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Recently B.K. Marcus expressed his surprised pleasure, with some reservations, at RFK Jr.'s apparent endorsement of a free market approach to environmentalism.

> I read this and I'm awfully suspicious. I'm suspicious of any Kennedy. I'm especially suspicious of a rich-boy Yankees in the spotlight.
>
> But I read this. I reread this. And all I can say for now is:
>
> "Right on, Bobby, Jr!"

As it turns out, his misgivings were probably based on sound instinct.

The Commons Blog and Steve Verdon go so far, respectively, as to denounce Kennedy as a "Free Market Fraud,"

> Of course, Robert Kennedy has little interest in the free market or protecting property rights. Rather, he is a "faux market environmentalist" and partisan defender of the federal environmental regulatory bureaucracy…

and a “prevaricator.”

Both bloggers object strenuously to RFK’s claim to the “free market” label, owing to his frequent statements like this one in The Grist:

> You have to force companies to internalize costs. All of the federal environmental laws are designed to restore free-market capitalism in America in this regard…
>
> I’m a free-marketeer. I go out into the marketplace and I catch the polluters who are cheating the free market and I say, “We are going to force you to internalize your costs the same way you are internalizing your profit.” That’s what the federal environmental laws allow us to do: restore real property rights in America.

Kennedy seems, as evidenced by quotes like that above and the following one from a *Buzzflash* interview, to view the federal regulatory state as the best mechanism for internalizing costs:

> But the energy industry gave $48 million to President Bush and the Republican Party during the 2000 race, and the payback is billions of dollars of relief from regulations that are meant to protect the commons, including the Clean Air Acts’ resource performance standards, which the Bush Administration abandoned last month. So it’s illegal for those companies to put those substances into our air, but the Bush Administration has now said that it is no longer going to enforce the laws against them…
>
> Let me add one other thing. Yesterday, the Bush Administration announced that it wasn’t going to enforce mercury standards…

A government regulation, enforced by administrative law, is about the most inappropriate mechanism for cost internalization I can think of. Even if you believe some form of federal action is necessary, which I do not, some form of "green tax" or Pigouvian tax on externalities (which Verdon seems to suggest at one point) is a much better way of doing it. Personally, I'd prefer restoring the common law of public and private nuisance as it existed before the commercial interests emasculated it in the 19th century, and let local juries assess damages against corporations that pollute their neighbors' air and groundwater. The polluters might just decide that the EPA was a big ol' pussycat, after all. Indeed, the whole point of administrative penalties enforced by executive agencies was that they preempted potentially much costlier civil actions and replaced them with a lowest-common-denominator standard.

RFK2 continues:

> All of our federal agencies have now been captured by the industries that they're intended to regulate. The head of the Forest Service is a timber industry lobbyist. The head of our public lands is a mining industry lobbyist…

Captured? They are the *creations* of the agencies they were ostensibly intended to regulate, as Gabriel Kolko might have told him. The great land barons and timber interests worked hand in glove with "progressive" government to create conservation laws, as Murray Rothbard described the process in *Power and Market*:

> Conservation laws… must also be looked upon as grants of monopolistic privilege. One outstanding example is the American government's policy, since the end of the nineteenth century, of "reserving" vast land tracts of the "public domain"–i.e.,

> the government's land holdings… Forests, in particular, have been reserved, ostensibly for the purpose of conservation. What is the effect of withholding huge tracts of timberland from production? It is to confer a monopolistic privilege, and therefore a restrictionist price, on competing private lands and on competing timber.

The great landed interests and the timber industry were, therefore, major supporters of federal conservation policy.

Kennedy's statement below, especially, demonstrates a muddled thought process:

> And the free market has to be protected through government regulation. As I say, capitalists do not want free markets. They want profits. And the best way to capture profits — to capture a reliable profit stream — is to get control of government and use government to crush your competition.

If government intervention itself, what Kolko called "political capitalism," is the best way to capture profits, then it doesn't make much sense to argue at the same time that government intervention is also the best way to prevent such profiteering. Government cannot simultaneously be the main cause of something, and the only way of preventing it.

Mr. Kennedy also seems rather mixed up about the nature of the commons, confusing a common with state property:

> One of the central roles of government from the beginning of the first organized communities has been protection — the safeguarding of the commons on behalf of the public. The commons under Roman law — under the Code of Justinian — were defined as those things that are not susceptible to

market" as synonyms for the feudal dominion of GM and Wal-Mart, RFK Jr.'s rhetoric is a breath of fresh air.

All things considered, I still think Kennedy holds more promise for fruitful cooperation with the free market left than almost any other prominent Democratic figure.

the preconditions for a non-free market? Does the market concentration he describes result from laissez-faire, or from state intervention? And if the latter, how does it gibe with his claim that government intervention is necessary to prevent concentration?

His theoretical confusion in this regard reminds me of Chomsky, who sometimes writes in great detail of the utter dependence of large corporations on the state to externalize their costs on the taxpayer and protect them from competition, and then at other times calls for a dramatic strenghtening of the state as the only way to break up "private concentrations of power." For Chomsky, the corporation is utterly dependent on the state, but at the same time threatens to achieve total power if the state does not restrain it.

