" on railroad regulation. But Gowen (not Gowan) was president of the Philadelphia & Reading, not just a "representative," and according to the *Philadelphia Inquirer's* story of the same day: "Mr. Gowen, of the Reading Railroad, followed [Charles Francis Adams], and gave the bill one of the severest poundings it has yet had." The Associated Press story from that day said: "Mr. Gowen doubted the power of Congress, under the Constitution, to interfere with the management of railways." Pounding a bill is not exactly an endorsement.⁴

But Gowen had many concerns. He complained of "excessive competition" between trunk-line roads, which made distant businesses competitive with local ones; he complained that railroads often charged double rates for local shipments. Further, the bill did not "cover the evil which exists," yet forbade things "which should not be forbidden." He doubted "the propriety of interfering" with "the pooling system and contracts with reference to earnings" The "real difficulty" was discriminatory rates for the same service. These arrangements hurt oil producers and railroad

⁴ Bradley and Donway, "Gabriel Kolko's 'Political Capitalism'" (2015). Cf. "Reconsidering Gabriel Kolko" (2013), 572, and Gabriel Kolko, *Railroads and Regulation, 1877-1916* (New York: W.W. Norton, 1970 [1965]), 21 (hereafter *R&R*).

stockholders, while “a special rate of about one-fourth of the actual cost of transportation” aided the Standard Oil Company.⁵

State legislatures could legally provide a remedy, if they would, but Gowen doubted that Congress had the same power. But if it did, Congress should “create by statute the same form of remedy that I would ask the State Legislature to adopt, and that is to *authorize the Courts to issue writs of mandamus to railway companies and railway officials to compel the performance of their obligations as common carriers.*” In short, the best answer was “to compel everybody to be served alike.” He had “no objection whatever to a congressional commission” or “a State railway commission, always provided that it be composed of *proper material.*”⁶

So Gowen “pounded” the bill in its *later* version because he had his own ideas about railroad regulation and was, therefore, more interesting than Kolko’s critics let on. Admittedly, his alliance with independent oil men against Rockefeller won’t endear him to those who imagine that time (and one essay⁷) has rendered Rockefeller spotless. Still, Gowen’s larger views undermine any strict separation between oil men and railroad men.⁸

Bradley and Donway quoted Kolko as follows: “The bill ... was apparently written by the attorney for the Philadelphia and Reading Railroad.” *Their* ellipsis (shown in bold) leaves out the following: “, which provided for enforcement by the courts rather than by a commission,” – in other words, the bill contained, in an early draft, *precisely the mechanism* that Gowen endorsed in his testimony. *Kolko does not look so inaccurate now* (see below: “Judges vs. Commissions”); in any case, he already addressed one of the critics’ problems on his next page: “The oil producers were not anti-railroad, but anti-Standard Oil, and this explains why a railroad attorney could have written the first basic draft of a railroad bill for them.”⁹

⁵ *Argument of Mr. Franklin B. Gowen, President of the Philadelphia & Reading R. R. Co., Before the Committee on Commerce of the House of Representatives, Upon House of Representatives Bill No. 1028, to Regulate Inter-State Commerce, and to Prohibit Unjust Discrimination by Common Carriers.* Washington, D. C., January 27th, 1880 (<http://www.ebooksread.com/authors-eng/franklin-b-franklin-benjamin-gowen/argument-of-mr-franklin-b-gowen--before-the-committee-on-commerce-of-the-ho-hci/1-argument-of-mr-franklin-b-gowen--before-the-committee-on-commerce-of-the-ho-hci.shtml>).

⁶ *Ibid.* (My italics)

⁷ John S. McGee, “Predatory Price Cutting: The Standard Oil (N. J.) Case,” *Journal of Law and Economics*, I (October 1958), 137-169.

⁸ See Chester MacArthur Destler, *Roger Sherman and the Independent Oil Men* (Ithaca: Cornell University Press, 1967), 76, 80-81, 111 ff, 145, 171, 199-200, 239, 241.

⁹ Kolko, *R&R*, 22. The best candidate for the mystery attorney is George F. Baer, who became counsel to the P&R in 1870 and later succeeded Gowen as director of the railroad. Baer did much legal work for J.P. Morgan, a fact likely related to the P&R’s anti-Rockefeller orientation. See “George F. Baer,” *Railway Age Gazette*, 56:18 (May 1, 1914), 990.

Thus the whole thing was indeed “*not strange*.” Historian George E. Mowry notes that when the Elkins Act of 1903 “forbidding railroads from giving rebates to large industrial companies” (to the competitive advantage of the latter) was debated, Senator Augustus O. Bacon (D., Ga.) charged “that the Elkins Act was first drawn up by *an attorney for the Pennsylvania Railroad*.” Senator Joseph R. Foraker (R., Ohio) claimed that was only true of the first Elkins bill, but (Mowry adds) “both proposals were substantially the same,” indicating (he says) that railroads no longer cared to give rebates to big shippers.¹⁰

But why would Kolko, or any historian, cite a secondary source? Perhaps its writer had dug through all sources likely to be found. Maybe the point at hand was too small to warrant six further months of research. As for historian Gerald Nash’s source, “rife with factual inaccuracies” (per Bradley and Donway), that is what we must expect from 19th-century American newspapers (along with political partisanship and outright lying). It is odd that Nash, as historian,¹¹ does not share the blame reserved for Kolko.

As for Kolko’s *ellipses*, we shall soon hear a lot about those.

Late in Life Chauncey Depew Recalls 1877

Kolko quoted Chauncey M. Depew, attorney for the New York Central Railroad, as writing in 1922 that circa 1877 he (Depew) had come to believe that government commissions were needed “for protection of both the public and the railroads.” Bradley and Donway quote Kolko as follows: “In 1877, the main danger posed to the railroad was ... from cutthroat competition, rate wars and the manipulators of stock.” The point about competition, they note, is Kolko’s.¹²

Bradley and Donway present a recurring claim: that Kolko deceives his readers by leaving out some obvious context. They offer to “restore” the *real* context of Depew’s remarks by quoting a longer passage from his 1922 memoir: “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”¹³ [...].

¹⁰ George E. Mowry, *The Era of Theodore Roosevelt and the Birth of Modern America, 1900-1912* (New York: Harper & Row, 1958), 123-124 (my italics).

¹¹ Gerald D. Nash, “Origins of the Interstate Commerce Act of 1887,” *Pennsylvania History*, 24 (July 1957), 181-190.

¹² Bradley and Donway, 2013, 571-572. Kolko, *Re&R*, 16-17.

¹³ Depew, quoted in Bradley and Donway, 2013, 571.

And here Bradley and Donway bring in the theme of “the gun behind the door,”¹⁴ a construct that reproduces Gilded Age magnates’ oft-spoken fear that the American masses, led by demagogues, hoped to reenact the Paris Commune by violently despoiling the tycoons’ self-made fortunes. Making this a key part of their context, the critics accuse Kolko of choosing among publicly expressed opinions of railroad bosses, which varied wildly (it seems) with how threatened each felt, of a day, by the rabble’s metaphorical gun.¹⁵

Since Bradley and Donway repeatedly imply that every time Kolko used ellipses he was up to something, let us then try filling in *their* ellipses in a sentence quoted from Depew:

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; **that all passengers or shippers, or those whose land was taken for construction and development, should have an appeal from the decision of the railroad managers to the government through a government commission.**¹⁶

I have put in bold and italics language that might concern fervent friends of laissez-faire (if such there be) and also supply added context. Further, Bradley and Donway’s dots between “some public body” and “It seemed to me” also leave out two sentences in which Depew describes how he convinced Vanderbilt to support commissions; and more importantly, most of the sentence beginning, “It seemed to me that it was either a commission or government ownership” – which concludes: **“and that the commission, if strengthened as a judicial body, would be as much of a protection to the bond and stock holders and the investing public as to the general public and the employees.”**¹⁷

More context! Anyone familiar with the work of Morton Horwitz and Martin J. Sklar¹⁸ will know that regulation by courts or by *quasi-judicial* federal

¹⁴ Bradley and Donway, 2013, 568.

¹⁵ “... mobs or expropriatory voters” (2013, 565), referring apparently to most people not related to railroad moguls.

¹⁶ Chauncey M. Depew, *My Memoirs of Eighty Years* (New York: Charles Scribner’s Sons, 1922), 241-242. My italics, bold.

¹⁷ Depew, *My Memoirs*, 242 (my italics, bold).

