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**PRIVATIZING PUBLIC LANDS: A BAD IDEA**

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**CHALLENGING FEDERAL OWNERSHIP AND MANAGEMENT:  
PUBLIC LANDS AND PUBLIC BENEFITS**

Natural Resources Law Center  
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## Privatizing public lands: a bad idea

by Scott Lehmann

My general position is that the case advocates have made for privatizing public lands is not very strong: they have yet to give us good reason to believe that privatization would improve upon the present system of collective management. Moreover, weaknesses in the case they have made provide various openings for defending public lands and the current management system. Such defenses constitute obstacles to making a convincing case for privatization in some other way. Since privatization is in some respects a limiting case of marketization, some of them are also obstacles to arguing that public resources should be allocated as if by a market.

The standard argument for privatization appeals to economic efficiency. It maintains that the resources of public lands and the resources now committed to their management would be better used if these lands were private, where "better used" means more efficiently employed to satisfy the desires of consumers. This argument from efficiency may be expanded somewhat as follows:

P1. Individuals are self-interested.

P2. Where individuals are self-interested, resources will find their most efficient uses, relative to what other allocation systems could achieve, if they are privately owned, ownership being characterized by property rights that are well-defined and non-overlapping, secure, and transferable.

P3. Privatization would create such rights in the resources of public lands.

P4. Uses of resources are more efficient as they better satisfy the desires of consumers.

P5. Situations are better as the desires of consumers are better satisfied.

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C. Public lands should be privatized.

Lest you think I'm making this up, let me briefly cite some of the commitments and arguments of privatization advocates, fitting them into this scheme. I'll then turn to criticism of it.

## A. Support for the premises

1. According to privatization advocates, "the world is populated by self-interested individuals constantly seeking ways to make themselves better off" (Stroup and Baden, 55). This is P1. The problem is to harness the "relentless" (Ibid., 26) forces of self-interest in socially productive ways.

2. The best solution is private ownership of resources. This is P2. It is supported by positive and negative considerations. The former recall the productivity of exchange, the latter allege that collective management 'gets incentives wrong'.

a. **Positive considerations.** If private property rights have the characteristics mentioned in P2 and they are respected, then I'll do well by doing good, via production and exchange. Doing well is getting what I prefer (better satisfying my desires), doing good is enabling others to get what they prefer. Since people know their own desires and preferences best, it's hard to see how we could improve on this system. Transferable rights underlie exchange, secure rights allow for productive investment rather than having to capture benefits by consumption. Rights are ill-defined if it is unclear what they license; such rights encourage wasteful conflict. Where rights overlap, my exercise of mine conflicts with your exercise of yours. Consequently, my consumption and production may harm others: I may no longer do good by doing well.

b. **Negative considerations.** By contrast collective management permits individuals to shift to others the costs of attaining desired allocations of public resources. The taxpayers at large help bankroll many public land users, whether they be backpackers hiking in Wilderness Areas at no charge, or ranchers grazing cattle on BLM allotments at below-market fees. More important, the system encourages transfer activity, in which interests expend time, ingenuity, and money trying to enlarge their slice of the pie, rather than in more productive activities that would enlarge it. Since the individuals who enjoy the benefits are generally not the same as those who 'pay' the opportunity and other costs, it's likely that costs often exceed benefits and resources are accordingly misallocated. Add self-interested legislators and bureaucrats, using the system to advance their own interests unchecked by a rationally ignorant citizenry, and things look pretty bad. Even if we suspend belief and thought these folks were selfless servants of the public good, there's no way for them to get the information about the desires of the public required to allocate resources efficiently.

3. While no entirely clear and satisfactory account of efficiency is given in the privatization literature, there's no doubt about the commitment of privatization advocates to this ideal. We are told, e.g., that "in simple terms, an economic system is efficient if resources are allocated so that no one can be made better off without making at least one person worse off. It is difficult to think of a more worthy goal." (Baden and Lueck, 43) The first of these claims is a somewhat imprecise rendering of the Pareto criterion, which is one elaboration of P4; the second of them is P5.

