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The Curious Origins of Airline Deregulation: Economic Deregulation and the American Left

This article examines the politics of airline deregulation in the 1970s, and the events that led to the passage of the Airline Deregulation Act of 1978. It links the antibureaucratic, antiregulatory policies of the 1970s to ideas closely connected to the New Left, the counterculture, and other left-wing subcultures that dominated high and low thought in the 1960s. By linking this source of antibureaucratic sentiment to the politics of airline deregulation, this article suggests a new direction for historians who study the American state in the last decades of the twentieth century. As they focus their attention on the rise of market-based, neoliberal regulatory policies, they should look for their origins not only in the growing strength of the intellectual and political right, but also in the political thought and practice of the 1960s left.

Keywords: administrative state, Airline Deregulation Act of 1978, airline industry, deregulation, liberalism, neoliberalism, regulation

What explains the rapid collapse of airline regulation in the 1970s? For over thirty years, a federal administrative agency, the Civil Aeronautics Board (CAB), had exercised extraordinary power over the rapidly growing airline industry.1 It determined what companies could enter the industry, what routes they could fly, and how much they could charge passengers. By the end of the decade, Congress had


passed—and President Jimmy Carter had signed—the Airline Deregulation Act of 1978, legislation that completely deregulated the economic aspects of the industry. In 1970, no one would have predicted this outcome. The idea that the airline industry should be deregulated was essentially unheard of outside the halls of the nation’s economics departments. Moreover, the alignment of interests with respect to airline regulation was not propitious for those who wanted deregulation. Powerful, concentrated interests favored regulation: the airlines themselves, the unions that represented airline workers, large financial institutions that were the airlines’ creditors, airport operators (including some of the country’s largest municipalities), and the CAB itself. Advocates of deregulation, in contrast, were either politically feeble (academic economists, a handful of small, intrastate airlines, a few eccentric charter operators) or large but extremely diffuse (airline passengers). This alignment was hardly a recipe for the deregulatory political outcome that occurred.2

Victory, of course, has many parents, and scholars of deregulation have identified a myriad of factors that led to the surprising passage of the Airline Deregulation Act.3 At the head of this list are a group of entrepreneurial politicians and policymakers: Senator Edward Kennedy, who led Congress’s first foray into airline deregulation, holding hearings in 1974 and 1975 that exposed malign connections between the CAB and the airline industry, and argued that deregulation would generate lower prices for air travel; Kennedy’s advisor, Harvard Law School professor Stephen Breyer, whose technical expertise informed the substance of these hearings; and the economist Alfred Kahn, whose academic work and real-world implementation of deregulatory policies at both the New York Public Service Commission and, later, at the CAB seemed to demonstrate the real-world benefits of deregulation. These political entrepreneurs, the argument goes, sat in a political context that was particularly sympathetic to deregulation. The leading domestic political issue of the time was the problem of double-digit inflation, and politicians of both parties were happy to support a policy that claimed to reduce consumer prices. Indeed, framed in this way, deregulation also had the potential to appeal to the emergent consumers’ movement. Similarly, deregulation played into broader trends in the partisan

2 This is nicely explained in Martha Derthick and Paul J. Quirk, The Politics of Deregulation (Washington, DC, 1985), 13–19; and in Vietor, Contrived Competition, 50.

The politics of the 1970s: the growth of the Republican Party’s increasingly government-phobic conservative wing, typified by the increasing popularity of Ronald Reagan, and the Democratic Party’s own move toward the center, particularly on issues related to economic policy.4 Yet all of these explanations beg a fundamental point. Scholars of deregulation have recognized a certain ineffable shift in American political culture in the 1970s that was of fundamental importance to the successes of airline deregulation, in particular, and more widespread deregulatory policymaking in general. There was “a growing deregulatory mood” and a need for politicians to respond to “widely shared desires, sentiments and values” that reflected a “widely diffused disaffection with government” and a “deep cynicism about government institutions.”5 This article focuses on the sources of this disaffection and cynicism. While many historians have linked the growth of this libertarian, antibureaucratic ideology with the rise of the conservative movement in the 1970s and 1980s, this article looks at a different wellspring of anti-statist thought.6 It argues that the antipathy to the state that permeated American political culture in the 1970s can be most easily traced to ideas closely connected to the New Left, the counterculture, and other left-wing subcultures that dominated high and low thought in the 1960s. By linking this source of antibureaucratic sentiment to the politics of airline deregulation, this article suggests a new direction for historians who study the American state in the last decades of the twentieth century. As they focus their attention on the rise of market-based, neo-liberal regulatory policies—“competitive deregulation,” “new

Antibureaucratic Thought in the 1960s

An obvious intellectual starting point for the left’s hostility toward the administrative state in the 1960s is the critical neo-Marxism of Frankfurt School thinkers such as Theodor Adorno and Herbert Marcuse. Their portrayal of inert, repressed masses controlled by the administrative totalitarianism of an “administered society” became increasingly popular in American academia in the 1950s and 1960s. This material was abstruse, to say the least, but, as intellectual historians Richard Pells, Howard Brick, Morris Dickstein, and Daniel Horowitz have demonstrated, these ideas filtered into the popular discourse. Sometimes this would happen through more accessible academic channels, such as the work of left-leaning historians (Gabriel Kolko, William Appleman Williams, Theodore Rozak, and Martin Sklar), political scientists (Henry Kariel, Grant McConnell, and E. E. Schattschneider), or sociologists (Paul Goodman and C. Wright Mills). At other times, ideas deeply hostile to the administrative state were popularized by social critics like Vance Packard, Charles Reich, or Ralph Nader, each of whom became best-selling authors during the 1960s.

Though Mills died in 1962, his portrait of the debased nature of the modern American state was deeply influential in shaping the left’s thinking about bureaucracy. In his influential 1956 book, The Power Elite, Mills described an American society governed by a small, interlocking group of economic, political, and military elites. This was not mere agency capture. Instead, according to Mills, business and government were no longer distinct institutions at all. They were a single entity, run by an elite class bound together not simply by economic interests but by barely conscious social and psychological affinities nurtured in a wide variety of elite institutions.