¹⁸ Morton Horwitz, *The Transformation of American Law, 1870-1960* (New York: Oxford University Press, 1992); Martin J. Sklar, *The Corporate Reconstruction of American Capitalism, 1890-1916* (Cambridge, UK: Cambridge University Press, 1988).

commissions was a much-favored model in big business circles, if made of Mr. Gowen's "proper material." (Ordinary federal courts sometimes played that role but were insufficiently acquainted with railroad problems.) If Kolko erred here, it was in leaving out material favorable (or neutral) to his case. Perhaps it is a case of whose ox is elided.

(I will add that the metaphorical door-sheltered gun that seemingly drove industrial titans into constant waffle and concealment, hardly seems as big a historical-causal force in those years as the real guns of the U.S. Army, state militias, local police, Pinkertons, etc., quickly available whenever captains of industry suffered the least difficulty.)

The Curious Case of Mr. Fink Who Did Not Bark (1882)

Bradley and Donway assert that "Kolko even doctored quotations to change their meaning. Consider this opening to his four-paragraph quotation from railroad man Albert Fink, which suggests that Fink favored immediate legislative interference in his industry." They quote Kolko: "In early 1882, during House hearings on the Reagan Bill, Fink, while claiming he would prefer an investigative committee of Congress first, made specific suggestions to the Committee on Congress: 'The first step ... should be to legalize the management of the railroad property under this [pool] plan.'"¹⁹

They continue: "Fink ran the railroads' voluntary pooling arrangements, under which the lines agreed to divide business according to historical percentages and then modify those percentages according to changes achieved by 'fair competition.' Fink believed fervently that such pooling could address all public complaints against the railroads, and he hoped that Congress would someday make pool contracts enforceable in the courts (as they were not under common law)."

Moving in for the kill, they write: "Enforcement of pooling contracts was compatible with free markets, despite Kolko's belief to the contrary. But that is not what Fink was saying in Kolko's quotation, although Kolko made the quotation sound that way. Fink was saying that *if* all voluntary efforts to end the complaints against the railroads failed, and *if* it became necessary for the government to act, then government ought to act in assistance of the railroads' *voluntary* efforts to address popular complaints. And *if* government did, at that point, act to assist the railroads' *voluntary* efforts, then '[t]he first step *to that end* should be to legalize the management of the railroad property under this [pool] plan.' (Emphasis added.) By means of an ellipsis, Kolko transformed the entire significance of four key paragraphs of quotation. He turned Fink's speculation about the 'first step' in a pro-free market process

¹⁹ Bradley and Donway, 2015. Kolko, *R&R*, 27.

that might, hypothetically, take place on some future day into an urgent plea for an immediate ‘first step’ by Congress.”²⁰

Let us look into Fink’s famous four paragraphs (actually *five*) as presented by Kolko, as well as the original text,²¹ to see if Kolko’s nefarious ellipses did them any bodily harm. As noted by Bradley and Donway, Kolko has left *three words* out of the first paragraph quoted (= “to this end”) in the sentence beginning with “The first step.” As they tell us, these words refer to Fink’s immediately prior discussion of settling railroad issues (if necessary) through government “interference” that *would back* “the general plan adopted by the railroads.” But, *alas*, the three missing words allude to material that would have reinforced Kolko’s thesis.²² Thus this elision does not seem to have been especially crafty; nor did it overturn the meaning of the following paragraphs.

In paragraph two Fink calls on the federal government to force railroad companies to honor cartel agreements *if* they have entered into them. Kolko quotes him thus: “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. ...”²³

Two sets of ellipses! What is Kolko up to? Well, between “agreements” and “This step alone,” he has left out a comma and these words: “and carry them out as they would be obliged to carry out any other contract” (not a terribly cunning omission). The second ellipsis (after “disruption.”) replaces this sentence: “Among so many railroad companies there may always be a few who think they can enrich themselves by the violation of compacts, at the expense of the others, and it is, unfortunately, in the nature of the railroad

²⁰ Bradley and Donway, 2015 (their italics), cf. 2013, 572. Kolko, *R&R*, 27-28. Bradley and Donway have “to that end” as the words left out by Kolko; the 1882 GPO printing of Fink’s testimony, taken separately (see note 21, below), has “to this end.” As the point is not especially material, I merely note it.

²¹ *Committee on Commerce, Argument of Albert Fink*, March 17-18, 1882 (Washington: Government Printing Office, 1882), 30. (This is a pamphlet-sized government publication taken from the longer Committee report, *Arguments and Statements before the Committee on Commerce, U.S. House of Representatives, 47th Congress, 1st Session*, Misc. Doc. No. 55 [February 21-March 28, 1882] (Washington: Government Printing Office, 1882). Page 30 in the short version = 189 in the longer one, 31 = 190, and so forth.)

²² That is, the thesis that the railroads wanted to have their cartel, one way or another. Our authors think Kolko should have adopted a *different* thesis, but that is another matter. As Kolko puts it, Fink wanted “legalized pooling and a permanent federal commission with powers to determine rates in the event of disputes among railroads, and to enforce their decisions in the courts” (*R&R*, 27).

²³ Kolko, *R&R*, 27-28 (my bold).

transportation business that one of these can destroy the good results of the cooperation of all the others.”²⁴ This suggests that competition *was* a concern for the magnates – something our critics tend to deny.

The third paragraph reads: “Another method that could be adopted by the government is to enforce the tariffs established by the railroads and approved of as reasonable and just by the government. ...”²⁵ Here Kolko’s nefarious ellipsis (shown in bold) indicates the *omission of nothing*, or to put it another way, shows the empty space between one paragraph and the next one, beginning with “Some.”

In the balance of the paragraph Fink suggests that the Reagan bill might, with a few changes, help the railroads “in carrying out their plans,” but that its provisions “could not be effectively applied without the cooperation of the railroads.” Here Kolko’s ellipsis has spared his readers some tedious railroad prose.²⁶ Once again, Kolko seems to have left out material that might have strengthened his argument.

Mr. Fink Barks at Congress, March 17 & 18, 1882

Our critics may have quit too soon. Reading farther, we find that Fink served Congress a large helping of railroad capitalist ideology. The details are rather interesting. Sneering at imagined railroad abuses, Fink accused merchants and “demagogues” of maligning the efficient American railroads. All pending railroad bills should be shelved. Railroads were not mere common carriers, but *legally owned* the roads and collected “tolls” on them, as interest on investment. Here he interjected some mystification justifying higher rates for short hauls. Like the thirteen states in 1787-1789, railroads must “subordinate separate interests.” Congress should act, but *could* it? He noted that at least 1,200 railroad shipping agents had direct knowledge that government commissions could never obtain, absent which, legislation and regulation could not succeed.²⁷ (Here Fink anticipates F.A. Hayek a bit, albeit in service to his narrow cause.)

Equitable rates would require railroad cooperation – voluntary or compulsory. The Reagan bill failed to make the railroads’ voluntary agreements into contracts enforceable at law. If that could not be done:

²⁴ Fink, 30.

²⁵ Fink, 30; Kolko, *R&R*, 28. The paragraph consists of one sentence.

²⁶ “Thus the roads that are entirely located in one State and the roads in adjoining foreign countries should first be made parties to the agreement to establish and maintain tariffs (which they could relied upon to do from motives of self-interest), and then the law could be applied to even those roads.” Fink, *Argument*, 30.

²⁷ Fink, *Argument*, 4-7, 10, 16-19, 23-25. I do not know if Fink ever developed his proto-Hayekian insight about dispersed knowledge, nor can I say whether or not it would prove the value of contractual cartels, had he done so.

“then, and not until then, may it become necessary for the government to interfere. But this interference can only be effective when it is in aid of the general plan adopted by the railroads.”²⁸

After the several paragraphs allegedly assassinated by Kolko, Fink called again for general, enforceable pooling agreements (*his* door-shaded gun for *coercing* defectors from the agreements). He admitted such arrangements might be imperfect: pooling alone could not set rates, which were (it seemed) partly *objective*. Surveying legalized cartels in England, Germany, and Austria, he thought that Americans should not have *that much* direct government interference (or perhaps only someday).²⁹

Wicked producers, middlemen, and Grangers opposed the railroads’ cartel plan out of self-interest. Asked about the powers proper to a railroad commission, Fink suggested those of investigating and reporting only. What of the commission on which Fink himself sat? That one was entirely honest and true. But since it could not enforce cartel agreements, it too was disappointing (so far). “If you want to regulate the railroads just give us power to punish any railroad man who violates his agreement” Fink thought that Charles Francis Adams’ bill looked pretty good. A *good* commission – made up of the *right sort* – would be good.³⁰

So far, Kolko’s ellipses have not changed much, despite assertions about his “quackery.” The complaint that Kolko characterized Fink as wanting *immediate* federal action merely reflects the critics’ molehill-gathering approach to mountain building. The question of *timing* (“immediate legislative interference”) seems to be a matter of the critics’ own choice – easily done, since railroad magnates could equivocate massively about *timing*, while entertaining numerous hypothetical policies and their possible sequences.

