

COMMUNICATIONS

PRIVATIZATION, JUSTICE AND MARKETS

Richard Auster

As the gains from privatization necessarily increase with the density of usage of the commons, it is quite natural that we find the movement to privatize public land holdings emerging. Privatization is both natural and correct and it is in no way the purpose of this paper to argue against it. Private ownership is clearly a more efficient method of controlling the usage of our now public lands. Efficiency is not the only issue, however. There is also the issue of equity, of preventing injustice and theft. That is, since governments are simply service firms which are publicly held in democracies,¹ there is the issue of selling assets for what they are truly worth and not in effect giving them away. The recent suggestion by Professor Hanke (1982) that we sell all the rangeland in the West to the ranchers who now hold Bureau of Land Management (BLM) leases for something under \$19 per acre is in effect giving the land away.

Hanke would have us believe that because the "custom" has arisen of linking BLM grazing rights to particular parcels of private land, the ranchers who own these private parcels have either implicitly or explicitly paid for all of the value the BLM land represents, save that sum which is the present discounted value of the grazing fees they are required to pay. Hanke, claiming we should not steal from them, argues that it naturally follows that we must first offer the ranchers the right to buy the land in fee simple at the present discounted value of those fees, a sum which averages out to slightly under \$19 per acre! This is wrong; let us see why.

It must be remembered that value in exchange is derived from value in use. Since the only use permitted the ranchers under their current leases is that of grazing, the full value of the public tracts cannot have been incorporated into the market values of their private

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The author is Associate Professor of Economics at the University of Arizona, Tucson, Ariz. 85721.

¹Governments are like widely held corporations with all the problems attendant on that form of doing business. See Auster and Silver (1979).

holdings. Only the value of the use of the land for grazing could have been capitalized; not the mineral rights, timber rights, or rights to subdivide and develop. What has been capitalized, even if it is the full value of the BLM grazing rights net of the lease fees, can only be a small fraction of the total value of these lands when held in fee simple. This point becomes particularly important when we contemplate the continued shift of population from the East to the West. At \$19 per acre we are contemplating one of the biggest giveaways in a long history of such misguided government transfers.

Actually, it is impossible that even the full value of the grazing rights have been capitalized into the values of the ranches. The full capitalization of the grazing rights into the value of the private holdings would have taken place only if there were certainty about the future status of these rights. Since they had never been granted in law, this is most unlikely. Moreover, full capitalization assumes that the market for these holdings was in perfect equilibrium, which is exceptionally unlikely given the dramatic population shifts that have been occurring, the imperfections in capital markets, and the lumpiness of the transacted quantities. I think the issue of the presumed certainty of their continued exclusivity with respect to the BLM grazing rights is the key defect of this aspect of the Hanke plan. The exclusivity of these lease rights—that is, their failure to be open to all in a process of public bidding—is only a relatively recent phenomenon, an administrative oversight as it were. While it is certainly politically smart to buy out a most organized part of the opposition, in this case the ranchers, we must wonder at the implicit encouragement such a policy of compensation would give to future squatting on the public domain. Moreover, once we begin to recognize what are in a sense usufructuary rights to the public domain and the consequent need to compensate losers from its privatization, we are opening up a large can of worms.

Much of the same reasoning that Hanke applies to the rights of the ranchers applies with equal, if not more, strength to the implicit rights of the public workers whose functions I (and Professor Hanke, I understand) wish to privatize as well. Since in many instances their jobs were covered by civil service tenure rules, it would seem that their claims would be stronger. Will we need to compensate them as well? Perhaps we should think this through before we leap.²

²Actually, I have at times argued that we should compensate public workers whose functions are privatized. See Auster (1982). For example, we could give the postal workers the plant and equipment of the U.S. Postal Service in return for the elimination of their monopoly privileges. The political finesse of such a procedure is appealing, but the area needs a lot more debate.

Ultimately what is wrong with the Hanke proposal is that inadvertently he has fallen into the planner's trap of believing that markets might be dispensed with and prices calculated at the center. What we need to do is to rely on markets. The public lands should be put up for auction as Professor Smith (1982) suggests. If we really believe, and I must confess to agnosticism on this point, that the ranchers have by now acquired a right to use the BLM land for grazing through *usus*, then we should grant them deeds to that effect and auction off the other rights to the land. The allocation of the rights to the commonly owned lands by competitive auction is in the true spirit of modern economics.³ Professor Hanke seems to have forgotten his own criticisms of central planning. He now seems vaguely like those socialists who in the great "calculation of prices under central planning" debates proposed that a collectivist economy could solve its price calculation problem by using the prices revealed by the free markets in capitalist countries.