## B. Problems with the argument.

1. **Logic.** The conclusion does not quite follow from the premises. The argument is consequentialist: it assumes that once we know what course of action has the best overall consequences, we know what we ought to do. Some people deny this, e.g., those who assert rights against forced abortion or sterilization, while conceding that China has a very serious population problem that can't be solved without effectively limiting family size. The problem is coming up with something that looks more important than consequences, properly assessed. In the present case, it's not clear that we can do so.

### 2. Premises.

a. **Spillovers** are excluded by well-defined and non-overlapping property rights, but this just assumes the problem away. There isn't any way to divide this world up so that what I do with mine doesn't affect what you do with yours (unless we make everything the property of one person). So P3 is false.

**Objection (i):** We can handle spillovers with covenants and easements. **Reply:** Covenants are no substitute for informed judgment; moreover, it is not clear how an adequate system of covenants would differ from the current system of regulated private use, except perhaps by being even more cumbersome and litigious.

**Objection (ii):** The present system often spends more than it's worth to prevent or mitigate spillovers. **Reply:** To the extent that this can be demonstrated rather than merely asserted, it seems to license remodeling rather than demolition.

b. The so-called **transaction-costs** of acquiring information and setting up an exchange may block productive movements of resources, particularly where each of a large number of people would derive a relatively small benefit or where it is difficult to

determine or collect what people are actually willing to pay for benefits. Wilderness, e.g., has value to some people who will never visit it. Perhaps aggregate willingness to pay for preservation, both by visitors and non-visitors, exceeds what others are in one way or another willing to pay for development, so that preservation is efficient (by one standard measure). But unless the private owner has some way to collect this, development will prevail. By contrast, the current system has in place mechanisms for acquiring such information and effecting the required allocations. This is a challenge to P2.

**Objection:** Information acquired through public hearings, etc., is misleading and costs more to acquire than it's worth. **Reply:** These claims are unsubstantiated.

c. Where resources end up in a free market reflects not only the desires of consumers but their ability to pay. Each has an initial bundle of resources, and they trade up by exchange. Some will do a lot better than others, depending upon the contents of that bundle. If I don't have what others much want (maybe all I can offer is unskilled labor), I'm not going to do too well in satisfying my desires. None of the standard explications of P4 embodies any concern for equity. So P5 seems to say that equity doesn't matter. Some features of the present system, which provides many services at below cost, might be regarded as addressing equity concerns.

**Objection:** These are not very efficient means to equity: they look more like welfare for the middle class. We could do better by the poor if we simply transferred some income to them, perhaps income raised by the sale of public lands. **Reply:** The objection appears to conflate what *would* be done with what *could* be done and to overlook the political fact that, in this country, the only way to assure the poor anything is to give it to the middle class as well.

d. The argument requires that privatization improve on the current system in the sense of utilizing resources more efficiently, i.e., better satisfying the desires of consumers, as P4 states. What does this mean? If allocations of resources are to be judged in terms of desire-satisfaction, then they must be individuated in part by who gets what: each allocation ultimately delivers to each consumer a bundle of goods. In line with the P1's assumption of self-interested individuals, we think of each consumer having well-behaved *selfish* preferences over bundles, i.e., preferences which do not depend upon what others get. Now how do we compare allocations about which different consumers have different preferences? Which better satisfies the desires of

consumers?

We may try to evade this problem by adopting the Pareto criterion: allocation II improves on allocation I iff no consumer prefers her I-bundle to her II-bundle and at least one consumer prefers her II-bundle to her I-bundle. But this understanding of P4 dooms the argument from efficiency, for lots of people are going to prefer what the current system delivers to them to what privatization would deliver. There may well be Pareto improvements over the current allocation of public lands and resources, but privatization isn't going to deliver any of them.