The mechanism by which this elite dominated society was the national administrative apparatus. According to Mills, the United States no longer possessed institutions that could check this “political directorate.”\textsuperscript{10} The political struggles between interest groups so beloved by the pluralist political scientists of the era occurred only at the periphery of power, in marginalized legislative institutions bypassed by administrative power. Governance had become “bureaucratized.”\textsuperscript{11} Yet this bureaucracy was not made up of experts, protected from elite domination by civil service laws and professional norms. Instead, the true bureaucratic actors were the power elite themselves, unchecked and unaccountable in a “system of organized irresponsibility.”\textsuperscript{12} Indeed, according to Mills, even the last, best hope of American democracy—the periodic reassertion of popular sovereignty by “The Great American Public”—had been destroyed by a deadening mass culture that had turned the people into passive consumers of elite opinion.\textsuperscript{13} Without any autonomous institutions in which to assert their own opinions, Americans had become inert—not reactionary but “inactionary.”\textsuperscript{14}

Mills’s portrait of a submissive populace controlled by an administrative state that was itself operated by and on behalf of elite interests echoed across radical and left-leaning thought throughout the 1960s. Historian Gabriel Kolko’s description of Progressive Era regulation reads like a case study of Mills’s thesis. The Interstate Commerce Commission (ICC) was created at the behest of huge railroad corporations to limit the cutthroat competition that was driving down their profits.\textsuperscript{15} Similarly, the Federal Trade Commission (FTC) generated an illusion of public-spirited, procompetitive administrative action, while its business-friendly commissioners pursued policies that stabilized markets, entrenched existing corporations, and gave legal authority to anticompetitive business practices.\textsuperscript{16} Thus, Kolko argued, the administrative state did not spring from popular attempts to limit the power of big business; rather, it sprang from big business itself, bent on preserving “conditions of stability, predictability, and security.”\textsuperscript{17} In his award-winning 1963 book, \textit{The Triumph of Conservatism}, Kolko dispensed

\textsuperscript{10} Mills, 229.
\textsuperscript{11} Mills, 231.
\textsuperscript{12} Mills, 338.
\textsuperscript{13} Mills, 298.
\textsuperscript{14} This pungent description—quoted in Dickstein, \textit{Gates of Eden}, 59—was from Mills’s other famous work, \textit{White Collar: The American Middle Classes} (New York, 1951), not from \textit{The Power Elite}.
\textsuperscript{17} Kolko, \textit{Triumph of Conservatism}, 2–3.
with even the pretense that the administrative state was anything other than a toady for corporate interests. At the beginning of the twentieth century, he argued, laissez-faire capitalism was replaced by “political capitalism” in which “regulation itself was invariably controlled by leaders of the regulated industries, and directed towards ends they deemed acceptable.”

Left-leaning political scientists concurred with Mills and Kolko. Schattschneider, McConnell, and Kariel each described how administrative agencies did nothing more than “lend public authority to policies determined by private groups.” They recounted a myriad of stories of agency capture. Though these tales were portrayed by the media as scandalous and unusual events, they were in fact simply “normal features of the political order.”

Theodore Lowi, perhaps the most widely read left-leaning political scientist of the decade, concurred. In The End of Liberalism (1968), Lowi argued that the “democratic state” had “drained away,” leaving Americans to be governed by administrative institutions responsive only to the will of elites. Bureaucracy had become “a tightly woven fabric of legitimized privilege,” in which the citizen was nothing more than an “administré,” the subject of technocratic administration.

Not surprisingly, the generation coming of age in the 1960s picked up their teachers’ hostility toward the administrative state. This was most obvious among the so-called “New Left,” the young people associated with various forms of political radicalism including the free speech movement, the civil rights movement, and the antiwar movement. For example, the Port Huron Statement, the founding document of the Students for a Democratic Society (SDS), was permeated with hostility to bureaucracies, both public and private. Indeed, like Kolko and Mills, the manifesto, written by Tom Hayden (who was in the midst of writing his master’s thesis on Mills), suggested that little difference existed between the two. It began with a critique of the bureaucratic institutions that these students knew best: “the cumbersome academic bureaucracy . . . that transforms the honest searching of many students to a ratification of convention.” The academic bureaucracy’s ultimate

18 Kolko, 3.
20 McConnell, Private Power, 27.
22 The traditional starting places for the history of the New Left are James Miller, Democracy Is in the Streets: From Port Huron to the Siege of Chicago, 2nd ed. (Cambridge, MA, 1995); and Todd Gitlin, The Sixties: Years of Hope, Days of Rage (New York, 1987).
goal was to enhance its own power in order to lead a “shift within the university towards the value standards of business and administrative mentality.” Government bureaucracy outside of the university behaved no differently. The administrative state used its “regulatory” powers (scare quotes in the original) to “ratify industry policies” that used “government coercion in the name of the ‘public interest’ to hide tensions between workers and business . . . [and] further maintain the status quo of big ownership.”

This system of public/private bureaucratic intermingling was nothing more than a system of domination by “faceless and terrible bureaucracies.”

The 1960s counterculture evidenced an even greater degree of hostility toward the state. While many in SDS sought to redeem the state and turn it toward progressive, compassionate ends, the cadres of cultural rebels who flocked to Haight-Ashbury, the Lower East Side, and the back-to-the-land communes of Marin County, Taos, and Drop City rejected it completely. Indeed, contemporary observers of the counterculture placed the rejection of the state and its bureaucracies at the very center of counterculture, “hippie” identity. As Theodore Roszak, the counterculture’s first chronicler, wrote in 1968, quoting an ancient Chinese philosopher, Chuang Tzu: “The wise man, when he must govern, knows how to do nothing.”