Markets, however, are processes which are situation and time specific. The answers of one market (price, quantity, quality) will not hold for others or for it at other times and situations. There is no perfect substitute for an actual market. Even if privatization is desirable, which it is, how one gets there is important.

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³Having just praised my colleague Professor Smith's paper, perhaps in closing I can point out a problem with it as well. This problem arises because of the imperfection of existing capital markets, which I take as a fact. Given this, it will not be equitable to auction off the rights even if they are initially allocated as he suggests, although that will go a long way in that direction. The Dorn suggestion (p. 675, n. 19) if coupled with the government carrying back the bid amounts to all citizens at the same interest rate would, I believe, complete the equity picture.

“PRIVATIZATION, JUSTICE AND MARKETS”: A REPLY

Steve H. Hanke

Before dealing with the central issue raised by Professor Auster, several assertions contained in his comment must be addressed, since they are either in error or misleading.¹

First, Professor Auster claims that I propose to sell all the public lands for an average price of slightly under \$19 per acre. This assertion is incorrect.

To illustrate the method for computing a first-refusal price for public grazing lands, I use data from a single 1,500-acre parcel of Bureau of Land Management land.² Contrary to Professor Auster's claim, I do not propose to use the first-refusal price for this one parcel as a price for all federal grazing lands. In fact, I clearly state that first-refusal prices should be calculated separately for each lease that is privatized.

Second, Professor Auster asserts that under my privatization proposal ranchers would obtain, in addition to “surface rights,” both timber and mineral rights. This assertion is incorrect.

In my article, I only address issues that are associated with President Reagan's program to privatize some of the public lands. This program does not include the sale of any mineral rights. Moreover, my article is further limited, since it only addresses the issues associated with the sale of “surface rights” on public grazing lands. It

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The author is Professor of Applied Economics at The Johns Hopkins University, Baltimore, Md. 21218. He also serves as a Senior Economic Adviser to the Joint Economic Committee of the U.S. Congress, and is a Senior Fellow at the Manhattan Institute for Policy Research in New York City.

¹R. D. Auster, “Privatization, Justice and Markets,” *Cato Journal* 3 (Winter 1983/84): 869–71.

²Steve H. Hanke, “The Privatization Debate: An Insider's View,” *Cato Journal* 2 (Winter 1982): 653–62.

does not address the problems associated with the sale of other assets contained in the president's program, such as lands that contain *timber rights*.

Third, Professor Auster implies that ranchers who currently lease grazing lands from the federal government do not own any private property rights in the public lands. He argues that these usufruct rights are similar to the "implicit rights" that public workers have in job security. This analogy is incorrect and misleading.

Ranchers' usufruct rights are much different than public workers' "implicit rights" to job security. Unlike public workers, ranchers purchase their usufruct rights.³ This occurs when ranchers pay private premiums for private lands that have public leases attached to them. These usufruct rights are, therefore, not only purchased, but they are recognized by the Internal Revenue Service and valued for purposes of determining inheritance taxes.

Although Professor Auster and I agree that public lands should be privatized, we have a fundamentally different view of the theory of justice and its relationship to the establishment of property rights. Professor Auster believes that the state should be invested with the original rights in the nation's natural resources, and that the state should then sell these "assets for what they are truly worth" instead of "in effect giving them away."⁴

My position is based on John Locke's theory of natural rights.⁵ This theory does not suggest that the original rights to property should be invested with the state and then sold to the highest bidder. Rather, the fundamental tenet of natural rights theory is that rights should be originally invested with those who discover, work, and invest in resources with their energy and savings.

My proposal for privatizing public grazing lands not only protects existing holders of usufruct rights (*rights that have been paid for and are recognized*), but it also formulates a method for establishing absolute rights by a process that is in keeping with the natural rights theory of justice.⁶

³This statement does not apply to those private ranch lands that, since the passage of the Taylor Grazing Act, have never been transferred in an "arms length," market transaction.

⁴Auster, p. 869.

⁵For an excellent exposition of this theory of justice and its relation to property rights, see Murray N. Rothbard, "Justice and Property Rights," in *Property in a Humane Economy*, ed. Samuel L. Blumenfeld (LaSalle, Illinois: Open Court, 1974).

⁶It is important to mention that we are not starting the process of privatization from a pure state of nature. Hence, I have accepted the current state of affairs and recognized both the existing usufruct rights of ranchers and those of the government as a lessor of grazing rights. Given the acceptance of existing government and private grazing rights in public lands, my privatization proposal protects these rights and then applies the "homestead principle"—a principle derived from the natural rights theory of justice.