A Descendant of Yankee Presidents Goes Railroading (1885)

Bradley and Donway write: “For example, Charles Francis Adams Jr., president of the Union Pacific Railroad, began his 1885 testimony before a U.S. Senate Committee by staunchly recommending a sunshine commission for railroads, such as he had headed in Massachusetts. Given that everyone saw a need to respond to the growing public complaints against the railroads, the question was one of theoretical approach: rules and maybe even rates set down by commissions? laws enforced by the courts? In the view of Adams, ‘The true theory of legislative dealing with this question’ was an approach close to *laissez-faire*, which would allow a commission, but one with only investigative powers. He went on to explain that ‘all the [Massachusetts]

²⁸ Ibid., 29-30.

²⁹ Ibid., 30-31 (complete with equivocation about time).

³⁰ Ibid., 32-35, 37-38.

commissioners could do was to examine, report, and recommend, thus having recourse to public opinion.’ When senators made it clear that so powerless a commission was out of the question, Adams tried to save what he could by agreeing to some minor regulations (for example, a ban on free passes), but he concluded by recommending to the senators an ‘easy does it’ commission with inchoate powers.”

They continue: “Adams had described such a fallback position – knowledgeable experts learning and tinkering – a year earlier in his correspondence with Congressman John D. Long (R-MA). Kolko quoted that letter from Adams to Long: ‘If you only get an efficient Board of Commissioners, they could work out of it whatever was necessary.’ Yet, on that basis, Kolko called Adams a ‘cynic,’ implying that -- even before the ICC existed – Adams had worked out the theory of regulatory capture and its uses for crony capitalism. Kolko ignored both the strong recommendation for a pure ‘sunshine commission,’ with which Adams began his testimony, and the significance of his earlier explanation to Long that acceptance of a somewhat more powerful commission could head off ‘a demand for extreme legislation.’”³¹

The Real Adams

Alas, quotes from Kolko, remarks from Adams and summaries of his views hardly suffice to sort out Adams’ politics – much less his relationship to “laissez-faire” – that elusive outlook to which he was so “near.” Since neither the critics nor Kolko have discussed Adams in detail, we must bring in some additional material.

Historians often refer to Adams as a *cynic*, because they generally agree that he was one – this is even less controversial than calling Justice Oliver Wendell Holmes a *nihilist*. Kolko hardly needed to call Adams a cynic *in order* to reach some other objective. Like Holmes, Adams had served in the Union Army (a great manufactory of cynics and nihilists). After years in business, Adams described the capitalists he had known: “A set of mere money-getters, unattractive and uninteresting.” As for railroading: “Gambling is now a business” Even worse, as historian Richard White writes, railroad managers were not good bureaucrats and were quite crooked, but in a manly way (given the Civil War background). Poor Adams tried to organize and control these men on the model (once more) of the Union Army. His failures in this endeavor doubtless increased his cynicism.³² (We shall return to the *capture theory*, which Kolko allegedly fathered on Adams, in Part II.)

³¹ Bradley and Donway, 2015. Kolko, *Re&R*, 37.

³² Adams quoted in Michael Perelman, *Railroading Economics: The Creation of Free-Market Mythology* (New York: Monthly Review Press, 2006), 80-81; Richard White, *Railroaded: The*

Historian Jeffrey Lustig writes that Adams was a Comtean, for whom society was an “organic unity.” He thought the railroads’ sheer scale put them into “favored zones” of non-competition, outside the normal laws of supply and demand. Textbook competition would never return; regulation and state support for industrial concentration would replace it. Lustig calls Adams’s outlook an incipient corporate liberalism. White sees Adams as a Comtean liberal and modernizer whose ideal was efficiency.³³

Historian Nancy Cohen writes that, for Adams, railroads represented Progress and their consolidation was the wave of the future. Rational, state-led development was needed, resting on statistics, state bureaus, and greater capital accumulation – capital now being the source of value. (This does not seem a great theoretical advance.) Evolutionary rhetoric rounded out Adams’s system.³⁴

Economist Michael Perelman notes that as a railroad critic and eventual executive, Adams helped create (and served on) the Massachusetts Board of Railroad Commissioners and was its most influential member. He presided over a voluntary rate-setting body, the Board of Arbitration of the Eastern Trunk Lines Association. Experience undermined his belief in existing economic theory: competition did not give the results that conventional economics promised, but instead yielded monopoly across the whole economy.³⁵

Finally, there is Adams’s frank statement in his book *Railroads: Their Origin and Problems* (1878, 1886) that “so far from being necessarily against public policy, a *properly regulated combination* of railroad companies, *for the avowed purpose of controlling competition*, might prove a most useful public agency.”³⁶ All in all, Adams seems a leader in the movement *away* from laissez-faire, however loosely understood, which tends to undermine his *nearness* to it. (Part II will revisit the theoretical trends in which Adams participated.)

Transcontinentals and the Making of Modern America (New York: W. W. Norton, 2011), 245-246, 252, 281-282.

³³ R. Jeffrey Lustig, *Corporate Liberalism: The Origins of Modern American Political Theory, 1890-1920* (Berkeley: University of California Press, 1982), 83, 55, 99-101, 105; White, *Railroaded*, 188, 279 ff.

³⁴ Nancy Cohen, *The Reconstruction of American Liberalism, 1865-1914* (Chapel Hill: University of North Carolina Press, 2002), 102-105.

³⁵ Michael Perelman, *The Invention of Capitalism* (Durham, NC: Duke University Press, 2000), 81-83.

³⁶ Charles Francis Adams, Jr., *Railroads: Their Origin and Problems* (New York: G.P. Putnam’s Sons, 1886 [1878]), 186 (my italics). Historian Elizabeth Sanders quotes exactly the same sentence from Adams’ 1878 edition: *Roots of Reform: Farmers, Workers, and the American State, 1877-1917* (Chicago: University of Chicago Press, 1999), 188, 456 note.

James J. Hill's Streetwise Blues (1901)

Bradley and Donway assert that Kolko deliberately distorted a quote from railroad magnate James J. Hill's contribution to a 1901 symposium on Industrial and Railroad Consolidations in the *North American Review*.³⁷ Kolko had written: "... the 'trust,' wrote James J. Hill in 1901, 'came into being as the result of an effort to obviate the ruinous competition.'"³⁸

Bradley and Donway inform us that "it" was the real subject (wickedly suppressed) of the sentence partially quoted by Kolko, and that this *it* referred to "a general feeling of hostility towards the railroads" which Hill had noted earlier – and indeed it did. That sentence read: "There is in the community a general feeling of hostility towards the railroads and industrial consolidations that have been effectuated and towards those that are now under way."³⁹

With original subject restored to its place, our critics give us the following: "*It began* when the 'trust' came into being *and* as the result of an effort to obviate ruinous competition."⁴⁰ But this reading creates a second clause in which the *feeling of hostility* came about "as the result of an effort to obviate ruinous competition." This makes little sense, but even worse, the two critics' "and" (italicized or otherwise) is not in Hill's essay. Without it, the sentence⁴¹ means that trusts *did* arise to restrict competition, and someone lies self-shot in the exegetical foot.

If the critics can mangle the source while accusing Kolko of mangling it, our confidence in their de-mangling skills must plummet. Meanwhile, however, they have added a "Correction" to their 2013 essay touching just this point: "In our essay 'Reconsidering Gabriel Kolko,' we alleged (on p. 573) that Gabriel Kolko's *Triumph of Conservatism* had doctored a quotation from J. J. Hill. We have since learned that this is false, and we regret the error."⁴² The error arose (they explain) from consulting a different version of Hill's essay published in 1902. Unrepentant, they add: "We have examples of

³⁷ James J. Hill, "Industrial and Railroad Consolidations: Their Advantages to the Community," *North American Review*, May 6-15, 1901, 646-655. [This was online at <http://www.unz.org>.]

³⁸ Kolko, *Triumph of Conservatism*, 13.

³⁹ Hill, "Industrial and Railroad Consolidations," 646-647.

⁴⁰ Bradley and Donway, 2013, 572-573; their italics.

⁴¹ "It began when the 'trust' came into being as the result of an effort to obviate ruinous competition." Hill, 647.

⁴² Bradley and Donway, "Correction": <http://www.independent.org/publications/tir/article.asp?a=928>, (undated).

quotations that Kolko doctored to change their meaning, but Hill’s is not one of them.”