Modern scholars of the counterculture have also highlighted its antibureaucratic character. Joshua Clark Davis has demonstrated its prevalence throughout the counterculture’s alternative businesses—bookstores, head shops, organic food cooperatives—that were often targeted by governmental actors intent on shutting them down. Fred Turner has similarly chronicled the connection between the countercultural communards, typified by the circle surrounding Stewart Brand’s Whole Earth Catalog, and modern libertarianism.

Arthur Marwick’s encyclopedic work, The Sixties, repeatedly returns to the theme of the counterculture’s libertarian instincts—its “disaffection” from “authoritarian and cumbersome bureaucracies”—that he compellingly argued came to permeate mainstream culture and politics.
Indeed, as the 1960s progressed, these anti-administrative attitudes grew increasingly intense and widespread.31 To many on the left, the decade was marked by a parade of escalating abuses of state power. The war in Vietnam and the draft topped the list, of course, but there were many other examples: police harassment and infiltration of civil rights and antiwar organizations, university suppression of free speech, and the enthusiastic enforcement of laws that appeared to be aimed at eliminating the emergent youth culture—drug laws, obscenity laws, vagrancy laws, and laws declaring popular styles of dress indecent.32 Nor was this emergent hostility toward the bureaucracy limited to the obvious state actors: police, public university administrators, draft boards, and the Department of Defense. In 1970, for example, Frances Fox Piven and Richard A. Cloward published *Regulating the Poor*, in which they argued that the United States’ welfare bureaucracies operated in a fashion similar to the Progressive Era agencies that Kolko excoriated in *The Age of Conservatism*. Elites controlled them and bent them to their will. The welfare state’s primary goal, Piven and Cloward argued, was “to regulate the political and economic behavior of the poor.” Elites expanded the welfare state in times of economic crisis in order to “mute political disorder.”33 When good times and political stability returned, social welfare programs contracted, and welfare bureaucrats imposed administrative obstacles to recipients in order to keep people off the welfare rolls and to force them into low-wage labor to benefit economic elites. Thus, even the social relief bureaucracies were captured. “A public agency will cater to a clientele that has some political force. . . . But a public agency whose clientele has no political force has to look elsewhere for a supporting constituency. . . . [L]arge farmers and factory owners who need cheap labor do have influence, and so it is they whom relief administrators must appease.”34 The apotheosis of this vision of the administrative state was Reich’s 1970 book, *The Greening of America*. The book molded a bizarre amalgamation of Mills, the Frankfurt School, Eastern philosophy, civil libertarianism, counterculture mysticism, and sex/drugs/rock ‘n’ roll evangelism into a product that tapped into a deeply libertarian, antibureaucratic zeitgeist. It sat atop the *New York Times* best-seller list for

34 Piven and Cloward, 148.
twenty weeks, going through five printings in less than two weeks and eventually selling two million copies.35

Unlike most assessments of the administrative state in the 1960s, The Greening of America was an optimistic book.36 Reich believed that the emergent counterculture would transform America’s debased society for the better. In order to make such an argument, however, he had to first describe the pathologies of contemporary America, and his description was harrowing. Heavily influenced by Mills, Frankfurt School thinkers like Marcuse, and other heterodox leftists from Jacques Elull to Eldridge Cleaver, Reich’s America was a totalitarian amalgam of enormous corporate bureaucracies and a massive, overbearing state. According to Reich, there was no longer a distinction between the state and private industry. Instead, markets, free enterprise, and the entrepreneurial spirit had been replaced by the “American Corporate State,” in which government regulation had “rationalize[d]” and “stabilize[d]” economic transactions for the benefit of large corporations.37

Yet the goal of regulation was not simply the furtherance of corporate power. Its goal, Reich argued, was the violent destruction of individual autonomy. Thus, the New Deal administrative state, the product of the previous generation’s reform impulses, was not merely ineffective. It was evil—“an inhuman structure.” As Reich wrote, “The lasting product of the New Deal era was not its humanism or its idealism, but a new consciousness that believed primarily in domination and the necessity of living under domination.”38 The administrative state’s primary task was to “impose order” under the illusion of “the public interest”—defined, according to Reich, as a homogenizing impulse designed to stamp out individual autonomy:

> The tendency of administration, while it may appear to be benign and peaceful . . . is actually violent. For the very idea of imposed order is violent. It demands compliance; nothing less than compliance will do; and it must obtain compliance, by persuasion or management if possible, by repression if necessary. It is convinced that it has the “best way” and that all others are wrong.39

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37 Reich, 89, 119.

38 Reich, 58.

39 Reich, 101.
This was a government of total domination made up of administrative entities with no goal other than the assertion of complete control. “We have turned over everything, rendered ourselves powerless, and thus allowed mindless machinery to become our master.”

_The Greening of America_ did not lack for specific examples of such administrative totalitarianism. It touched, of course, on the obvious candidates: the war in Vietnam and acts of police oppression against African Americans and youth. Reich, however, was encyclopedic in his cataloging of abusive bureaucratic power. From the FTC to local boxing commissions, all were part of the unyielding machine. Indeed, he reserved his most trenchant attacks on the state not for its obviously oppressive actions but for the way it enforced conformity and oppression through the creation of the welfare state. Be they occupational licenses, government jobs, public education, or Aid to Families with Dependent Children (AFDC) payments, government benefits bound people to the state in a role of complete dependence. Americans were so dependent on such government goodies that they were willing to give up their autonomy to get them: the hippie who was forced to cut his hair to go to school, the Peace Corps volunteer who took a loyalty oath, or the welfare recipient who allowed the state to police her morality in exchange for money to feed her children.

