

Public Choice, Contracting Out and Communitarianism

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INTRODUCTION: PUBLIC CHOICE, CONTRACTING OUT AND COMMUNITARIANISM

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Privatization is of increasing practical importance in many different countries. However, issues of privatization as they relate to the law have had less attention than they deserve. In this Symposium, the balance is amply redressed. Ronald Cass' paper will be a point of reference in years to come. And the particular blend of interests on the part of the discussants of his paper is especially fruitful. Clayton Gillette and Neil Komesar contribute interesting and different approaches towards the issues that Cass discusses. Stuart Butler's discussion is illuminated by his practical experience of public policy issues. Finally, Cento Veljanovski complements the other papers with his deep knowledge of privatization in Britain.

The papers of this Symposium formed the basis of a small conference arranged by both Dean Henry Manne of the Law and Economics Center at the George Mason University Law School and the Liberty Fund, which took place in Arlington, Virginia, from March 26-29th, 1987. The discussion at the conference — a shortened version of which follows the papers presented in this issue — was of great interest. This might have been expected, given the particular blend of theoretical interest and practical experience of the participants. In editing the transcript of the discussion, I was constantly impressed by the range of issues that were addressed as well as the links that were made between privatization and other important questions.

It would be invidious to single out particular contributors other than the authors of the initial papers. But it is worth drawing attention to three themes which were prominent in the deliberations at the conference. First, they mark the coming of age of privatization. They indicate how the dis-

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discussion of privatization has shifted from relatively unreflective partisanship to a deeper perception of the problems, practical and theoretical, that are posed by privatization. The themes also display important links with issues in political philosophy and jurisprudence.

At the conference, there was a strong representation of advocates of law, economics and the public choice approach to the understanding of political phenomena. It was fascinating to see the proponents of these approaches grappling with some of the problems presented by privatization. Other things being equal, one might expect those who take such approaches to favor privatization. But how is one to understand the fact that privatization has taken place? Does privatization represent a triumph of the general interest over particular interests? If so, how is it possible from a public choice perspective that such a thing could happen?¹

Second, among many participants there was a good measure of sympathy for market provision, as opposed to the political provision, of goods and services. The phenomenon of contracting out the provision of goods and services currently supplied by government to the private sector is popularly seen as a striking example of privatization. It was interesting to note the extent to which the discussants were wary of such contracting out, seeing it as generating worrying opportunities for rent-seeking, and as possibly creating barriers to a future return to full market provision. Such problems have previously been explored by John Blundell, one of the participants in the conference.² It was striking the extent to which this perspective was shared by those who favored privatization. Reservations were also expressed by some participants as to whether privatization which amounts to a move from government monopoly to private, regulated monopoly, as in Britain, is in the general interest.

But what of those who are not wholehearted enthusiasts for market provision? They are ably represented in this Volume, through a particularly interesting critique of privatization from a communitarian perspective. Ideas about the importance of public voice and the identity and rights of communities, which have been used to criticize liberalism in political thought and jurisprudence,³ are here seen in engagement with ideas from

1. See Dunleavy, *Explaining the Privatization Boom: Public Choice versus Radical Approaches*, 64 PUB. ADMIN. 13 (1986).

2. See Blundell, *Privatization — by Political Process or Consumer Preference?*, ECON. AFF. Oct.-Nov. (1986).

3. See, e.g., M. WALZER, *SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY* (1983); M. SANDELL, *LIBERALISM AND THE LIMITS OF JUSTICE* (1982). For a brief guide to this literature and an interesting response from a classical liberal perspective see Kukathas, *Liberalism and Its Critics*, 4 HUMANE STUD. REV. (1986-87).

the classical liberal tradition. The discussion also contains a classical liberal response to some of the communitarians' points. This Volume thus links current disputes in the philosophy of law with practical policy issues.

Third, there was some disagreement among those who favored private provision between those who argued on the basis of economic efficiency, and those who also wished to emphasize individual rights. However, as I was a participant in some of this particular discussion, as well as being the editor of this collection, I must forbear from expressing an opinion as to how this argument went.

In conclusion, I can only say how useful I would find this Volume from each of the positions that I have recently occupied as the Director of Studies of a Public Policy Institute, as an academic teaching in the fields of comparative politics and public policy and as an academic research fellow, working in political philosophy. There is much in this Symposium which is stimulating and informative. Many of the contributions also point to the need for further work. Any reader will surely discover many points with which he will disagree. But this simply indicates that this presentation will form a point of reference for discussion on these issues for many years to come.