You might think the matter settled (perhaps arrogantly), but, no. Bradley and Donway now claim that while the wicked Kolko did not quite *doctor* Hill’s sentence, his nefarious ellipsis did the self-same work: “That said, Kolko did delete the subject and verb of Hill’s sentence with an ellipsis and thereby altered the implication of the clause in question. Hill was not saying, as Kolko suggested, that the trust had been a valuable institution because it obviated ‘ruinous competition.’ As we wrote: ‘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.’”⁴³ And yet, re-assembling Hill’s clauses, we get this: “A general feeling of hostility towards the railroads and industrial consolidations” [subject] + “*began* when the ‘trust’ came into being *as the result* of an effort to obviate ruinous competition” [predicate] (my italics). This and several surrounding paragraphs of railroad prose do not persuade me that the critics’ reading (see above) is especially natural. Kolko never *says* the trust was “a valuable institution,” but simply takes Hill’s word that they came about “as the result of an effort,” etc. It is, after all, part of Kolko’s larger argument that trusts had *not successfully rationalized* the railroad sector. It follows that trusts had not been as valuable as sundry moguls had hoped they would be. After doing the math, they increasingly turned to political capitalism. In time they got quite good at it.

Carnegie Was a Steel-Drivin’ Man (1909)

Bradley and Donway show Kolko quoting Andrew Carnegie as follows: “So far as the price competition plaguing the steel industry was concerned, however, ‘it always comes back to me that Government control, and that alone, will properly solve the problem.’”⁴⁴ They continue: “Carnegie appears to support Kolko’s thesis that leaders of the early twentieth-century steel industry preferred government regulation to market-driven competition. This is what Carnegie actually wrote:

It is not alone in steel that there is to-day [sic] a practical monopoly: tobacco, thread, sugar, oil, even if there be different manufacturers in all of these, have that ‘sort of an understanding’ which creates monopoly.... A monopoly could not be permitted to make its own price.... Some remedy must be found; I have thought over the subject and considered substitutes, but without success: it always comes

⁴³ “Correction.”

⁴⁴ Bradley and Donway, 2015; Kolko, *Triumph*, 173. Kolko cited Andrew Carnegie, “Control of Monopolies,” *New York Times*, February 16, 1909.

back to me that government control, and that alone, will properly solve the problem. There is nothing alarming in this; capital is perfectly safe in the gas company, although it is under court control. So will all capital be, although under Government control.”^{45, 46}

“In short,” they write, “Carnegie’s statement has *nothing* to do with ‘the price competition plaguing the steel industry.’ Quite the reverse. It expresses Carnegie’s belief that monopolies or pools dominating steel and other industries might have the power to set monopoly prices. His solution was one that many were urging for so-called natural monopolies (such as the gas company): empowering ‘expert’ government commissions to oversee prices. Whether such commissions are wise or unwise is not the point here. The point, rather, is that Carnegie was advocating government regulation to restrain monopoly, not to restrain competition.”⁴⁷

But Kolko thought he had already established the persistence of price competition “plaguing the steel industry” (see *Triumph*, 30-39). Since it *had* existed, Kolko could assume Carnegie knew about it, since Carnegie himself had sometimes contributed to it by *breaking existing voluntary cartel understandings*. This becomes clear on page 174, where Kolko writes: “The reason Gary and Carnegie were offering the powers of price control to the federal government was not known to the Congressmen, who were quite unaware of the existing price anarchy in steel.” The Congressmen thought the proposal too “socialistic.”⁴⁸

Twenty years earlier, in February 1889, Carnegie had written about the “Bugaboo of Trusts” in the *North American Review*.⁴⁹ There he laid out his famous law: “The condition of cheap manufacture is running full.”⁵⁰ This meant that in heavily capitalized industries, Say’s Law of Markets did not

⁴⁵ Carnegie did *actually* write those words. The first sentence comes from his fourth paragraph and the next sentence from his sixth paragraph (summarizing the court’s conclusion in the New York Gas Company case). The last several sentences combine Carnegie’s seventh and eighth paragraphs.

⁴⁶ B&D’s ellipsis here, 2015, omits two paragraphs discussing Judge Gary and the New York Gas Company case, and the first sentence of a third paragraph.

⁴⁷ Bradley and Donway, 2015. It is odd that our critics do not ask, in the manner of Rothbard: What’s wrong with monopoly if it can arise without obvious state support? (One need not endorse Rothbard’s view here.)

⁴⁸ Kolko, *Triumph*, 174.

⁴⁹ Andrew Carnegie, “The Bugaboo of Trusts,” *North American Review*, CCCLXXXVII [387] (February 1889), 141-150.

⁵⁰ Carnegie, “Bugaboo,” 142.

apply – in the short or medium run. In some longer period (he said) things would right themselves (after enough business failures). Carnegie seemed rather complacent about it.

In 1912, roughly three years after his letter to the *Times*, Carnegie testified before the House Committee on Investigation of United States Steel. After much friendly joshing about hypothetical cases, Congressman John J. Gardner (R., New Jersey) asked Carnegie what would happen if large steel combinations were dissolved in the absence of Carnegie’s proposed industrial court:

Mr. Carnegie: Why my dear sir, if you dissolve them into small parts they will do as they did before when they were small parts.

Mr. Gardner: Of course they will. Will that, in the long run, make cheaper steel products or more expensive products?

Mr. Carnegie: No; because they would have understandings. They would be driven to understandings against destructive competition which would ruin them all.⁵¹

If Carnegie believed that competition inevitably drove enterprisers into various schemes of cooperation or consolidation, legal or not, then his statement in 1909 said *something* about continued price competition in the steel industry. And he might well have referred to the results as “monopoly” in 1909, especially if adopting that term helped to promote his preferred top-down solution, the industrial court. (The court – presumably of the *right sort* – would reassure the better capitalists by disciplining the others.) Unable to think in *class terms*, even when the specific historical frame demands it, Bradley and Donway see right past an emerging upper-class consensus hiding in plain sight.

On Bradley and Donway’s reading, Carnegie – having forgotten all about ruinous competition in 1909 – suddenly remembered, in 1912, his own definite views on the subject, already expressed in 1889. One can hardly fault Kolko for crediting Carnegie with some lasting inner consistency.

Mr. Gary’s Quest for Certainty (1911)

In their 2015 article, Bradley and Donway write: “Kolko also did not grasp that, to businessmen, uniformity and clarity of regulation might be

⁵¹ No. 36, *Hearings before the Committee on Investigation of United States Steel Corporation, House of Representatives* (Washington: Government Printing Office, 1912), 2484 (Friday, January 12, 1912).

more important than the degree of regulation. Thus, after railroads became continental, their owners sought consistent national regulation at the price of greater regulation. Likewise, after the Sherman Antitrust Act created a legal standard that was hopelessly vague, businessmen petitioned Congress for clarifying legislation simply because they sought intelligibility.”⁵²

Reacting to two unclear U.S. Supreme Court antitrust rulings (*Standard Oil* and *American Tobacco*, both in 1911), they continue, the head of U.S. Steel, Judge Elbert H. Gary, “spoke with exasperation to a House investigation of his company: ‘I would be glad if we knew exactly where we stand, if we could be freed from danger, trouble, and criticism by the public, and if we had some place where we could go, to a responsible government authority, and say to them, “Here are our facts and figures, here is our property, here our costs of production; now you tell us what we have the right to do and what prices we have the right to charge.”’”

But, naturally, they say: “Kolko thoroughly misinterpreted Gary’s words, saying that he sought federal price controls to obviate ‘the existing price anarchy in steel.’ In fact, as Gary made clear, although U.S. Steel could not set prices in the market, it had achieved ‘a very great result in securing reasonable stability.’ What Gary wanted to avoid was not price ‘anarchy’ but endless and incomprehensible trust-busting aimed at dominant firms.”⁵³

It seems possible, however, that Gary wanted to be free of *both* “excessive” competition and unclear legal boundaries. Kolko’s account of late 19th-century political capitalism directly addresses businessmen’s wish (noted by Bradley and Donway) for *predictability and stability*, that is, “rationalization” in Max Weber’s sense. If Kolko overlooked that desire, it is odd that the first chapter of *Railroads and Regulation* should be entitled “In Quest of Stability, 1877-1883.” But apparently it is one thing for large-scale capitalists, seconded by Bradley and Donway, to call for stability, but quite another for Kolko to *say* that they did so.