The enormous popularity of Reich’s antibureaucratic work was not atypical. Indeed, he was but one of a series of popularizers of this sort of hostility toward the administrative state. The New Left and the counterculture may have been only a small sliver of the population, but in recent years, historians of the 1960s and 1970s have demonstrated how pervasive their ideas about bureaucracy and the state were within the culture as whole. Brick finds them embedded in the literature of the era, including the highbrow surrealism of Thomas Pynchon, the best-selling detective fiction of John Le Carre, and the raft of JFK conspiracy books of the mid-1960s. Turner demonstrates how the various elements of countercultural thought—including its anti-statism—made their way into the emerging technology culture of the San Francisco Bay Area. Thomas Frank shows that the counterculture’s beliefs—rejecting conventional, corrupt institutions in order to promote individual freedom and self-actualization—permeated the advertising industry in

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40 Reich, 89.  
41 Reich, 212–16, 208–12.  
42 According to Reich, all power was abusive: “It is not that the misuse of power is the evil; the very existence of power is an evil.” Reich, _The Greening of America_, 125.  
44 Brick, _Age of Contradiction_, 124–45.  
45 Turner, _From Counterculture to Cyberculture_.
the 1960s. It was not just hippies who rejected the bureaucratic business strategies of the man in the gray flannel suit. It was an entire generation of young people in the business community as well. Indeed, Art Kleiner illustrates this phenomenon through a series of biographical sketches, telling the stories of dozens of young business managers in the 1960s and 1970s who found success by replacing Taylorite, bureaucratic business practices with flexible, humanized, democratic practices originating in “Eastern and Western spiritual traditions, in the new types of engineering and social science practice, in humanistic psychology and role-playing theory, in the experiences of anti-Nazi resistance fighters, in the models of systems engineers, and in the counterculture of the 1960s.”

For years, the radical thought of the 1960s has portrayed itself as opposed to some imagined “square” or “straight” majority. In fact, the ideas about the state that stood at the core of this thought permeated American society. At the end of the decade, the remnants of the fraying New Left may have bemoaned their failure to transform American politics. Countercultural radicals may have similarly despaired of their even more utopian attempts to restructure American society along the lines of some imagined, loving community. Yet in many domains, “straight” society had been completely vanquished. As Maurice Isserman and Michael Kazin note, though many radicals “survey[ed] the ruins of their successive . . . failures” at the end of the 1960s, “it is striking that while ‘nothing’ was accomplished . . . everything was different afterwards.” The emergence of a new culture that included “a vigorous libertarian spirit,” they write, affected “the ambience of our lives.” There had been a “revolution in the head,” in the words of Ian McDonald. One component of this revolution was the emergence of a broad consensus that the state was something to be feared and that administrative bureaucracies were agents of corrupt power, not well-meaning experts pursuing the public interest.

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50 Isserman and Kazin, 229, 228.
Deregulation and the American Left in the 1970s

This overwhelming hostility toward the administrative state did not suggest any single remedy. The New Left’s commitment to participatory democracy led to demands that bureaucracies become more transparent and responsive to the public. This, in turn, generated a variety of legal innovations, including the Freedom of Information Act, statutory provisions that facilitated public challenges to agency actions in court, and regulatory procedures that allowed or even required public input into the administrative process.\(^\text{52}\) For other reformers, the increased awareness of malevolent agency behavior suggested the need to dramatically expand judicial protection from administrative action through novel and robust readings of the Constitution’s due process clause.\(^\text{53}\) Finally, for many, the anti-statism of the times led to a different but obvious conclusion: some administrative entities should simply be eliminated.

Perhaps the most outspoken voice on the left for this position was Ralph Nader and his Center for the Study of Responsive Law (CSRL).\(^\text{54}\) Nader established the CSRL in 1969 as an institutional home for the student volunteers he gathered in Washington, D.C., each summer to investigate federal agencies and the corporate forces he believed had co-opted them. These students, soon dubbed “Nader’s Raiders” by the national media, conducted research for a series of seventeen book-length reports that the CSRL released between 1969 and 1974 documenting the corruption, incompetence, and ineffectiveness of the federal administrative apparatus.\(^\text{55}\) The reports’ cheeky titles—*The Interstate Commerce Omission*, *The Closed Enterprise System*, “Uncle Sam the Monopoly Man”—were not the only element drawn from the political and intellectual culture of the 1960s left. The reports evidenced the same jaundiced view of the institutional relics of New Deal administration. Agencies were controlled by the interests they were supposed to regulate. They used their power to mislead the public about the dangers that corporations posed to the consumers and the environment. They suppressed competition and promoted the interests of entrenched


\(^{55}\) For a list of all CSRL publications from the late 1960s and early 1970s, see the front matter of Franklin D. Chu and Sharland Trotter, *The Madness Establishment: Ralph Nader’s Study Group Report on the National Institute of Mental Health* (New York, 1974).
economic elites, be they railroad companies, airlines, energy conglomerates, telecommunications giants, or the medical profession.

The CSRL’s reports did not call for wholesale deregulation. Instead, they articulated the now familiar distinction between “economic regulation,” in which the government controlled competition within an industry, and “social regulation,” in which administrative action was designed to prevent market failures that resulted in risks to public health and safety. The latter was an appropriate role for government; the former was not. The reports then argued that the regulatory state, as currently constituted, failed miserably in both respects. Agencies used their powers to protect incumbent businesses by blocking entry to the industry. At the same time, agencies that should have been focused on protecting public health and safety furthered industry interests by authorizing practices—deceptive food labels, toxic pesticides, poisonous artificial sweeteners—that harmed consumers.

According to the CSRL reports, the causes of this disastrous situation were obvious. Each report documented the close links among the industry, agency personnel, and federal politicians. One of the Center’s earliest reports, The Interstate Commerce Omission, contained the most thorough accounting of “The Regulatory-Industrial Complex.” It recorded, in great detail, the cornucopia of goodies that trucking and railroad companies showered on the ICC’s commissioners: golf trips, bottles of whisky, flights to Hawaii to attend corporate-sponsored transportation conventions. The ICC’s industry advisory committees “institutionalized [this] influence” by transportation companies on the agency by creating a flow of information and opinions that was completely one sided. As the report noted, none of the commission’s seventeen advisory committees had even a single consumer representative. Most damning was the report’s recounting of the revolving door between the ICC and the transportation industry. It traced the career paths of the eleven commissioners who had left the ICC between 1958

59 Fellmeth, Interstate Commerce Omission, 15.
60 Fellmeth, 22.
and 1967, revealing that six landed positions as high-level executives in transportation corporations while three others wound up as attorneys in Washington, D.C., representing the industry in front of the commission. Middle-level bureaucrats were also compromised: “In addition to the influence that alluring job offers might have over middle-staff personnel, most of the personnel in the Bureaus of Traffic and Operations, as well as many in Accounts, have been hired from industry.”