But despite all these caveats, I cannot go so far as Kennedy's other critics in calling him a prevaricator or a fraud. He is, all in all, much superior to the general run of Democratic politicians (not to mention having a claim to the "free market" title at least as good as that of the hangers-on at ASI and the Globalization Institute). Although admittedly he isn't thinking very clearly about the solutions, he often hits fairly near the mark in pointing out the problems. And even when he's somewhat off the mark, his general approach is quite an improvement on that of most big government liberals. He at least sees that the big polluters are engaged in some sort of collusion with the government, and that government action is somehow involved in preventing costs from being internalized. He's not nearly as far from the right path as other members of his party, and could well be amenable to rational persuasion regarding legitimate free market environmentalist policies. Certainly, in using "free market" as a god-term rather than a devil-term, and portraying big business as its main enemy, he's light years ahead of the average "progressive." After reading the work of someone like, say, Thomas Frank, who treats "laissez-faire" and "free

> private ownership; in other words, the shared resources, the air that we breathe, the waterways, the dune lands, wetlands, wandering animals.
>
> And under Roman law, if you were a citizen of Rome, the Emperor himself, whether you were humble, noble, rich or poor, could not stop you from crossing a beach flowing at an ebb and taking out the fish. Everybody had a right to use those resources. Nobody had a right to use them in a way that would diminish or injure their use and enjoyment by others.
>
> That principle is echoed in the Magna Carta and in the constitutions of all of our states, through a doctrine that's called the Public Trust Doctrine. And it's at the heart of our environmental laws. And again, from the beginning of time, the first acts of tyranny were to privatize the commons. In fact, the Magna Carta was passed because of the Battle of Runneymede, which was precipitated by King John's efforts to turn the rivers, the fisheries and the deer over to private corporations and privileged parties.

For too many free market libertarians, this would be the cue to bring in a horrible misrepresentation of Garrett Hardin's Tragedy of the Commons, and an argument that the only solution is to "privatize" forests into the hands of the usual big busienss suspects. Verdon does himself credit, and throws away any chance for sitting at the vulgar libertarian kool kids table, by coming to the defense of the commons as a legitimate form of property.

> …Kennedy is also prevaricating when he talks about both the tragedy of the commons as well as firms internalizing costs.

> First, there is no law in economics that says a common resources has to result in the tragedy of the commons scenario. In fact, there are instances where common resources are managed just fine with little or no government internvention.

Verdon then quotes this statement from a review of Elinor Ostrom et al.'s *Governing the Commons* to bolster his position:

> In contrast to the proposition of the tragedy of the commons argument, common pool problems sometimes are solved by voluntary organizations rather than by a coercive state. Among the cases considered are communal tenure in meadows and forests, irrigation communities and other water rights, and fisheries.

(In fairness to Hardin, he himself specified that his argument applied only to an *unregulated* common.)

Contrary to popular stereotype, quite a few free market libertarians are amenable to the idea of the common, as a form of socially-owned (not state-owned) property. For example, check out this article by Roderick Long, and this one by Carlton Hobbs.

Still another Kennedy quote that raises some problems is this:

> And that's what's happening in this country — the free market is being eliminated. And in many of the major sectors, the free market has already disappeared. There is no free market left in agriculture. A farmer can't raise a pig and get it slaughtered, and bring it to a stockyard and sell it. The stockyards are gone. The farmers are out of business, and hog production and meat production and chicken production in this country is now controlled by giant agri-businesses, as is grain production. The same is true in the energy sector, and in the media — you've got 17,000 news outlets in this country that are now controlled by 11 corporations.

He apparently confuses a particular market structure–what neoclassical economists call "perfect competition"–with the free market, and regards it as government's job to promote the "free market" by actively intervening to breaking up concentrations of ownership. In that sense, he is a throwback to the liberals at the turn of the 20th century, who regarded a petty bourgeois economy of small firms and atomistic competition as their *beau ideal*, but considered federal anti-trust action necessary to maintain such an economy in existence. For him, the free market is not a set of procedural rules, but a particular outcome. He confuses a symptom with the disease.

Now, I agree with Mr. Kennedy's view that the state of affairs he describes in the block quote above is not a free market. But not because any particular level of concentration violates the model of "perfect competition" necessary for a free market. I object, rather, because I believe such levels of concentration came about through massive state intervention to cartelize the market; further, I do not believe that such concentration is possible through a free market mechanism, in the vast majority of cases. If, however, the levels of concentration he describes were the outcome of a genuinely free market, and resulted from superior efficiency of such large-scale organization against smaller-scale competitors rather than from state coercion, then I would have to accept them as legitimate (despite some aesthetic revulsion).

Kennedy is greatly in need of theoretical clarity; he needs to state exactly *why* such market concentration is incompatible with the free market. Does he believe that certain outcomes of a free market can create, without government intervention,