Tentative Conclusion

The critics’ top seven charges have left Kolko quite unscathed. For them, it is at best a draw. We have learned that Kolko took certain sentences in his sources to mean one thing, while Bradley and Donway insist they *must* mean something else. The dispute shrinks down to the critics’ claim (among others) that Kolko *ought to have believed* that cartels were just fine in the truly free market, and their assertion that somehow, *since he didn’t*, his presentation was both wrong and dishonest. Our critics have done little harm (or justice), to

⁵² Bradley and Donway, 2015. On “uniformity and clarity of regulation,” see below.

⁵³ Bradley and Donway, 2015. Kolko, *Triumph of Conservatism*, 174.

either Kolko's historical account or to his theoretical category of political capitalism.

Part II: Theory

“Now the rain man gave me two cures, and he said, ‘Jump right in.’
The one was Texas medicine and the other was just railroad gin.”
– Bob Dylan

Part I concluded that Robert L. Bradley and Roger Donway have done little harm (or justice), to either Kolko's historical account or to his theoretical category of political capitalism. We may add here that it remains far from established that Kolko had any *habitus* “of changing the meaning of quotations.”⁵⁴ In this section the focus is mainly on these critics' 2013 essay, chockfull of theoretical-sounding complaints about Kolko's works and deeds. Indeed their critique regularly retreats into ideological categories, including economics-as-ideology,⁵⁵ and wrenches history and theory apart in atomistic liberal fashion. We shall survey some highlights here.

Marxism, Class, and Kolko

Bradley and Donway try to fit Kolko up as a scarecrow Marxist. But Kolko already made serious criticisms of Marx at the end of *Triumph of Conservatism* and further criticisms came in his later works.⁵⁶ Neither does the critics' whole “who/whom” discussion – meant (apparently) to turn Kolko into Lenin – work very well.⁵⁷ One influence on Kolko was the German Marxist economist Paul Mattick of the Council Communists, who traced their sectarian descent from Dutch theorist Anton Pannekoek, an anti-statist Marxist and severe critic of Lenin. Kolko was involved with the social-democratic Student League for Industrial Democracy (SLID), which later became Students for a Democratic Society (SDS). He corresponded with Norman Thomas, veteran leader of the Socialist Party of America. He was

⁵⁴ As claimed by Bradley and Donway, 2015.

⁵⁵ I won't say much here on libertarianism as such, since I am trying to give up ideology.

⁵⁶ Kolko concluded that conservative, Weberian, and Marxist theories of bureaucracy “gravely distort much of mankind's past experiences,” leaving researchers unable “to fathom the consummately self-destructive irresponsibility of leaders playing with the lives of their subjects and gambling on the very future of their social and political orders.” *Century of War: Politics, Conflicts, and Society Since 1914* (New York: The New Press, 1994), 455.

⁵⁷ Bradley and Donway, 2013, 566.

involved in anti-nuclear activity, attended peace demonstrations, and, yes, he never liked any American wars.⁵⁸

Not much *Leninism* in all that. As for the narrow point that politics is about “Who does what to whom,” anyone might agree with that. Consider historian Charles A. Beard, who sought the main origin of Western European states in conquest:

A military leader and his war band, in search of plunder and sources of steady income, conquer and fuse settled communities loosely united by kinship, and settle down upon the population as the ruling authority, absorbing surrounding areas by divers processes.⁵⁹

There is certainly a lot of “who/whom” analysis to be done in such cases, but Lenin is hardly needed.

Special State Duties to Deserving Capitalists

Bradley and Donway accuse Kolko of blurring the distinction between mere defense of private property (which, oddly enough, seems to require *enormous exertions* by the state, where capitalists’ properties are concerned) and use of the state to rig market outcomes prospectively. Surely, they imply, the state has a duty to do the first.

They write: “Seeking government protection of one’s property from mobs or expropriatory voters⁶⁰ differs categorically from seeking legal protection against economic competition, and therefore the two cannot be coherently combined into a single syndrome called ‘political capitalism.’”⁶¹ But they could certainly *coexist in a concrete historical situation*, if not perhaps as a tidy ideological *system*. Mr. Rockefeller, for example, might – with his own money – put expensive locks on his keep, or hire armed head-bashers to resolve human-resource problems. But he also might (and did) call upon the U.S. Army, state militias, and irregular deputies to beat or shoot disaffected workers.⁶²

⁵⁸ See Gary Roth, *Marxism in a Lost Century: A Biography of Paul Mattick* (Leiden: Brill, 2015), where letters from Kolko are regularly cited between pages 263 and 301, and Melanie A. Yolles, *Norman Thomas Papers Guide* (Alexandria, VA: Chadwyck Healey, 1985), 72, listing Kolko under “Prominent Correspondents in Series I.”

⁵⁹ Charles A. Beard, *Politics* (New York: Columbia University Press, 1908), 17.

⁶⁰ This seems incoherent, since *voters*, “expropriatory” or otherwise, are supposed to have some say over what the state does.

⁶¹ Bradley and Donway, 2013, 565.

⁶² Howard Zinn, *A People’s History of the United States* (New York: HarperPerennial, 2003), 354-356 (Ludlow [Colorado] Massacre, April 1914).

Questions might arise as to whether the taxpayers really *owed him quite so much help, or indeed any*, but we needn't begrudge him the locks. Yet, here *three* "forms of activity *are united*"⁶³ in Rockefeller's (hypothetical) actions without clearly getting him off the hook as a possible agent of political capitalism.

Methodological Individualism

Putting Kolko's supposed blindness on various matters down to class analysis, Bradley and Donway pronounce in favor of methodological individualism.⁶⁴ Legal historian Wythe Holt, who was a bit of a Marxist, writes that "class is not a deterministic way of predicting precise individual behavior by extrapolating from characteristics of wealth, status, or occupation that they may have. Rather, class is a way of understanding and expressing the tendencies and interactions of human life and human history as it has been and is lived in social groups, dynamic, ever-changing, full of conflict, full of possibility, full of both pain and hope."⁶⁵ And non-Marxists like philosophers Maurice Mandelbaum and Michael Simon agree that methodological individualism, extended beyond its small area of usefulness, results in an inability to spot patterns, much less explain ongoing social facts, institutions, and practices. Mandelbaum and Simon hold that institutions "really exist as entities,"⁶⁶ while Bradley and Donway apparently invoke methodological individualism merely to ward off all conceivable "collectivist" error. But such reductionism eliminates much of the subject matter of economics and sociology, and is thus a step too far.

For Competition and Against It Too

Bradley and Donway manage to be both for and against "competition," writing: "But capitalism involves only the *right* to compete – that is, the absence of legal monopolies. Nothing in capitalism requires the existence of actual competition" ending in "survival of the fittest."⁶⁷ They offer these thoughts in refutation of Kolko, to whom they attribute the view that a railroad man he quoted (*R&R*, 38-39) thought that was how things worked, but didn't like it.

This move is tricky in that competition was long a selling point in defense of free economic activity, one put forward by Adam Smith and a legion of

⁶³ Bradley and Donway, 2013, 565.

⁶⁴ Bradley and Donway, 2013, 566.

⁶⁵ Wythe Holt, "To Establish Justice": Politics, the Judiciary Act of 1789, and the Invention of the Federal Courts," *Duke Law Journal*, 1989:6 (December 1989), 1525.

⁶⁶ Maurice Mandelbaum, "Societal Facts," in Patrick Gardiner, ed., *Theories of History* (Glencoe, IL: Free Press, 1959), 476-488, and Michael A. Simon, *Understanding Human Action* (Albany: State University Press of New York, 1982), Ch. 3, and 50.

⁶⁷ Bradley and Donway, 2013, 570 (also 573).

later Smith popularizers. The rationale was that competition stimulated production and so lowered prices, benefiting society as a whole. On this basis, it was good policy to leave the capitalists free to act and not begrudge them their profits.

But the railroad president quoted *did say* what he said, and Kolko hardly violates Bradley and Donway's methodological individualist strictures by quoting the man's actual words.

Bradley and Donway further complain that Kolko did not understand that cartel arrangements are compatible with an ideal (hypothetical) free market. But the common law did not agree, and that fact was an important part of the historical context. As for the claim that cartel agreements are, or *should be*, enforceable contracts, no less than Murray Rothbard disagrees: "What of a cartel agreement? Would that be enforceable in a free society? If there has been no exchange of property, and A, B, C ... firms agree among themselves to set quotas on their production of a good, this agreement would surely not be illegal, but neither would it be enforceable. It could be only a simple promise and not an enforceable case of implicit theft." In the related note, Rothbard states that this conclusion, adopted by an English court in the *Mogul Steamship Case* (1892), did *not* rest on the older English common law doctrine.⁶⁸

Kolko did not take up such questions. His view was that big businessmen tried one way after another to stabilize markets to their liking. When pooling or cartel agreements did not work out, they developed more directly *political* means.⁶⁹ Bradley and Donway show little awareness that Kolko's thought changed over time, or that he was sketching out an historical process in which the programmatic ends (and means) of big business changed over time. They seem minimally interested in knowing that Kolko carried his analysis into the mid-20th century (and later), and found both continuity and change in American political capitalism; or that he carried the analysis into his account of U.S. foreign policy.