While *The Interstate Commerce Omission* recited industry infiltration of the administrative state in the most detail, every report returned repeatedly to the problem of private influence and control over the federal administrative state. CSRL staff linked the FTC to deeply corrupt southern political machines, themselves under the control of industry. Reports portrayed both the Food and Drug Administration and the Department of Agriculture as in the thrall of the food and chemical manufacturing industries, arguing that bribery, “privileged access,” “interlocking chains of influence,” and biased, industry-dominated advisory committees led to circumstances in the marketplace that were worse than if there had been no regulation at all. These agencies “acted as an official sponsor of processing and marketing practices that have transformed the defrauding of consumers into a competitive advantage.”

Environmental agencies existed simply to promote pollution: “Water pollution exists, in large part, because polluters have more influence over government than do those that they pollute.” The CSRL’s most extraordinary (and, frankly, unhinged) claim was that National Institute of Mental Health was engaged in a campaign to both promote social control and increase opportunities for Freudian therapists by defining many social ills as forms of mental illness at the behest of the increasingly “conservative,” “bureaucratic,” and “hierarchical” psychiatric profession that controlled the agency. Less paranoid, and supported with more concrete evidence, were the CSRL’s demonstrations of powerful industry influence over the Federal Communications Commission, the Federal Maritime Commission, the CAB, the Federal Power Commission, and the Federal Tariff Commission.

61 Fellmeth, 20n*.
66 Chu and Trotter, *Madness Establishment*, xxi. Someone had clearly read their Foucault!
When the CSRL turned to solutions for this sad state of affairs, it often recommended deregulation, particularly with respect to economic regulation. Agency capture led to regulatory behaviors that were “irrational” from the perspective of the public interest. Agencies promoted price-fixing. They encouraged artificial scarcity of products and services by limiting entry into regulated industries. Accordingly, “where there would be a viable, competitive market but for economic regulation, the industry should be freed from all such restraint.” In a world where corrupt agency action was the norm, there should be a presumption against regulation. “Regulation . . . is a pallid substitute for true competition. . . . Hence, our general industrial policy should encourage competition in our economy by minimizing regulation, except when clearly necessary.”68 Of course, no one would confuse the lawyers at the CSRL with libertarians. “Clearly necessary” regulation was a much larger category for them than it was for Reich. That said, there were certain regulatory regimes that the CSRL had no doubt should be eliminated. Airline regulation was one such regime.

Airline Deregulation and Left-Wing Thought

The antibureaucratic ideas of Mills, Kolko, Reich, Nader, and their intellectual compatriots did not simply echo around the intellectual stratosphere of the 1960s. They had a profound effect on public policy. The details of their thinking—that bureaucracies could not be trusted, that agencies were captured, and that deregulation was often the solution—made their way into both politics and policy in the 1970s. Indeed, the potency and ubiquity of this hostility toward the administrative state was in evidence when Congress turned its attention to deregulation for the first time in 1974. The subject of this attention was the airline industry.

The connection between left-wing, antibureaucratic thought and airline deregulation is easy to trace. There are references to Kolko, Lowi, Nader, Reich, and McConnell throughout the works of the economists and lawyers who wrote about and advocated for deregulation in the 1970s and 1980s.69 This connection is even more apparent in the

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political and legislative maneuvering that led to the passage of airline deregulation legislation in 1978. Indeed, even when advocates of deregulation attempted to focus the policy discussion on technical economic issues—the relationship between airline ticket prices and entry restrictions, or the relationship between price controls and inefficient overcapacity—the debate about airline deregulation was constantly drawn back to the concerns articulated by the left-leaning intellectuals of the 1960s: corruption, capture, and the interwoven alliance of public and private institutions that Kolko described as “political capitalism.” These concerns are seen most vividly in the hearings concerning airline deregulation that Senator Kennedy held in 1974 and 1975.

Kennedy held these hearings at the urging of a young law professor from Harvard, Stephen Breyer. Breyer had arrived in Washington in 1974 to join Kennedy’s staff on the recommendation of Archibald Cox. He had worked for Cox on the Watergate prosecutions and was teaching courses on administrative law and regulation when the invitation came. Kennedy had spent the previous five years as chair of the Administrative Practices and Procedures subcommittee of the Judiciary Committee—known as “Ad-Prac” to Washington insiders. The senator considered Ad-Prac to be something of a hidden gem, particularly for someone as politically ambitious as he. Accepting the chair of an obscure subcommittee with a seemingly technical mandate allowed Kennedy to portray himself as both a team player and a public policy heavyweight, willing to engage with unglamorous, technical issues. Yet the subcommittee’s jurisdiction gave him a broad mandate to look into the functioning of every federal agency, a fact that allowed him to choose issues likely to raise the most political hay. With that goal in mind, Breyer wrote Kennedy a memo prior to arriving in Washington, suggesting a number of areas on which Ad-Prac could focus its attention. Not surprisingly, Breyer’s suggestions for technical changes in administrative law were nonstarters.