Instead we need a criterion of improvement which will allow us to count at least some shifts I→II as improvements although some consumers prefer I to II. Unfortunately, the ones available — the Kaldor criterion, or its consumer-surplus variants, or a positive net benefits test — don't advance the argument from efficiency. The basic idea of all of them is that I→II shall count as an improvement if the winners can fully compensate the losers and still be winners. Aside from being very difficult to apply directly, these standards are of dubious coherence, since we can dream up cases in which both I→II and II→I count as improvements. Moreover, to the extent that losses are reckoned in terms of minimum willingness to accept — that is, to the extent that losses or costs are taken *seriously* — the argument may be no better off than it was with the Pareto criterion. If those for whom there is no acceptable substitute for what the current regime delivers to them can name their price, then privatization is going to be effectively vetoed. Of course this problem can be assumed away by holding that reasonably cheap substitutes are always available, regardless of what people claim. But then we are either no longer talking about the real world or we have abandoned the idea that people know their own interests best.

e. Although resources may be useful in satisfying desires, we may not get the most out of some of them if we think of them in this way. To the extent that the market encourages us to regard these as commodities, which exist to satisfy our desires, privatization may be counterproductive. Consider wilderness, which may be most valuable in terms of human experience if we avoid thinking of it as something which is there for us. Under privatization, wilderness would be a commodity like 2×4s, inviting such distracting questions as “Am I really getting my money's worth here?”

f. The assumption of selfish consumer preference that elaborates P1 is completely unrealistic. I don't know anyone who's interested *only* in the contents of his

consumption bundle. Sometimes “self-interest” is given a broader reading, as when Stroup and Baden explain that “to assert that individuals are primarily motivated by self-interest merely suggests that when individuals evaluate the projected impact of an action, their first question is, ‘How will that action affect the things I value?’” (Stroup & Baden, 4) Since this is true of saints as well as sinners, it is much too weak to support their claims about self-interest driving transfer activity and bureaucratic expansion. Instead, they need to argue that the claims of self are much the stronger. Unfortunately, it is not clear where the self is to be found, given that all of us assume various roles whose demands frequently conflict. This makes it difficult to give clear sense to the notion of “claims of self”, which is required if we are to maintain that they are supreme.

An important class of interests that cannot be assimilated to desires for bundles of commodities are what Sax calls “collective values” and Sagoff calls “citizen interests”. These are desires that a collective, perhaps the body politic, behave in certain ways. Suppose I don’t just want the Arctic National Wildlife Refuge preserved as wilderness, perhaps so I have the option of seeing it in its present wild and undiminished state someday, but want *the nation* to do it, perhaps in recognition of the part that wilderness has played in our history and cultural imagination. Suppose I also want to help bring this about by participating in the political processes by which we make such decisions. Such desires cannot, as a matter of logic, be satisfied under privatization (it’s the distinction between wanting *your daughter* to do the dishes and merely wanting them done). These desires of consumers are simply ignored in the standard accounts of P4.

g. Also ignored by the argument is the content of desires. When we seek, as P5 directs, to best satisfy the desires of consumers and to consider what institutional arrangements would do so, we take desires as given. The problem is to better satisfy desires, not to better them. But better satisfying desires makes sense only if the desires are worthwhile to begin with. Socrates’ question “How should I live?” is not to be answered merely by consulting my preferences. Surely there is a distinction between what I’m interested in – what I desire – and what’s in my interest – what’s desirable for me. The most vivid examples are addictions or compulsions of various sorts, yet all of us, I’m sure, have desires we’d be better off without. We need all the help we can get in revealing and modifying them. I suggest that public lands have a role in bettering desires, both via the processes by which we collectively decide how they are to be used and the uses to which these processes lead.

i. If you want to influence the way in which public resources are used, you must join with others of like mind, present a case for your favored use, and respond to those which differ from your vision of the best use. All of these exert pressure toward more critical reflection on our preferences. None are present in commercial transactions.

ii. Many of the public resource allocations represented in National Parks and Wilderness Areas, grazing policy, etc. can be regarded as reflecting a collective determination that certain things are valuable but are threatened by market forces. If we wish to hang onto them and to hold them up as valuable, we must somehow remove them from the market.

### References

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