Capitalist Subjectivities

Near the end of their 2013 essay,⁷⁰ Bradley and Donway go in for considerable agonizing over how, when, or whether, any late nineteenth-century railroad capitalist ever acted in an "anticapitalist" fashion or had an "anticapitalist" thought. It is hard to see who would find this inquiry interesting and unclear how illuminating the demonstration would be. Let us

⁶⁸ Murray N. Rothbard, *Man, Economy, and State*, I (Los Angeles: Nash Publishing, 1970 [1962]), 156, 443 note.

⁶⁹ As understood by Franz Oppenheimer, A.J. Nock, and Murray Rothbard.

⁷⁰ Bradley and Donway, 2013, 573-574.

suggest instead a minimal working definition of capitalism as a political economy characterized by private ownership of large-scale means of production, production for profit, price mechanisms, full-scale monetization, free waged labor, and rational accounting.⁷¹ Of course “political” is here to remind us that all economies are embedded in states, and that therefore, capitalism is always political in one way or another. (See below.) The *cronies* have been there from the beginning and in itself the fashionable phrase “crony capitalism” adds little to analysis.

It is on such a definition that economist Andre Gunder-Frank can argue, persuasively, that that “It is the cash nexus and the hard economic reality behind it, and not principally aristocratic or feudal traditions, which ruled in Latin America from the very beginning.”⁷²

Mysteries of Rent Seeking

Referring to “Kolko’s evidence for Gilded Age corporatism” (Kolko *never* uses the term “corporatism”), Bradley and Donway allow that rent-seeking has run all through American economic history, but that no one, including its perpetrators, could have properly understood what they were doing before Gordon Tullock found its abstract concept in 1967 and Anne Kreuger “named” it in 1974.⁷³ Evidently, historically existing rent-seekers worked in a debilitating pre-Public Choice fog and it’s a wonder they ever got any rents.

But England – the major source of American ideas, law, political institutions, etc. – was, after all, the classic *home* of an especially aggressive class of rent-seekers (nobility, gentry, and London merchants), whether under “feudalism,” feudal absolutism, agrarian capitalism, or (finally) industrial capitalism. One would expect English writers to have noticed rent seeking centuries ago, either to praise it or damn it. And indeed they did. Opposition poet John Gay wrote around 1732: “If schemes of lucre haunt his brain, projectors swell his greedy train; vile brokers ply his private ear with jobs of plunder for the year” So, too, opposition poet Alexander Pope in the late 1730s: “Who makes a Trust or Charity a Job, and gets an Act of Parliament to rob”; “No cheek is known to blush, no heart to throb, Save when they lose a Question, or a Job....”⁷⁴

⁷¹ Cf. Max Weber, *The Theory of Social and Economic Organization*, Talcott Parson, ed. (New York: The Free Press, 1964 [1947]), 279-280.

⁷² Andre Gunder Frank, *Capitalism and Underdevelopment in Latin America* (New York: Monthly Review Press, 1969), 24.

⁷³ Bradley & Donway, 2013, 561-564.

⁷⁴ Isaac Kramnick, *Bolingbroke and His Circle* (Ithaca, NY: Cornell University Press, 1992 [1968]), 225 (italics added). William K. Wimsatt, Jr., ed., *Alexander Pope: Selected Poetry and Prose* (New York: Holt, Rinehart & Winston, 1967 [1951]), 285, 294.

Adam Smith famously wrote of the tendency of merchants and employers to meet together to rig their markets. Similarly, from the 1770s forward, the French *philosophe* Condorcet was very concerned that the wealthy might gain undue political influence and tailor the law and regulatory bodies to their narrow economic interests.⁷⁵

Virginia planter John Taylor of Caroline declared in 1822 that while a “property-transferring policy” reduced general prosperity, merchants could “evade its oppression ... by blending the capitalist with the mercantile character; and becoming bankers, lenders to government, or factory owners. So far also, as the agricultural and mechanical classes, are interspersed with individuals endowed with pecuniary privileges, such individuals derive emolument ... not as mechanicks or agriculturists, but in their privileged characters.” They won more than they lost by “property-transferring” measures.⁷⁶

It begins to seem willful of Bradley and Donway to imply that Kolko could not, in works written in 1963 and 1965, have understood the central point of rent-seeking (= prospectively controlling market conditions to ensure a greater share of potential profits) or that his historical actors could not have understood or *done* any of it, pending the rise of correct *theory* in 1967 or 1974.

Capitalist Ideological Reformation, 1860-1890

Bradley and Donway make much of William Graham Sumner.⁷⁷ Historian Jeffrey Lustig notes Sumner’s definite “corporatist impulse” and his appeal to impersonal forces, in a kind of Godless Calvinism.⁷⁸ Historian James E. Block remarks that Sumner could argue that the late 19th-century American economy was “free” by pretending that “feudal command economies” were the *only* alternative to Gilded Age corporate capitalism.⁷⁹

If Sumner was the best “laissez-faire” proponent of the age, something wasn’t right. *It wasn’t*: A massive (and partly unseen) theoretical/ideological shift had taken place. Block recounts how the work of Amasa Walker, Arthur L. Perry, and Simon Newcomb, who served as *official* laissez-faire economists, minimized Jeffersonian ideals and dismissed self-sufficiency and decentralization as “outmoded,” belittled “antebellum Jeffersonian society

⁷⁵ Anna Rothschild, *Economic Sentiments: Adam Smith, Condorcet, and the Enlightenment* (Harvard University Press, 2001), 166, 189, 219.

⁷⁶ John Taylor of Caroline, *Tyranny Unmasked* (Indianapolis: Liberty Fund, 1992 [1822]), 267.

⁷⁷ Bradley and Donway, 2013, 574.

⁷⁸ R. Jeffrey Lustig, *Corporate Liberalism: The Origins of Modern American Political Theory, 1890-1920* (Berkeley: University of California Press, 1982), 82, 86-87.

⁷⁹ James E. Block, *A Nation of Agents* (Cambridge, Mass.: Harvard University Press, 2002), 464.

rooted in proprietary independence and self-reliance,” and endorsed the new corporate economy. Participation in this new economic order – “neither natural nor inevitable” and which had excluded “other possibilities” – was all the freedom there was. Here, Block comments, these friends of laissez-faire created a problem for themselves “by claiming sector autonomy *for a product of systematic legislation and adjudication*”⁸⁰ In the end, this ideological adjustment succeeded so well that few can now distinguish the earlier laissez-faire from its substitute. (But Sumner had another side, as shown by his attacks on plutocrats, lobbyists, and those who buy legislatures, seen as corrupt individuals betraying a system otherwise sound.⁸¹)

Oddly, Bradley and Donway made a similar point in 2010: “Following the Civil War, the American political-economic system began to drift farther from the model of laissez-faire capitalism, as governments at the state and federal level passed laws to regulate the market.”⁸² Unfortunately, their critique does not go much beyond the usual right-wing complaint about the follies of lawmakers and (perhaps) the bad motives of envy-ridden voting blocs. Actually, it was the political and military successes of Mr. Lincoln’s developmental coalition that set the stage for the second kind of laissez-faire, just when the new theorists were theorizing it.⁸³

Not surprisingly, the official laissez-faire economists’ approval of large-scale industry easily coexisted with the practical businessmen’s view that ruinous competition led inexorably to monopoly (“survival of the fittest”). This Social Darwinist view was taking hold precisely in the period treated by Kolko. He did not have to impose it on anyone.

Kolko’s ‘Political Capitalism’ Disputed

Bradley and Donway complain 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.”⁸⁴ It almost seems as if Bradley and Donway are redefining political capitalism so narrowly as to exclude most of Kolko’s (or anyone’s) evidence.

⁸⁰ Block, *Nation of Agents*, 459, 462-463, 478, 490.

⁸¹ Historian H.A. Scott Trask emphasizes this side of Sumner’s work in “William Graham Sumner: Against Democracy, Plutocracy, and Imperialism,” *Journal of Libertarian Studies*, 18:4 (Fall 2004), esp. 10-19.

⁸² Robert L. Bradley Jr. and Roger Donway, “Capitalism, Socialism, and ‘the Middle Way’: A Taxonomy,” *Independent Review*, 15:1 (summer 2010), 75.