On the other hand, another of Breyer’s suggestions, airline deregulation, appealed to Kennedy. The senator had no doubt there were enormous political advantages to advancing a deregulatory issue: “Well, you know, this Governor Carter is going around talking about too much government, and he’s getting a very good response,” he said, according to Breyer. Airline regulation was the perfect first target. It was a small industry compared with other potential targets, such as trucking or railroads, so Kennedy calculated that political opposition would be muted. At the same time, it was high profile enough to get Kennedy some good press as a moderate on economic issues. Thus, Kennedy and Breyer sought to structure the hearings to sell the idea that deregulating the airline industry was a sensible, middle-of-the-road idea. It was a classic “win-win” policy. It would lower the cost of airfares by decreasing government regulation. As such, it had broad appeal. Consumers would get lower airfares. By lowering prices in an entire industry, deregulation would also address the overwhelming economic concern of the time: inflation. At the same time, conservatives would get less government, and Democrats could demonstrate their pragmatism. “You see,” Breyer said, channeling newly ascendant centrist Democrats, “we’re not for regulating everything.”

To achieve this end, Breyer and the rest of Ad-Prac’s staff spent eight months collecting information on the CAB and its interactions with the airline industry. What Breyer chose to do with this information revealed a degree of ambivalence as to the best approach to promoting deregulation. When later recounting his role in the hearings, Breyer emphasized that the investigation’s goal was to build a compelling argument that the current system of airline regulation was economically irrational. In both his oral history and his writings about his time working for Kennedy, Breyer suggested that congressional hearings on airline deregulation would provide a forum to educate policymakers and the public about the economic benefits of deregulation, particularly the benefit to consumers. Breyer was intent on avoiding cheap shots and scandal mongering. “Limit” and “resist” stories about “frozen dogs” and “crippled” people trapped on airplanes, Breyer told his staff. Instead, focus “in a systematic way” on “a serious investigation of: How do you set rates? How do you set routes? What do you do about enforcement?”

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72 Breyer, interview, 3.
73 Breyer, interview, 4.
75 Breyer, Regulation and Its Reform, 317–23; Breyer, interview, 5–6.
76 Breyer, interview, 5–6.
Consequently, Breyer began the hearings in February 1975 with a spate of economists: Alfred Kahn, Merton Peck, Roger Noll, Thomas Gale Moore, John C. Miller III, William A. Jordan, and John R. Summerfield.\footnote{Oversight of Civil Aeronautics Board Practices and Procedures: Hearings Before the Subcomm. on Administrative Practice and Procedure of the Comm. on the Judiciary, 94th Cong., 1st sess. (1975), 56–99, 452–94.} Purposely drawn from across the political spectrum, they nonetheless all wore their neoclassical economic beliefs on their sleeves. (Kahn famously said that he viewed airplanes as nothing more than “marginal costs with wings.”)\footnote{Quoted in McCraw, Prophets of Regulation, 224.} None of the economists discussed agency capture or otherwise impugned the motives of the airline companies. They emphasized that it was the existence of price and entry regulation that created inefficiencies and high prices, not misbehavior by the agency or the industry. The problems of high prices and inefficient service, Kahn claimed, had “nothing to do with honesty or corruption or irresponsibility of the regulators.”\footnote{Oversight of CAB: Hearings, 88.} Instead, these problems were the natural result of an administrative regime designed to suppress competition.

Yet, despite this purported focus on technocratic, economic matters, Breyer was either unwilling or unable to keep the hearings from quickly turning into a forum for exposing agency and industry corruption. As the hearings progressed, they increasingly seemed designed to humiliate the board by exposing it as incompetent, mendacious, and entirely in the thrall of the airline industry. Indeed, prior to the February hearings, Breyer and Kennedy held two days of damning hearings in November 1974, before the committee staff had even finished its investigation.\footnote{Airline Charter Fares: Hearings Before the Subcomm. on Administrative Practice and Procedure of the Comm. on the Judiciary, 93rd Cong., 2nd sess. (1974).} Breyer had stumbled upon a closed-door meeting among representatives of the CAB, the federal Department of Transportation (DOT), and the airline industry. (Breyer discovered the meeting when it was listed in the \textit{Washington Post} as an innocuous-sounding advisory committee meeting. He then snuck in.)\footnote{Peterson and Glab, \textit{Rapid Descent}, 33.} At the meeting, CAB and DOT officials stated their intention to put a price floor on charter airline fares in order to protect the interests of Pan Am against low-cost charter operators that were attracting customers with cheap transatlantic fares. “It was a cartel, a simple cartel organized by the government,” Breyer recalled having excitedly told Kennedy. They quickly convened hearings on the issue of the regulation of charter airlines.\footnote{Peterson and Glab, 34.}
These hearings confirmed that the CAB and the DOT had engaged in a coordinated effort to prop up the economic position of the nearly bankrupt Pan Am. The agencies did so by requiring that charter carriers charge fares no lower than those of Pan Am. Witness after witness paraded before the committee denouncing “government-sanctioned price fixing” that “subsidize[d] inefficiency,” “destroyed competition in one of the remaining free marketplaces of air transportation,” and “virtually guaranteed that the student, the senior citizen, the laborer, the farmhand, the small businessman—average Americans for whom air charter travel represents the difference between staying home and seeing the world—will be paying higher prices.”

Why did the DOT and the CAB behave like this? Because “they have plenty of friends in the business,” speculated the charismatic British low-cost airline operator Freddy Laker. Consumer advocacy groups agreed: “The CAB and the Department of Transportation have embarked on a sustained and very serious effort to eliminate the competitive bargaining . . . and to replace it with an administered pricing system which will be controlled largely by the airlines themselves . . . and enforced by . . . the CAB.”

Three months after the charter hearings, Ad-Prac convened the less spontaneous, more carefully stage-managed hearings on the CAB. Breyer scheduled seven days of testimony. On the first day, academic economists—including the charming Kahn—laid out an overview of the “problem” of contemporary airline regulation: the CAB had facilitated the formation of a cartel of airline companies that kept prices artificially high. Several days then focused on the board’s specific policies relating to route allocation, rate setting, capacity restrictions, and consumer protection. Another entire day was given over to testimony from unregulated intrastate airlines in California and Texas that flew routes within these states at a fraction of the cost of the major domestic carriers. Only after this searing indictment of the status quo was the board invited to testify. Because of this stage managing, the hearings played into the emergent public consensus that administrative agencies were not to be trusted because they were simply agents of industry. In later years, Breyer may have thought he was publicizing the power of the economic argument against airline regulation, but the academic thought that was vindicated at these hearings was not that of the neoclassical economists who led off the hearings; instead, it was the ideas of Mills, Kolko, and Reich.

This emphasis was obvious from the very first moment of the first day of the hearings. In his opening statement Kennedy announced that

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86 Oversight of CAB: Hearings.
airline regulation had “gone astray.” The CAB was supposed to “protect
the consumer from concentrations of economic power”; instead, it did
nothing more than “approve unreasonably high prices, inadequate
service, and anticompetitive behavior” because its members had
“become captives of regulated industries.” The CAB was supposed to
protect the consumer from concentrations of economic power; instead, it did
nothing more than “approve unreasonably high prices, inadequate
service, and anticompetitive behavior” because its members had
“become captives of regulated industries.” CAB members, Kennedy
stated, “have had a strong orientation towards industry” and frequently
conducted their business behind closed doors without public scrutiny.
Not surprisingly, the consumer advocates who appeared on the one day
that Breyer had allocated for such testimony agreed. Representatives of
the Consumers Union, the Aviation Consumer Action Project, and a
variety of “travel clubs” (entities that hired charter flights for group
travel) testified about the CAB’s failure to respond to complaints about
the airlines’ deceptive practices and substandard customer service.
The reason for this behavior, they argued, was obvious: agency
capture, or, as one consumer advocate put it, “the romance between
the CAB and the industry it’s supposed to regulate.” The CAB “collab-
orated with the companies that should be regulated”; it acted more like a
government sponsored trade association than a regulatory agency.
This sort of “corruption” was not surprising considering the “revolving
door situation” where agency officials were looking to get “lucrative”
jobs in the airline industry. Those jobs would only go to agency officials
“whose work has been most pleasing to the airlines.” As a result, the
CAB staff had “such a strong bias towards the protection of the [airline
companies] that they think they are doing their job by doing anything
to stamp out low-fare services.”

The testimony from consumer groups was so copious that the com-
mittee was unable to contain it to a single day, as Breyer had originally
planned. Another half day of the committee’s time was given over to
Nader. Given the connection between Nader and the anti-statist left,
the tenor of his testimony was not surprising. Excoriating the “CAB-
airline cartel,” Nader roared through a litany of CAB abuses familiar to
anyone who had read the CSRL’s various publications: the agency sup-
pressed competition, fixed prices, ignored consumer complaints, and
excluded the public from the agency decision-making process. Nader
chronicled hundreds of ex parte contacts between the agency and the
industry, the boondoggle junkets that the airlines gave to CAB

87 Oversight of CAB: Hearings, 1.
88 Oversight of CAB: Hearings, 17.
89 Oversight of CAB: Hearings, 761–1053
90 Oversight of CAB: Hearings, 855.
91 Oversight of CAB: Hearings, 761, 791
92 Oversight of CAB: Hearings, 819.
93 Oversight of CAB: Hearings, 947.
94 See Oversight of CAB: Hearings, 1150–68.
commissioners, and the revolving door that resulted in cushy employment in the airline industry for retired CAB officials. He concluded his jeremiad with an explicit reference to the rising tide of anti-agency sentiment permeating the political culture: “Throughout the land, people are repulsed by arrogant and unresponsive bureaucracies serving no useful public purpose, and they are looking to this Congress to get on with the national housecleaning job that is needed. Can you think of a better place to get started than the Civil Aeronautics Board?”

Assertions of agency capture were not limited to consumer advocates. In fact, they cropped up in the testimony of many witnesses. Not surprisingly, they were frequently articulated by the management of the low-cost airlines and charter companies that the CAB often kept out of the market. Perhaps less expected was the hostility expressed by government witnesses. Particularly acid in his attacks on the CAB was Donald Baker, from the Justice Department’s Antitrust Division, whom Kennedy had testify three separate times during the hearings. Baker spent a good part of his testimony explaining how the CAB used its power to exempt the airlines from antitrust laws in a manner that was unnecessary to protect consumers. The reason the board did this, he believed, was because it was controlled by the airlines. The agency had “been influenced by the people they are supposed to regulate.” It was a “cartel system of regulation, which is supposed to protect the traveling public, but its leading champions . . . are not the traveling public, but the carriers.” Indeed, the board’s “parochial” use of its discretion was “designed solely to increase carrier profits.” This outcome was not surprising, Baker argued, because the CAB had “become attuned to the needs of the industry it regulates and hears only faintly the voices, if there are any, of those advocating the interests of the general public.” The behavior “demonstrate[s] that . . . the agency usually becomes dominated by the industry it is supposed to regulate.”

Indeed, any attempts to focus the hearings on the more economic, technocratic aspects of airline deregulation were swamped by the scandals that the hearings revealed. The CAB spent 60 percent of its enforcement resources going after carriers that cut their fares and only 3 percent

95 Oversight of CAB: Hearings, 1161, quoted in Derthick and Quirk, Politics of Deregulation, 51.
98 Oversight of CAB: Hearings, 666.
99 Oversight of CAB: Hearings, 1744.
100 Oversight of CAB: Hearings, 1745.
of its time responding to consumer complaints.\textsuperscript{102} The board had secretly imposed a route moratorium and then lied about its existence.\textsuperscript{103} Even worse, during the Watergate investigation, the agency had been asked to examine allegations that the airlines had been forced to donate money to the Nixon campaign in order to avoid agency enforcement actions.\textsuperscript{104} During the hearings it was revealed that board members had ordered only the most cursory of investigations and then suppressed the results. The full scale of the extortion came to light only when William Gingery, the CAB official tasked with investigating the contributions, killed himself on the eve of testifying before the committee. Kennedy read Gingery’s rambling ten-page suicide note attacking the agency into the record.\textsuperscript{105} Indeed, the suicide and its connection to Watergate caused Kennedy to add a day to the hearings so he could grill CAB board members about the investigation. That day ended with Kennedy referring the conflicting testimony of the chair of the CAB and one of the board members to the Justice Department for an investigation into perjury charges.