⁸³ Richard Franklin Bensel, *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877* (New York: Cambridge University Press, 1990).

⁸⁴ Bradley & Donway, 2013, 563.

For Bradley and Donway, Kolko's theses on political capitalism commit him⁸⁵ to the following practical syllogism: *Real-true capitalist executives opposed regulation of any kind. But in fact they supported some kinds of regulation. Therefore they did not believe their own ideology.* Our critics add some complaints about "feudal" survivals in Anglo-American law, under which railroad men can't be held to any high standard of free-market belief or behavior.⁸⁶ The only cost (to us) has been the unrewarding effort of imagining a 19th-century businessman as a proper free-market ideologue (easier to find a unicorn).

Now there is another view, a rather well grounded one, historically speaking: namely, that in this great land of Herman Melville's *confidence men* the real point was making lots of money, full stop, with formal American ideology remaining rather flexible. Gilded Age entrepreneurs (mainly derived from Greater New England) were happy to have state handouts for themselves, now, and to set up legal barriers for their rivals and foes, later, when and where they could.⁸⁷ Many writers praise this reality as nothing more than applied American pragmatism or creative destruction.

Kolko's Political Capitalism

As Kolko saw things, the Progressive Era's ultimately conservative consensus made it possible to raise political capitalism to new levels. Political and business leaders basically agreed on a federal role in reform. Industry wanted and usually got a veto power over regulatory agencies.⁸⁸ Given a predominant capitalist bloc, the upshot was political capitalism: "the functional unity of major political and business leaders," i.e. an "Establishment," or "interlocking social, economic, and political elite."⁸⁹ Big business wished to short-circuit local (state) reformers and occasionally redirected radical rhetoric to their own ends. The key was *stabilization* and World War One economic planning *fulfilled* this (Eastern) Progressive program.⁹⁰

⁸⁵ Bradley and Donway, 2013, 564.

⁸⁶ Bradley & Donway, 2013, 564-565.

⁸⁷ The pious Mr. Rockefeller (or his proxies) spent more time in court than in church.

⁸⁸ Kolko, *Triumph*, "Conclusion," 282-283. Cf. Philip L. Beardsley, "Toward a Synthesis of Conflicting Ideological Views Regarding the Political and Economic Dimensions of the American Political Economy: The Current System," *Peace and Change*, 5 (Fall 1978), 12-33 (assessing the work of republican theorist Walter Karp).

⁸⁹ Kolko, *Triumph*, "Conclusion," 284.

⁹⁰ Murray N. Rothbard, "World War I as Fulfillment: Power and the Intellectuals," *Journal of Libertarian Studies*, 9 (Winter 1989), 81-125.

In Kolko's view, European social *theory* shed little light on this episode. Taking the state as merely the capitalists' rent-a-cop, Marx failed to see how it could help capitalist accumulation through regulation. Max Weber saw political capitalism very narrowly, as "opportunities provided by political bodies, colonialism, or tax farming." Mistaking Hegel's nice painting for reality, he thought bureaucracies were neutral, rational, and classless institutions fostering predictability; but (Kolko adds) in the United States, bureaucracies could "make economic decisions and profits predictable and secure through *political means*." Since 1887 U.S. bureaucracies have typically protected the profits of established businesses from chaotic competition and democracy alike. Stabilization was the key; business titans wished to short-circuit local (state) progressives, and redirected radical rhetoric. But while he used the term "political capitalism," Weber did not see how such a thing could become a functioning system. *Political means* [to wealth], when noted, were all in the past for Weber, as they were for Marx.⁹¹

Elsewhere, Kolko also criticized Weber for being completely unaware of how things worked in the American colonies: "In the American colonial period we can discern of a pattern of development in which the role of political capitalism, as in China, is decisive in the economic process." The odd result was that "refutation of the Protestant Ethic, as Weber understood it, also leads to a validation of the concept of political capitalism, which Weber limited to China, as a central element in any analysis of early American history."⁹²

More on Political Capitalism

John A. Hobson (1902), discussing the sources of monopoly, laid bare the interpenetration of capital and state, citing tariffs, patents, franchises, licenses, and railroad subsidies as prime examples.⁹³ As Ida Tarbell put it in 1936, corporate consolidators "based their operations usually on exclusive privileges which competitors ... were unable to get," including tariff protection, large grants of land (with mineral rights) to railroads, "perpetual franchises and rights of way to builders of utilities."⁹⁴ Economist Adolf A. Berle (1938) adduced "direct government subsidies, for instance, to aviation and the merchant marine; indirect subsidies – low mail rates to newspapers; government purchases; special privileges – patents, copyrights, and licenses;

⁹¹ Kolko, *Triumph*, "Conclusion," 280, 282-285, 292, 294-299.

⁹² Gabriel Kolko, "Max Weber on America: Theory and Evidence," in George H. Nadel, ed., *Studies in the Philosophy of History* (New York: Harper & Row, 1965), 194, 197.

⁹³ John A. Hobson, *The Evolution of Modern Capitalism* (London: George Allen & Unwin, 1926), 192-201.

⁹⁴ Ida Tarbell, *The Nationalizing of Business, 1878-1898* (New York: Macmillan, 1936), 5, 6-7).

tariffs; protection against price fluctuations; collateral subsidies – to the automobile industry through highway construction; public relief to take care of industry’s unemployed in unprofitable seasons; direct loans; credits and banking facilities; regulation of rates; privileges to organized labor.”⁹⁵ And Oskar Lange (of market socialist fame) wrote in 1937 that in recent times “the best businessman is he who best knows how to influence in his interest the decisions of the organs of the state (in regard to tariffs, government subsidies or orders, advantageous import quotas, etc.). (...) What formerly was regarded as a special trait of the munitions industry becomes in interventionist capitalism the general rule.”⁹⁶

Judges vs. Commissions

Bradley and Donway imply⁹⁷ that big businessmen who endorsed some kind of commission invariably had in mind a tame PR agency – a kind of weak Roman censor, occasionally condemning some business decisions and praising others. In fact, magnate thinking ran from having federal courts issue orders to their competitors to having federal commissions (or agencies) with judicial powers issue the orders. It also ran from having these judicial bodies (or commissions) merely enforce *voluntary* cartel agreements to wanting them to enforce *compulsory* cartelization. Kolko never said the earth stood still and he never said the moguls’ thinking did. But our two critics decline to see that leading capitalists could shift over time from “voluntary” cartels to compulsory ones, enforced by whatever direct or indirect legal or legal-bureaucratic means became available.

All through the magnates’ discourse runs the theme of having the *right sort* on commissions, whatever their form, suggesting that the railroad lords pretty much did *anticipate* or invent “capture” *practice*. Formal capture *theory* could wait⁹⁸ and was hardly something Kolko had to father on poor Charles Francis Adams. Adams already had a pretty good idea how it worked.

⁹⁵ As paraphrased by Charles A. Beard and Mary R. Beard, *America in Midpassage*, II (New York: Macmillan, 1939), 879 (citing Adolf A. Berle, “Investigation of Business Organizations and Practices,” *Plan Age*, 4, 7 (September 1938), 185-206 [see esp. 189-191]).

⁹⁶ Oskar Lange, “On the Economic Theory of Socialism, Part Two: The Economist’s Case for Socialism,” *Review of Economic Studies*, 4:2 (February 1937), 131 n.

⁹⁷ Bradley and Donway, 2013, 568-569.

⁹⁸ For more on this topic, see William J. Novak, “A Revisionist History of Regulatory Capture” in Daniel Carpenter and David A. Moss, *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (New York: Cambridge University Press, 2013), 25-48. On the emergence of quasi-judicial permanent bureaucracies, see Hiroshi Okayama, “The Interstate Commerce Commission and the Genesis of America’s Justicialized Administrative State,” *Journal of the Gilded Age and Progressive Era*, 15:2 (April 2016), 129-148.

Other Historians on Kolko

Writing in the *American Economic Review* in March 1965, economic historian George Hilton called himself “lamentably well qualified” to review *Railroads and Regulation*. He had begun the very same project but dropped it when he realized Kolko had done a good job. “Kolko’s history of the early behavior of the ICC,” he wrote, “is a devastating demonstration that the Commission looked upon itself as a cartelizing body from the outset.” Its practice of “cartelizing the railroad industry without pooling” reflected its origins in 1887. But Kolko’s book was not perfect, and Kolko had made “no use of the theory of cartels,” nor had he realized that “charging more for a short haul than for a long one was both a form of discrimination against areas without water transport and a means of rate cutting to points at which the railroads were competitive with one another.”⁹⁹ This last point throws some light on Mr. Fink’s haulage mystifications of 1882.