Not surprisingly, the newspaper coverage of the hearings hewed to the antibureaucratic line that dominated the hearings rather than the inefficiency arguments proffered by Kahn and the other economists. The latter simply did not capture the attention of journalists and the public the way the former did. While the Washington Post mentioned that “many who testified” before the committee had suggested that “the problem is not political influence, but the nature of regulation itself,” the paper’s coverage focused more on that former than the latter.\textsuperscript{106} The CAB’s charter fare guidelines were characterized as “illegal rate-setting designed to protect the interests of scheduled carriers under the agency’s regulatory umbrella.”\textsuperscript{107} When the committee issued its report on the hearings in early 1976, the Post focused exclusively on the CAB’s untoward behavior: the route moratorium and other policies made during “private meetings with industry representatives.”\textsuperscript{108} The only front-page coverage of the hearings related to Gingery’s suicide and the CAB’s cover-up of the campaign contribution

\textsuperscript{102} Oversight of CAB: Hearings, 1058–119.
\textsuperscript{103} Oversight of CAB: Hearings, 540, 546, 553, 576, 582, 634, 648, 652, 674, 689, 696, 729–30.
\textsuperscript{104} The entire eighth day of the hearings was devoted to this issue. See Oversight of CAB: Hearings, 2299–469.
\textsuperscript{105} Oversight of CAB: Hearings, 2300–3.
\textsuperscript{107} Shifrin, G1.
Indeed, that aspect of the hearings even generated an editorial that focused on corruption and agency capture. The entire episode, the Post’s editors opined, suggested that “regulatory vigor and detachment from the airline industry . . . were . . . conspicuously missing” at the CAB. They hoped Kennedy’s hearings would remind the CAB that “its proper function is to serve the public, rather than a political party or the industry.”

The New York Times published much more thorough coverage than did the Post, but its emphasis was the same. David Burnham, the Times’ investigative reporter in Washington, filed five articles during the eight days of hearings, with particular focus on the CAB’s secret route moratorium, Gingery’s suicide, and the agency’s cover-up of the campaign contribution fiasco. The Times’ editors repeated these stories in the Sunday Week in Review section and printed a long article by Burnham on corruption at the CAB in the Sunday features section. In June 1975, Burnham obtained a draft of Ad-Prac’s final report on the CAB and landed a devastating piece on the front page. “A Senate study has concluded that the Civil Aeronautics Board has for the last five years regularly violated its own rules—and perhaps in some instances Federal law—while acting to protect the interests of the airlines at the expense of the traveler,” read the lede. And it was all downhill from there: “closing of an investigation . . . of possible illegal campaign contributions”; “the board has chosen to protect the industry at the expense of the consumer”; the board “failed to follow Federal rules of procedure and ‘commonly accepted standards of openness’”; “the board adopted a transportation policy of major importance at the private request of executives from airlines without holding a hearing where customers . . . could

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113 David Burnham, “Senate Study Says C.A.B. Broke Rules for Airlines,” New York Times, 30 June 1975, 1, 32. The draft report was almost certainly leaked by Breyer, who had been cultivating Burnham for months. Derthick and Quirk, Politics of Deregulation, 44; Breyer, interview, 6; Breyer, Regulation and Its Reform, 337.
complain”; “yet another action that the report said harmed consumers was taken without full hearings.”\footnote{Burnham, “Senate Study Says.”} Not surprisingly, when the 	extit{Times}’ editors ran a piece on the report that Sunday in the Week in Review section, the headline simply read “C.A.B. and the Airlines: Who Is in Charge?”\footnote{New York Times, 6 July 1975, sec. 4, p. 2.}

The hearings and the news coverage had an answer to that question, of course. The existing political culture had primed the public to believe that the airlines were in charge. Indeed, by the middle of the 1970s, the underlying assumption about the way government worked was that agencies were captured and that, accordingly, they did the bidding of private industry. It was this conception of politics that Kennedy’s hearings confirmed. Breyer may have wished to promote the expertise of the economists who campaigned for deregulation, but the key in which his hearings sounded (and the media coverage they received) suggested that it was the thinking of Mills, Kolko, Reich, and Nader that accurately described the administrative process.

Conclusion

The path from Ad-Prac’s CAB hearings in 1975 to the passage of the Airline Deregulation Act two and a half years later is not entirely straight. Presidents Ford and Carter both proposed deregulatory legislation. Carter’s proposal had to be shepherded through the Transportation Committee and its aviation subcommittee, both of which had chairs—Warren Magnuson and Howard Cannon, respectively—who were considerably less sympathetic to deregulation than was Kennedy. Nonetheless, Ad-Prac’s hearings generated considerable political momentum that Magnuson, Cannon, and other opponents of deregulation were unable to resist. This momentum came from a variety of sources, to be sure: Kennedy’s political skill; Kahn’s appointment to the CAB and his success in partially deregulating the industry prior to the passage of the legislation; United Airlines’ surprising decision to abandon its opposition to deregulation; the ability of both the Ford and Carter administrations to frame deregulation as a cure for inflation. What Ad-Prac’s hearings made clear, however, was that deregulation had tapped into the potent antibureaucratic sentiment that was welling up in American political culture in the 1970s. The power of this sentiment, and its origins in the 1960s left, suggest that the sources of neoliberal regulation may lie, in part, outside of the places where historians of American politics look to identify the roots of neoliberal regulatory strategies. The rise
of deregulation and other market-oriented, anti-statist regulatory strategies at the end of the twentieth century are surely the product of many factors. The story of airline deregulation suggests that to tell this story in all its complexity, historians should look in some unexpected places.

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