Bradley and Donway put forward historian Robert H. Wiebe as an opponent of Kolko, citing his review of *Railroads and Regulation* in the *Journal of American History* (June 1964), which chided Kolko for thinking that “a handful of big businessmen monopolized national political power during the progressive era.”¹⁰⁰ Rather boldly they also assert that Wiebe’s view that “the business community was the most important single factor – or set of factors – in the development of economic regulation”¹⁰¹ gives no aid to Kolko. One can only suppose that the same is true of Wiebe’s very next sentence: “And a significant portion of this influence supported reform.” Since Wiebe focused on the new, bureaucratic middle class whose career prospects rested on reform, he tended to treat big business as a background fact.¹⁰² Perhaps, as sociologist Frederick R. Lynch writes, the underlying dispute was between Wiebe’s functionalist, Cold War pluralist assumptions about power, and Kolko’s (and C. Wright Mills’) conflict sociology founded on class power. In Lynch’s view, big business had preponderant power and the reforms it favored largely coincided with the interests of the new bureaucratic middle class.¹⁰³

⁹⁹ George W. Hilton, “Review of Gabriel Kolko, *Railroads and Regulation*,” *American Economic Review*, 56:1/2 (March 1965), 271-272. Hilton also wrote: “Being so familiar with the author’s sources, I have found the historical record so unambiguous that I have difficulty conceiving how a long line of scholars can have avoided the conclusions of this volume” (272).

¹⁰⁰ As quoted in Bradley and Donway, 2013, 567.

¹⁰¹ Robert H. Wiebe, *Businessmen and Reform* (Chicago: Ivan R. Dee, 1962), 217.

¹⁰² This focus drew Kolko’s criticism in *Rebels*, 94n. Wiebe responded in his *Search for Order, 1877-1920* (New York: Hill & Wang, 1967), 305n, with a rather dismissive summary of Kolko’s work.

¹⁰³ Lynch, “Social Theory and the Progressive Era,” 178-182, 189-190.

Lynch concludes: “After purely economic means to control and rationalize the market failed, the corporate rich co-opted both the reform measures and the new middle class.” Further: “With the expansion of American economic and military power abroad, the technocrats have been able to engineer the expansion of the power and scope of *both* the monopoly-capitalist (or ‘corporate’) sector of the private economy and the state (or ‘public’) sector. The victims of this alliance have been those in the competitive-capitalist sector.”¹⁰⁴

Historian Elizabeth Sanders covers some of the same ground as Kolko, but sees the reform process as more dialectical: big business set definite *limits* to what was possible, but did not get everything it wanted.¹⁰⁵ (Sanders’s subject is organized farmers’ contribution to Progressive reform.) Railroad men did not completely control the legislative process and Congressman John Reagan (D., Tex.), sponsor of the House Bill through various versions, was a conscious agrarian enemy of the railroads. (As an ex-Confederate,¹⁰⁶ his views owed something to the pre-corporate, Jeffersonian version of *laissez-faire*.)

Once more George Hilton sheds light on the problem. He points out that excessive railroad investment produced duplicate routes, additional competition, and falling rates, and thus increased incentives to violate (unenforceable) collusive agreements. “If the cartels were to be stabilized, the federal government had to undertake the task.” The Interstate Commerce Act (1887) made that possible, but the provision outlawing pooling forced the Commission “to use its ratemaking authority to distribute traffic among the cartel members.” (The anti-pooling rule survived from Congressman Reagan’s House version.) In the 1920s, new legislation gave the Commission improved means of enforcing cartelization.¹⁰⁷

Final Word

Throughout, Bradley and Donway are greatly vexed by Kolko’s disdain for the free market. His related heresy that all capitalism is politically imposed troubles them greatly. And yet there is much evidence for this claim. Paul Baran writes that “the state everywhere had an important hand in determining the course and speed of economic development in the capitalist age.” Baran

¹⁰⁴ Ibid., 196, 191. Cf. James O’Connor, *The Fiscal Crisis of the State* (New York: St. Martin’s Press, 1973), 13-15.

¹⁰⁵ Sanders, *Roots of Reform*, 257, 275, and Ch. 11, “Farmers, Workers, and the Administrative State.”

¹⁰⁶ CS Postmaster General.

¹⁰⁷ George W. Hilton, *The Northeast Railroad Problem* (Washington: American Enterprise Institute for Public Policy Research, 1975), 7-8. On Reagan, see Sanders, *Roots of Reform*, 187. See also George Hilton, “Reconciling Classical Objections to Laissez-Faire in Railways,” *Economic Notes No. 24* (London: Libertarian Alliance, Occasional Paper, 1990).

and Paul Sweezy observe elsewhere that “the effect of government intervention into the market mechanisms of the economy, whatever its ostensible purpose, is to make the system work more, not less, like one made up exclusively of giant corporations” Sociologist Robert Nisbet notes that “*Laissez faire*, as the economic historian, Polanyi, among others, has emphasized, was *brought* into existence by the planned destruction of old customs, associations, villages, and other securities; by the force of the state throwing the weight of its fast-developing administrative system in favor of new economic elements of the population.” Michael E. Tigar and Madeleine R. Levy have surveyed the way in which rising bourgeois oligarchies, allied with consolidating European monarchs, remodeled the older Law Merchant in detail and in their own favor.¹⁰⁸

Finally, economist Wilhelm Röpke has described how the “feudal-absolutist heritage” of European states allowed “immense accretions of capital and economic positions of power which endow capitalism with that plutocratic taint which clings to it ... and has given it a false start from the very beginning.” (As for the most popular 19th-century investment – railroads – they were entirely premature and inflationary.) But how did the United States obtain *much the same results* as seen in Europe? Röpke reasoned that American democracy had allowed “vested interests to flourish unchecked” for far too long. In fact, the interpenetration of interests and bureaucracies had “probably reached its highest degree in the United States.”¹⁰⁹

Early 20th-century reformer Herbert Croly hoped to rebuild American life by deploying Hamiltonian means for Jeffersonian ends. But taking a longer view, one might well agree with Jeffrey Lustig that “Hamiltonian means were precisely what had brought America to the pass Croly lamented.”¹¹⁰

Big business and its allies were all about *laissez-faire*, when it came to hiring, firing, cutting wages, and having tariffs and a favorable credit regime provided by the feds. But then again, it wasn’t exactly strict *laissez-faire* with respect to labor. When faced with a large-scale strike, they wanted governments, state or federal, to protect their extensive properties and imperiled profits with massive armed violence paid for by the taxpayers.

What was at stake were: 1) government activity useful to business and 2) government activity not useful to business, but perhaps useful to someone

¹⁰⁸ Paul Baran, *The Political Economy of Growth* (New York: Monthly Review Press, 1957), 92-93; Paul Baran and Paul Sweezy, *Monopoly Capital* (New York: Monthly Review Press, 1968), 66; Robert A. Nisbet, *The Quest for Community* (London: Oxford University Press, 1969 [1953]), 279; Karl Polanyi, *The Great Transformation* (New York: Rinehart & Co., 1944); Michael E. Tigar and Madeleine R. Levy, *Law and the Rise of Capitalism* (New York: Monthly Review Press, 1977).

¹⁰⁹ Wilhelm Röpke, *The Social Crisis of Our Time* (London: William Hodge & Co., 1979 [1950]), 115 (feudal absolutism), 122 (railroads), 132, 145 n, 147-148 n (United States).

¹¹⁰ Lustig, *Corporate Liberalism*, 147.

else (including the state itself). The latter kind of “intervention” drew forth much complaint from business. But the hypothetical purely free market was seldom a serious distraction for busy capitalist moguls, but merely an abstraction to throw into the argument as needed. Non-ideological businessmen (i.e. most of them) could therefore be on both sides of laissez-faire simultaneously. Pragmatically, this *was* the content of laissez-faire (the second one) – the original formulation of vulgar libertarianism. Accordingly, laissez-faire is basically a rather empty category for at least the last four decades of the nineteenth century.

(It only remains now to mention the deleterious impact of railroading on American popular music. Historian J.C. Furnas quotes the famous song collectors, the Lomaxes, as saying, “in our estimation the distinctive feeling of American hot music comes from the railroad.”¹¹¹ But then again there is this¹¹²)

¹¹¹ J. C. Furnas, *The Americans: A Social History of the United States, 1587-1914* (New York: G. P. Putnam’s Sons, 1969), 355.

¹¹² Henry Flynt, “Lonesome Train Dreams”:
<https://www.youtube.com/watch?v=X4TiSXSOgCk>